

TRANSPORTATION CODE
CHAPTER 312. CONTROL OF HIGHWAY ASSETS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 312.001. DEFINITIONS. In this subchapter and in Subchapters B and C:

- (1) "Highway" includes all or any part of a street, alley, or public place or square that is dedicated to public use.
- (2) "Improvement" means the:
 - (A) filling, grading, raising, or paving of a highway in a permanent manner;
 - (B) widening, narrowing, or straightening of a highway;
 - (C) constructing of a gutter, curb, or sidewalk; or
 - (D) constructing of necessary appurtenances to a highway, including sewers and drains.
- (3) "Railway" includes a street railway.

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

Sec. 312.002. APPLICABILITY AND ADOPTION OF SUBCHAPTERS. (a) This subchapter and Subchapters B and C apply only to a municipality that has adopted those subchapters as provided by this section.

(b) To adopt the subchapters, the governing body of a municipality must submit the question of the adoption to voters of the municipality at a special election called for that purpose.

(c) The governing body of a municipality by resolution:

- (1) may order the election; and
- (2) shall order the election if the governing body is presented with a petition for an election that is signed by at least 100 of the registered voters of the municipality.

(d) If the majority of the votes cast in the election favor the adoption of the subchapters, the governing body shall enter the result in its minutes. On entry of the result, the subchapters apply to the municipality. A certified copy of the minutes is prima facie evidence of the regularity of the election and its result.

(e) The governing body of a municipality that adopts the subchapters may adopt any ordinance or resolution to implement the subchapters.

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

Sec. 312.003. HIGHWAY IMPROVEMENT. A municipality may:

- (1) order the improvement of a highway in the municipality's limits;
- (2) select the materials and methods to be used in that construction; and
- (3) contract for the construction in the name of the municipality.

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

Sec. 312.004. CONFLICT OF LAWS. To the extent of a conflict between this subchapter or Subchapter B or C and a law granting a special charter to a municipality, the provision of the special charter controls.

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

SUBCHAPTER B. ASSESSMENTS

Sec. 312.021. PAYMENT FOR IMPROVEMENT. (a) Payment for an improvement under Subchapter A may be made either entirely by the municipality or partly by the municipality and partly by the owners of the abutting property.

(b) The governing body of a municipality may use any available municipal money to pay the municipality's share of the cost of the improvement.

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

Sec. 312.022. ASSESSMENT ORDINANCE. (a) The governing body of a municipality by ordinance may assess the cost of an improvement made under Subchapter A against property that abuts and benefits from the improvement or against the owner of the property.

(b) Except as provided by Subsection (c), the governing body may not assess more than three-fourths of the cost of an improvement against properties or property owners.

(c) The entire cost of constructing a curb or sidewalk fronting property may be assessed against the property or its owner.

(d) The ordinance may:

- (1) provide the terms of payment of an assessment;
- (2) provide a rate of interest to be paid on the assessment, not to exceed eight percent a year payable on deferred

payments;

(3) create a lien on the assessed property; and
(4) declare the assessment to be a personal liability of the owner of the assessed property.

(e) The ordinance must provide for the collection of the:

(1) assessment; and
(2) collection costs and reasonable attorney's fees incurred.

(f) An assessment under this section is a lien securing the payment of the assessment.

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

Sec. 312.023. ASSESSMENT OR TAX AGAINST RAILWAY. (a) The governing body of a municipality may assess against the owner of a railroad that occupies a highway ordered to be improved the entire cost of the improvement made in the area between or under the rails or tracks or in the area extending two feet outside of the rails or tracks.

(b) A municipality by ordinance may impose a special tax on a railway and its roadbed, ties, rails, fixtures, rights, and franchise.

(c) An ordinance that imposes a special tax under this section must describe when the tax is due and delinquent and the method of enforcement.

(d) A tax under Subsection (b) is a lien that is superior to any other lien or claim except a lien or claim for state, county, or municipal taxes.

(e) A tax lien under Subsection (d) may be enforced by:

(1) sale of the property in the manner provided by law in the collection of ad valorem taxes by the municipality; or
(2) suit against the owner.

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

Sec. 312.024. CORRECTION OF ERROR; REASSESSMENT. (a) The governing body of a municipality may correct a mistake or irregularity in a proceeding regarding an improvement or in an assessment of the cost of an improvement made against abutting property or its owner.

(b) If an assessment is in error or is not valid, the governing body may reassess the cost of the improvement against abutting property or its owner. A reassessment may not exceed the improvement's benefit in enhanced value to the property.

(c) The governing body may adopt rules for giving notice to a property owner before a reassessment and for holding a hearing before a reassessment.

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

SUBCHAPTER C. HEARING; APPEAL; PROPERTY LIEN

Sec. 312.041. HEARING REQUIRED. (a) An assessment against property abutting an improvement or against the owner of the property may be made under Subchapter B only after the property owner has a full hearing.

(b) Reasonable notice of the hearing shall be given to the property owner or the owner's agent or attorney.

(c) Notice of the hearing shall be published at least three times in a newspaper published in the municipality in which the assessment is to be made. If that municipality does not have a newspaper, notice shall be published in the newspaper that is published nearest to the municipality and that is of general circulation in the county in which the municipality is located.

(d) The first publication of the notice shall be made not later than the 10th day before the date of the hearing.

(e) If the owner of the property is a railway, written notice of the assessment and hearing shall be:

(1) delivered in person to the local agent of the railway; or

(2) mailed postage paid at a post office in the municipality and properly addressed to the office of the railway at the address shown on the last approved municipal tax roll.

(f) Notice required by Subsection (e) shall be mailed or delivered not later than 10 days before the date of the hearing.

(g) The governing body of the municipality may provide notice in addition to the notice required by this section.

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

Sec. 312.042. HEARING. (a) A hearing under this subchapter shall be before the governing body of the municipality.

(b) An owner of property abutting a proposed improvement is entitled to contest at the hearing:

(1) a proposed assessment or personal liability;
(2) the regularity of the proceedings regarding the proposed improvement;
(3) the benefit of the proposed improvement to the owner's property; or
(4) any related matter.

(c) The amount of an assessment may not exceed the benefit the property owner receives in enhanced value to the property.

(d) The enhanced value to the property shall be determined at the hearing.

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

Sec. 312.043. NOTICE AND HEARING: RULES. The governing body of a municipality by ordinance shall adopt rules providing for giving notice and hearing as provided by this subchapter.

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

Sec. 312.044. NO LIEN ON EXEMPT PROPERTY; LIABILITY OF OWNER. (a) This chapter does not authorize a municipality to create a lien by assessment against property that by law is exempt from sale under execution.

(b) The owner of exempt property is personally liable for an assessment for the cost of an improvement fronting the property.

(c) The omission of an improvement fronting exempt property does not invalidate an assessment lien made against nonexempt property on the improved highway.

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

Sec. 312.045. RIGHT TO APPEAL. (a) A property owner against whose property or against whom the assessment has been made may bring suit to set aside or correct the assessment or any proceeding related to the assessment. The suit or proceeding must be brought not later than the 20th day after the date on which an assessment is made.

(b) After the period provided by Subsection (a), the property owner and the property owner's successors are barred from:

(1) any action to set aside or correct the assessment or a related proceeding; and

(2) raising a defense that alleges the invalidity of the assessment or of a related proceeding in any action in which the invalidity may be raised.

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

Sec. 312.046. ENFORCEMENT OF ASSESSMENT LIEN AND LIABILITY. (a) An assessment lien created against property or the personal liability of the property owner may be enforced by suit or by sale of the assessed property in the manner provided by law for the collection of municipal ad valorem taxes.

(b) A recital in a deed to property sold under Subsection (a) that all legal prerequisites to the assessment and sale of the property have been performed is prima facie evidence that the procedures and prerequisites were performed as stated.

(c) An assessment secured under Subchapter B by a lien on property is:

(1) the first enforceable claim against the property; and

(2) superior to any other lien or claim except a lien or claim for state, county, or municipal taxes.

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

Sec. 312.047. ASSESSMENT CERTIFICATE. (a) A municipality that makes an assessment under Section 312.022 may:

(1) issue in its name an assignable certificate that declares the liability of the owner and the assessed property; and

(2) determine the terms and conditions of the certificate.

(b) A recital in a certificate that states that the procedure for making the improvement was in compliance with law and that all prerequisites to creating the assessment lien on the property and to creating the personal liability of the property owner were performed is prima facie evidence that the procedure and prerequisites were performed as stated in the certificate.

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

SUBCHAPTER D. SPECIAL ASSESSMENT

Sec. 312.061. DEFINITION. In this subchapter, "improvement" means the opening, straightening, widening, paving, constructing, or grading of a street, alley, sidewalk, gutter, or public way.

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

Sec. 312.062. ASSESSMENT FOLLOWING VOID OR ERRONEOUS

ASSESSMENT. (a) The governing body of a municipality may assess property that abuts an improvement with the amount of the cost of the improvement if for any reason none of the cost of the improvement has been borne by the abutting property or its owner either because an attempted assessment and enforcement of the assessment was erroneous or void or was declared erroneous or void in a judicial proceeding and if:

(1) the municipality has spent public money on the improvement;

(2) a municipal voucher or certificate has been issued to a contractor; or

(3) the municipality has contracted for the improvement.

(b) The assessment may not exceed the special benefit the property receives in enhanced value to the property.

(c) The amount of the special benefit is to be determined on a basis of the condition of the improvement at the time of the assessment.

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

Sec. 312.063. NOTICE OF ASSESSMENT. (a) An assessment may be made under this subchapter only if at least 10 days' written notice and an opportunity to be heard on the question of special benefits has been given to the owner of the property abutting the improvement.

(b) Notice under this section may be served personally or by publication in a newspaper of general circulation published in the municipality.

(c) If the owner of the property abutting the improvement is a railway and the property is assessed for improvements, notice shall be given by publication and by written notice delivered in person to the local agent of the railway or mailed postage paid at a post office in the municipality and properly addressed to the office of the railway at the address as shown on the last approved municipal tax roll.

(d) The governing body of the municipality may provide for the procedure and rules:

(1) for notice and a hearing under this section; and

(2) to assess and collect the assessment.

(e) In this section, "railway" includes a street railway.

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

Sec. 312.064. ASSESSMENT LIEN AND LIABILITY. (a) An assessment under this subchapter is payable in not less than five equal, annual installments.

(b) An assessment under this subchapter is a lien against the abutting property and is a personal liability of the owner of the abutting property. The assessment may not be construed as becoming due before the assessment is properly made in accordance with this subchapter.

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

Sec. 312.065. TIME LIMIT ON ASSESSMENT. (a) A proceeding to assess property under this subchapter may not be started later than three years after the date on which the improvement abutting the property that is to be assessed is completed.

(b) If an original assessment on property has been in litigation, the time that the assessment was in litigation may not be computed in the time limit for assessment under Subsection (a).

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

Sec. 312.066. ASSESSMENTS IN CERTAIN MUNICIPALITIES. (a) The amount of an assessment made by the governing body of a municipality with fewer than 5,000 inhabitants may equal the entire cost of a sidewalk, curb, gutter, or improvement other than a street intersection.

(b) The governing body of a municipality making an assessment under this section shall follow applicable procedures in Section 311.095.

(c) The amount of an assessment may not exceed the special benefit the property receives in enhanced value to the property.

(d) An assessment under this section may be made only after the owner of the abutting property has:

(1) been given notice of the assessment; and

(2) the opportunity to contest the assessment before the governing body of the municipality.

(e) The governing body of the municipality may by ordinance adopt rules for the notice and opportunity to contest an assessment under this section.

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

Sec. 312.067. RIGHT TO APPEAL. (a) A property owner against whose property or against whom an assessment has been made may appeal to a court the decision of the governing body of the municipality. The appeal must be brought not later than the 20th day after the date on which an assessment is made.

(b) An assessment becomes final at the end of the period provided for appeal if an appeal is not brought.

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