

TRANSPORTATION CODE

CHAPTER 254. DRAINAGE ON PUBLIC ROADS

Sec. 254.001. DEFINITIONS. In this chapter:

(1) "Ditch" includes a drain or other watercourse.

(2) "Public road" means a road or highway that has not been discontinued and that has been established according to law, and includes each road or highway opened to and used by the public for at least 10 years before March 25, 1897.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 254.002. PETITION FOR DRAINAGE CONSTRUCTION. (a) The commissioners court of a county may not order a drainage system to be constructed unless a petition is presented to the court as provided by this section.

(b) To be valid, the petition must include:

(1) the signatures of at least 100 registered voters of the county;

(2) a statement of the necessity for and availability of the drainage system;

(3) the number of miles of public roads, as accurately as possible;

(4) the width and depth of the ditches to be built along the first-class roads;

(5) the name and location of each natural waterway crossed by the county's first-class roads;

(6) the distance of each waterway from another along the first-class roads; and

(7) the names and residences, if known, of each owner of real property adjacent to or within one mile of each first-class road.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 254.003. NOTICE OF HEARING ON ESTABLISHING DRAINAGE SYSTEM. (a) After a petition is filed under Section 254.002, the county clerk shall issue notice of the petition not later than the 20th day before the date on which the next regular session of the commissioners court convenes. Each notice must contain a brief statement of the contents of the petition and must require all interested persons who wish to contest the petition to appear at the court's next regular session.

(b) The county clerk shall post a copy of the notice:

(1) at the courthouse door; and

(2) at each of four other public places in the county, not more than one of which may be posted in the same municipality.

(c) The sheriff shall post the notices and shall return them to the county clerk on or before the first day of the term.

(d) For services provided under this section, the county clerk shall receive a fee of \$1.50.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 254.004. HEARING AND DETERMINATION ON ESTABLISHING DRAINAGE SYSTEM. (a) At the hearing on the petition, the commissioners court shall:

(1) consider the petition and hear all testimony for or against its provisions; and

(2) determine whether the drainage system proposed by the petition is necessary or advisable for the public benefit.

(b) If the court approves the petition, the court shall:

(1) order the decision entered into the court's minutes and made part of the record; and

(2) enter into the minutes whether notice was properly served.

(c) The court's order is final if notice was properly served.

(d) If the court disapproves the petition for the drainage system, the court may not hear another application for the drainage system before the first anniversary of the date of disapproval.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 254.005. AUTHORITY TO PROVIDE DRAINAGE. (a) The commissioners court of a county may order the construction or maintenance of ditches as provided by this chapter at any regular session of the court.

(b) If a ditch is constructed under this chapter, the ditch must be placed on or within the exterior lines of a public road in the county and must have the capacity to carry off into a natural waterway all surface water reasonably adjacent that may collect in the ditch from natural causes.

(c) The commissioners court shall:

(1) make a drain on each side of a public road when necessary and use the dirt from the drain excavation to build the road; and

(2) drain a public road when necessary and have one or more ditches cut for that purpose, taking into account the natural waterflow and causing as little damage as possible to adjacent property owners.

(d) In connection with its authority to construct and maintain ditches, the commissioners court may construct any necessary side, lateral, spur, or branch ditch.

(e) The commissioners court may acquire by purchase or condemnation any new or wider right-of-way not wider than 100 feet for streambed diversion and drainage channels, but only for locating, constructing, or maintaining a county road. The cost of acquisition may be paid from the county road and bridge fund or any available county money.

(f) If damages are suffered by a property owner, the commissioners court shall determine the damages and pay the property owner out of the county general fund. If the commissioners court and the property owner disagree as to the amount of damages, the amount may be determined by civil suit.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 254.006. RESTRICTIONS ON DRAINAGE AUTHORITY. (a) The commissioners court of a county may not construct a ditch without an outlet to a natural waterway large enough to carry off all water that may collect in the ditch.

(b) The commissioners court may not change the natural course of any branch, creek, or stream. The public road must cross a branch, creek, or stream at the water's natural crossing.

(c) A culvert must be of sufficient size to allow water to flow, at its natural rate at its normal peak level, from the side of the road where the road intersects the natural channel to the natural channel at the other side of the road.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 254.007. PRIVATE DITCHES. An owner of real property abutting a road or ditch or the owner of a tract of property that is located wholly or partly within one mile of a road or ditch may construct at the owner's cost lateral drainage ditches and may connect those ditches with a main ditch constructed under this chapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 254.008. REGULATION OF PRIVATE DITCHES IN COUNTIES OF 100,000 OR LESS. (a) In a county with a population of 100,000 or less, the commissioners court by order may:

(1) remove the blockage of a ditch on real property that is not owned by the county, if the ditch connects with a drainage ditch constructed or maintained by the county; or

(2) provide for the removal or clearance of a blockage from a ditch that is in violation of an order adopted under this section.

(b) Before a commissioners court acts to remove or clear a blockage under this section, the court shall send a notice by certified mail to the record owners of the property on which the blockage is located in violation of an order adopted under this section. The notice must inform the owners of the order and of the other relevant provisions of this section. The court may not remove or clear the blockage before the 20th day after the date the notice is sent.

(c) The commissioners court shall pay the costs incurred in clearing or removing a blockage under this section.

(d) In this section:

(1) "Blockage" means an accumulation of refuse, vegetation, or other matter in a ditch that substantially decreases or stops the flow of water through the ditch.

(2) "Ditch" includes a culvert.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 254.009. DRAINAGE SYSTEM SURVEY. (a) After approval of a petition under Section 254.004, the commissioners court shall hire a surveyor to conduct a survey under this section for an amount determined by the court at the same meeting or at a subsequent term of court. The surveyor must be an engineer.

(b) The survey shall be applied first to the first-class roads, followed by the second-class and third-class roads.

(c) The surveyor shall make the survey and system of levels required by this section as soon as practicable after the surveyor

is employed.

(d) The surveyor shall:

(1) run a line of levels along the county's public roads, measure the roads from beginning to end, and measure the distance of each waterway crossed by a public road from the location of the beginning of the waterway;

(2) place stakes or monuments along the line at intervals of 100 feet, with intermediate stakes that may be necessary, numbered progressively;

(3) establish permanent benchmarks along the line at intervals of one mile or less as necessary;

(4) establish by stakes or monuments different in character and appearance from all other stakes or monuments the highest point on the road between each of the natural waterways crossed by the road;

(5) measure and establish by suitable marks the frontage of each tract of real property abutting the road; and

(6) if there is a natural waterway adjacent to the line of the road and ditch and the waterway is necessary as an outlet for the water at any point on the ditch, measure the distance to the waterway and run the line of levels to the waterway at the nearest practicable point on the road and ditch.

(e) The surveyor shall prepare a map showing:

(1) the location of the ditch or ditches, with the position of stakes or monuments with numbers corresponding with those on the ground;

(2) the location of benchmarks with their elevations referred to an assumed or previously determined datum; and

(3) the lines and boundaries of adjacent property and the courses and distances of any adjacent watercourse, with a profile of the line of the ditch showing the assumed datum and the grade line of the bottom of the ditch, and the elevation of each stake, monument, or other important feature along the line, such as the top of the banks, the bottom of all ditches or watercourses, the surface of the water, the top of the rail, the bottom of the tie, the foot of the embankment, and the bottom of each borrow pit of each railroad.

(f) The map or an explanation accompanying the map must:

(1) give in tabular form the depth of the cut and the width at the bottom, at the top, at the source, at the outlet, and at each 100-foot stake or monument to the ditch;

(2) show the total number of cubic yards of earth to be excavated and removed from the ditch between each natural waterway into which the water is to be conveyed;

(3) show an estimate of the cost of each portion of each ditch located between natural waterways crossed by the road; and

(4) show an estimate of total cost of the whole work.

(g) The surveyor shall also prepare detailed specifications for the execution of the project.

(h) If in the surveyor's opinion it is advantageous to run a ditch underground through drainage tiles, the surveyor shall so state in the surveyor's report, map, and specifications, with a statement of the location of the underground ditch, its length, and the dimensions or character of tiling or other material required for the underground ditch.

(i) The surveyor shall file a report and the survey, map, and explanation with the county clerk as soon as those items are completed.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 254.010. APPOINTMENT OF JURY OF VIEW. (a) At any regular or called session of the commissioners court after the filing of the surveyor's report, the court shall appoint five real property owners of the county as a jury of view. An appointee may not:

(1) have a direct interest in property adjacent to a proposed ditch or within one mile of a proposed ditch; or

(2) have a family relationship with a person having a direct interest in property described by Subdivision (1).

(b) The court may appoint a single jury of view for the entire proposed drainage system or a separate jury of view for each ditch.

(c) If the jurors selected fail or refuse to perform their duties or the report of the jury is rejected by the commissioners court, the court may appoint another jury of view with the same

duties as the initial jury.

(d) A member of a jury of view is entitled to compensation in the amount of \$3 for each day of service.

(e) After the appointment of a jury of view, the county clerk shall provide the jurors with a certified copy of the petition, court order, and the original surveyor's report with maps, specifications, and the surveyor's estimate of costs.  
Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 254.011. OATH OF JURY. Members of the jury of view must take the following oath before assuming their duties: "I do solemnly swear that I am not directly interested in the construction of the proposed ditch, either as the owner or otherwise, or in adjacent land lying within one mile of the proposed ditch, and that I am not related to any person who is so interested. I further swear that I have no bias or prejudice toward any person directly interested in the ditch, and that I will assess the amount of expense due on and by all adjacent lands lying within one mile of the ditch, according to law, without fear, favor, hatred, or hope of reward, to the best of my knowledge and ability. So help me God."  
Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 254.012. NOTICE TO PROPERTY OWNERS OF JURY PROCEEDINGS. (a) Not later than the fifth day before the date of the meeting to determine costs of ditch construction, the jury of view shall issue notice of the time and place of the meeting to each property owner or to the agent of each property owner who owns real property adjacent to or within one mile of the proposed ditch. The notice must state that:

(1) the purpose of the meeting is to determine each property owner's share of the expense of constructing the ditch; and

(2) each property owner's share of the total expense of constructing the ditch is to be a proportional share of one-half of the total expense of constructing the ditch.

(b) The notice may be served by anyone competent to testify and shall be returned and filed with the jury's final report.

(c) Notice to a property owner who is not a resident of the county and does not have an agent or representative in the county shall be published in a newspaper in the county in the manner provided for giving notice to a nonresident defendant in a district court action. The notice must be published at least four weeks before the jury's meeting date.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 254.013. CLAIMS BY PROPERTY OWNERS. (a) A person whose real property may be affected by the ditch may appear before the jury of view and express the person's opinion on any matter relating to the assessment of expense against the person. The owner at or before the time stated in the notice of the jury's meeting may present to the jury a written statement of an objection to or dissatisfaction with the ditch and any claim for damage sustained because of the construction of the ditch.

(b) Failure to make an objection or claim for damages under Subsection (a) is a waiver of all claim or right to make the objection or claim.

(c) The jury shall return each claim or objection to the commissioners court with the jury's report.

(d) An adjacent property owner may appear before and be heard by the commissioners court on the property owner's protest or claim against the action of the jury.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 254.014. DETERMINATION OF DAMAGES AND ASSESSMENTS; ACTION OF COMMISSIONERS COURT. (a) After giving the required notice and conducting a meeting at which all interested persons have been heard, the jury of view shall:

(1) consider all of the partial estimates and the surveyor's total cost estimate;

(2) draw parallel lines one mile on each side of the ditch; and

(3) apportion to each parcel of real property abutting or within the parallel lines and to the owner of each parcel a proportional share of one-half of the total expense of the ditch, considering the relative amount of benefit to the property derived from the ditch.

(b) The jury shall determine the damages due to any property owner whose property is crossed by any spur, branch, or lateral ditch constructed by order of the commissioners court. Before the

ditch may be opened, the damages must be paid by an order of the court out of the money set aside for the ditch.

(c) The jury shall make a sworn report to the court, signed by at least three jurors, as soon as practicable after its meeting. The report must include:

- (1) an accurate description of each tract of property assessed, with the number of acres and the names of the owners; and
- (2) the amount assessed against each tract and its owners.

(d) The jury shall return the surveyor's report and records to the county clerk. The county clerk shall file the jury's report and the surveyor's report and records. The reports and records are public information after filing.

(e) The commissioners court shall approve or reject the jury's report at its next regular or called term.  
Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 254.015. APPEALS BY PROPERTY OWNERS. (a) A person aggrieved by an assessment may appeal from the final order of the commissioners court approving the report of the jury of view to the appropriate court in the county by:

- (1) giving notice of the appeal in open court;
- (2) having the notice entered as part of the judgment of the court; and
- (3) filing a transcript of the proceeding in the commissioners court with the justice or clerk of the court to which the appeal is taken.

(b) The transcript must be filed not later than the 10th day after the date the judgment of the commissioners court is entered, and must be filed with an appeal bond that has at least two good sureties. The appeal bond must:

- (1) be in an amount that is at least twice the amount of the probable costs to accrue;
- (2) be conditioned that the appellant will prosecute the appeal to effect and pay all costs that may be adjudged against the appellant in the appeal; and
- (3) be approved by the clerk or justice of the court.

(c) The issue in an appeal from an assessment of expense is whether the assessment made against the appellant for construction of the ditch is in proportion to the benefit to the real property derived from the ditch.

(d) The issue in an appeal from an assessment of compensation is whether the assessment of compensation made by the jury of view is adequate to the damage suffered and to the value of the property.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 254.016. PROCEDURES GOVERNING PROPERTY OWNER APPEAL. (a) In an appeal of an assessment under Section 254.015, the appellant has the burden of proof.

(b) The court that tries the appeal shall determine the amount of expense chargeable to the appellant, or the amount of compensation due the appellant, as appropriate, and shall enter that amount as the court's judgment.

(c) Except as provided by Subsection (d), the costs of the appeal shall be adjudged against the appellant.

(d) The costs of the appeal shall be adjudged against the county if the court finds that:

- (1) the amount chargeable to the appellant is less than the amount of expense charged by the jury of view; or
- (2) the appellant is entitled to a greater amount of compensation as damages than determined by the jury of view.

(e) Not later than the fifth day after the date of the judgment, the clerk of the court or the justice, as appropriate, shall issue a certified copy of the judgment and return it to the commissioners court. The commissioners court shall:

- (1) file the judgment with the records relating to the ditch; and
- (2) enter the judgment as the judgment of the commissioners court.

(f) After the commissioners court enters the judgment on appeal:

- (1) there is no further appeal from the judgment of the court for either party to the appeal; and
- (2) the appellant is liable for the amount of expense or entitled to the amount of compensation, as applicable, as determined by the judgment.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 254.017. CERTIFICATION AND COLLECTION OF ASSESSMENTS; LIENS. (a) At the same term at which the commissioners court enters its order for the construction of the ditches and adjoining roadway or at any subsequent term, the court shall enter on its minutes a list of each tract of real property for which an assessment of expense was made and reported by the jury of view and approved by the court. The list must include:

(1) the names of the owners and original grantees of each tract;

(2) the number of acres covered by the assessment; and

(3) the amount of the assessment.

(b) The county clerk shall issue a certificate against each person on the list showing the amount of each assessment, the ditch or road for which the assessment was issued, and the tract of property on which the assessment was issued. The certificate must be signed by the county judge in open court and attested under the hand and seal of the county clerk, and that fact shall be noted in the minutes of the court.

(c) All amounts assessed against any property and its owner by the jury of view or the order of the court are a lien on the property unless prohibited by the Texas Constitution.

(d) The county judge shall deliver the certificates to the county treasurer, and shall take a receipt for delivery from the treasurer and file it with the county records relating to the ditch. The treasurer shall collect each amount due on the certificates and deposit the money collected to the credit of the county road and bridge fund.

(e) If a person against whom a certificate is issued does not pay the amount due to the treasurer on demand, the treasurer shall report that fact to the county attorney. The county attorney shall immediately file suit for foreclosure of the lien or for a personal judgment, as permitted by law.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 254.018. APPROPRIATION FOR DITCH CONSTRUCTION. Following its approval of the report of the jury of view, the commissioners court may order that a portion of the road and bridge fund or the special road and bridge fund, if necessary, be set aside for the construction of the ditch described in the report.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 254.019. CARRYING OUT CONSTRUCTION OF DITCHES. (a) The commissioners court shall order the person in charge of the road adjoining the proposed ditch to construct the ditch in the manner prescribed, using the earth taken from the excavation to build a raised road adjoining the ditch. In the alternative, the court may hire a suitable and competent person other than the person normally in charge of the road adjacent to the proposed ditch to oversee the construction of the ditch for compensation in an amount ordered by the court.

(b) The court by order shall assign to the person in charge of constructing the ditch all county employees assigned to the road adjacent to the ditch and all county equipment and materials. The order shall provide that the person may employ additional labor or purchase additional equipment or material to construct the ditch. The order must show the amount to be paid to the director of construction for the person's services. The court shall order the money required for additional labor, equipment, or material to be paid from the money set aside from the road and bridge fund.

(c) The drainage system shall be applied first to the county's first-class roads, followed by the second-class and third-class roads.

(d) The county may construct one or more ditches at the same time, as the financial condition of the county permits.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.