

TRANSPORTATION CODE
CHAPTER 313. STREET IMPROVEMENTS AND ASSESSMENTS IN CERTAIN
MUNICIPALITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 313.001. DEFINITIONS. In this chapter:

(1) "Cost" includes an expense of engineering and other expense incident to construction of an improvement.

(2) "Governing body" means the governing body of a municipality.

(3) "Highway" includes any part of a street, alley, public place, or square, including a part left wholly or partly unimproved in connection with another street improvement.

(4) "Improvement" includes the following, liberally construed:

(A) filling, grading, raising, paving, or repairing a highway in a permanent manner;

(B) constructing, realigning, or repairing a curb, gutter, or sidewalk;

(C) widening, narrowing, or straightening a highway; and

(D) an appurtenance or incidental to an improvement, including a drain or culvert.

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

Sec. 313.002. APPLICABILITY OF CHAPTER. This chapter applies only to a municipality that has a population of more than 1,000.

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

Sec. 313.003. GENERAL POWERS OF GOVERNING BODY. (a) The governing body of a municipality may:

(1) determine the necessity for and order the improvement of a highway in the municipality;

(2) contract for the construction of the improvement in the name of the municipality; and

(3) provide for the payment of the cost of the improvement by the municipality or partly by the municipality and partly by assessments as provided by this chapter.

(b) The governing body by resolution, motion, order, or ordinance may exercise a power granted by this chapter unless this chapter specifically prescribes that the governing body act by ordinance.

(c) The governing body by resolution or ordinance may adopt rules appropriate to:

(1) the exercise of a power granted by this chapter;

(2) the method and manner of ordering or holding a hearing; and

(3) giving notice of a hearing.

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

SUBCHAPTER B. IMPROVEMENTS

Sec. 313.021. HIGHWAY IMPROVEMENTS AUTHORIZED. (a) A municipality may improve a highway within its limits.

(b) A municipality that has a population of more than 285,000 may make an improvement on a highway outside the municipality's limits if the improvement does not extend more than 150 feet from the municipal limits.

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

Sec. 313.022. CONTRACT FOR IMPROVEMENT OF BOUNDARY HIGHWAY. (a) A municipality may contract with another municipality for one municipality to make an improvement to a part of a highway as provided by this chapter and for the other to pay a part of the cost of the improvement if:

(1) the boundary between the municipalities is on or along the highway or the edge of the highway; and

(2) the governing bodies of the municipalities determine the improvement is necessary.

(b) Either municipality may use its money for the improvement under the contract without regard to whether the highway is within the municipality's limits.

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

Sec. 313.023. PAYMENT FOR IMPROVEMENT. Payment for an improvement under this chapter may be paid entirely by the municipality or may be paid partly by the municipality and partly by property abutting the part of the highway ordered to be improved and the owners of that property.

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

Sec. 313.024. ESTIMATE OF COST. If part of the cost of an

improvement is to be paid by the property abutting the part of the highway to be improved and the owner of the property, the governing body shall prepare an estimate of the cost of the improvement before the improvement is constructed and before the hearing provided by Section 313.048 is held.

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

SUBCHAPTER C. ASSESSMENTS

Sec. 313.041. DEFINITION. In this subchapter, "railway" includes a street railway and an interurban.

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

Sec. 313.042. ASSESSMENT ORDINANCE. (a) The governing body of a municipality by ordinance may assess the cost of an improvement under this chapter against property that abuts the highway or part of the highway the municipality orders to be improved and against the owner of the property.

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

(c) The entire cost of constructing, repairing, or realigning a curb, gutter, or sidewalk may be assessed against the property and its owner.

(d) The ordinance may:

(1) prescribe the terms of payment and default of the assessment; and

(2) prescribe the rate of interest to be paid on the assessment, not to exceed the greater of:

(A) eight percent a year; or

(B) the rate payable by the municipality on its most recently issued general obligation bonds, determined as of the date of the notice provided by Section 313.047.

(e) An assessment against abutting property is:

(1) a lien on the property that is superior to any other lien or claim except a lien or claim for ad valorem taxes; and

(2) a personal liability and charge against the owner of the property, regardless of whether the owner is named.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 827, Sec. 2, eff. Sept. 1, 2001.

Sec. 313.043. ASSESSMENT AGAINST PARCELS OWNED JOINTLY. (a) A single assessment may be made against multiple parcels of property owned by the same person.

(b) Property owned jointly may be assessed jointly.

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

Sec. 313.044. ASSESSMENT APPORTIONED UNDER FRONT FOOT RULE UNLESS INEQUITABLE. (a) A cost of an improvement that is assessed against abutting property and the owners of the property shall be apportioned among the parcels of abutting property and the owners of the property in accordance with the front foot rule.

(b) If, in the opinion of the governing body, the application of the front foot rule in a particular case would result in injustice or inequality, the governing body shall apportion and assess the costs in the proportion it determines just and equitable, considering:

(1) the special benefit the property and the owner receive in enhanced value to the property;

(2) the equities of the owners; and

(3) the adjustment of the apportionment so as to produce a substantial equality of benefits received and burdens imposed.

(c) The entirety of a parcel of real property abutting the highway proposed for assessment is subject to the assessment irrespective of subdivision or partial sale after the date on which the notice was mailed if:

(1) an assessment is imposed by ordinance; and

(2) the municipality has delivered to the county clerk for recording a notice of the proposed assessment that describes, or describes by reference, each abutting parcel.

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

Sec. 313.045. ASSESSMENT OR TAX ON RAILWAYS FOR CERTAIN IMPROVEMENTS. (a) The governing body of a municipality may assess against a railway that uses, occupies, or crosses a highway the cost of a highway improvement in the area between, under, or in the area extending two feet outside of the railway's rails, tracks, double tracks, turn outs, or switches.

(b) The governing body by ordinance may impose a special tax on the railway and its roadbed, ties, rails, fixtures, rights, and

franchises.

(c) The tax imposed under Subsection (b) is a lien on the railway and its roadbed, ties, rails, fixtures, rights, and franchises that is superior to any other lien or claim except county or municipal ad valorem taxes.

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

(1) sale of the property in the manner provided by law for the collection of ad valorem taxes by the municipality; or

(2) suit.

(e) The ordinance imposing the special tax must prescribe the terms of payment of the tax.

(f) The rate of interest may not exceed the greater of:

(1) eight percent a year; or

(2) the rate payable by the municipality on its most recently issued general obligation bonds, determined as of the date of the notice provided by Section 313.047.

(g) If the special tax imposed under Subsection (b) is not paid when due, the municipality may collect the tax, interest, expenses of collection, and reasonable attorney's fees, if incurred.

(h) The governing body may issue assignable certificates in evidence of an assessment as provided by Section 313.052.

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

Sec. 313.046. ASSESSMENT FOR IMPROVEMENT OF BOUNDARY HIGHWAY. (a) If part of the boundary of a municipality is on or along a highway, the municipality may improve that part of the highway and assess a part of the cost of the improvement against the abutting property on both sides of the highway as provided by Section 313.048.

(b) If the highway is wholly or partly in another municipality, the improvement and assessments are subject to consent of the governing body of the other municipality.

(c) An assessment imposed under Section 313.048 against abutting property that is in a municipality other than the municipality initiating the improvement is valid only if the governing body of the other municipality by ordinance or resolution ratifies the assessment.

(d) A person who owns or claims the abutting property has, in addition to the right of appeal provided by Section 313.049, the right of appeal from an assessment for 15 days after the date the ratifying ordinance or resolution is adopted by the governing body of the other municipality.

(e) If the governing body of the other municipality does not ratify the assessment within 30 days after the date of the ordinance or resolution imposing the assessment, the municipality that initiated the improvement may repeal and annul all of the assessment proceedings, including a contract for the improvement.

(f) The failure of the governing body of the other municipality to ratify an assessment does not affect the validity of an assessment imposed against property that is in the municipality that initiated the improvement.

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

Sec. 313.047. NOTICE OF HEARING ON ASSESSMENT. (a) An assessment may be made against an abutting property or its owner or against a railway or its owner only after notice and opportunity for hearing as provided by this section and Section 313.048.

(b) Notice of the hearing shall be published at least three times in a newspaper published in the municipality in which the assessment tax is to be imposed. If the municipality does not have a newspaper, the 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.

(c) The first publication of the notice shall be made not later than the 21st day before the date of the hearing.

(d) In addition to the notice required by Subsection (c), written notice of the hearing shall be given by mail, postage prepaid, deposited at least 14 days before the date of the hearing, and addressed to the owners of the properties abutting the part of the highway to be improved, as the names and addresses of the owners are shown on the rendered tax roll of the municipality. If the names of the respective owners do not appear on the rendered tax roll, the notice shall be addressed to the owners as their names and addresses are shown on the unrendered tax roll of the municipality.

(e) If a special tax is proposed to be imposed against a

railway that uses, occupies, or crosses a part of a highway to be improved, the additional notice shall be given by mail, postage prepaid, deposited at least 14 days before the date of the hearing, and addressed to the railway as shown on the rendered tax roll of the municipality. If the name of the railway does not appear on the rendered tax roll of the municipality, the notice shall be addressed to the railway as its name and address are shown on the unrendered tax roll of the municipality.

(f) The notice is sufficient, valid, and binding on each person who owns or claims an interest in the property or the railway if the notice:

- (1) describes in general terms the nature of the improvement for which the proposed assessment is to be imposed;
- (2) states the part of the highway to be improved;
- (3) states the estimated amount per front foot proposed to be assessed against the owners of abutting property and the property on which the hearing is to be held;
- (4) states the estimated total cost of the improvement on each part of the highway;
- (5) states the amount proposed to be assessed for the improvements proposed to be constructed in part of the area between, under, and two feet outside of rails, tracks, double tracks, turnouts, or switches of a railway; and
- (6) states the time and place of the hearing.

(g) The mailed notice may consist of a copy of the published notice.

(h) If an owner of property abutting a part of a highway proposed to be improved is listed as "unknown" on the municipal tax roll or if the name of an owner is shown on the municipal tax roll but no address for the owner is shown, it is not necessary to mail a notice. If the owner is shown as an estate, the notice may be mailed to the address of the estate.

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

Sec. 313.048. HEARING. (a) A hearing under this subchapter shall be before the governing body of the municipality.

(b) The owner of property abutting a proposed improvement or the owner of an affected railway is entitled to:

(1) be heard on any matter for which a hearing is a constitutional prerequisite to the validity of an assessment under this chapter; and

(2) contest:
(A) the amount of the proposed assessment;
(B) the lien and liability for the assessment;
(C) the special benefit of the proposed improvement to the abutting property and the owner of the abutting property; and

(D) the accuracy, sufficiency, regularity, or validity of the proceedings or contract for the improvement and proposed assessment.

(c) The governing body may:

(1) correct an error, inaccuracy, irregularity, or invalidity;

(2) supply a deficiency;
(3) determine the amount of an assessment;
(4) determine any other necessary matter; and
(5) by ordinance, end the hearing and impose the assessment before, during, or after the construction of the improvement.

(d) An assessment may not:

(1) exceed the enhanced value to the property as determined at the hearing; or

(2) be made to mature before the municipality accepts the improvement for which the assessment is imposed.

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

Sec. 313.049. APPEAL OF ASSESSMENT. (a) A person who owns or claims an interest in assessed property or in an assessed railway may bring suit to contest:

(1) the amount of the assessment;
(2) an inaccuracy, irregularity, invalidity, or insufficiency of the proceedings or contract relating to the assessment or the improvements; or

(3) any matter or thing not in the discretion of the governing body.

(b) The suit must be brought not later than the 15th day after the date the assessment is imposed.

(c) After the period provided by Subsection (b), a person who fails to bring suit:

(1) waives every matter the hearing might have addressed; and

(2) is barred from contesting or questioning in any manner or for any reason:

(A) the assessment;

(B) the amount, accuracy, validity, regularity, or sufficiency of the assessment;

(C) the assessment proceedings; or

(D) a contract relating to the assessment or the improvement.

(d) This section applies to an assessment made under Section 313.048 or 313.050.

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

Sec. 313.050. CORRECTION OF ASSESSMENTS. If an assessment is determined to be invalid or unenforceable, the governing body of the municipality may:

(1) supply any deficiency in the assessment proceedings;

(2) correct any mistake or irregularity in connection with the assessment; and

(3) at any time, make and impose a subsequent assessment after notice and hearing as nearly as possible in the manner this chapter provides for an original assessment and subject to the provisions of this chapter regarding special benefits.

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

Sec. 313.051. NO LIEN ON EXEMPT PROPERTY; LIABILITY OF OWNER. (a) This chapter does not authorize a lien against an interest in property that, at the time an improvement is ordered, is exempt from any lien created by an assessment for a street improvement.

(b) Notwithstanding Subsection (a), the owner of exempt property is personally liable for an assessment in connection with the property.

(c) The omission of an improvement fronting exempt property does not invalidate the lien or liability for an assessment made against nonexempt property.

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

Sec. 313.052. ASSESSMENT CERTIFICATES. (a) The governing body may issue in the name of the municipality an assignable certificate to evidence an assessment imposed. The certificate may declare the lien on the property and the liability of the owner of the property regardless of whether the owner is correctly named. The governing body may determine the terms of the certificate.

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

(c) Subsection (b) applies to a recital in a certificate that evidences an assessment under Section 313.048 or 313.050.

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

Sec. 313.053. CHANGES IN PROCEEDINGS; PROCEDURE. (a) The governing body of a municipality may change a plan, method, or contract for an improvement or other proceeding related to a plan, method, or contract for an improvement.

(b) A change that substantially affects the nature or quality of an improvement may not be made unless the governing body determines, by a two-thirds vote, that it is impractical to proceed with the improvement.

(c) If a substantial change is made after a hearing has been ordered or held, the governing body, in the same manner and with the same effect as provided for an original notice and hearing, shall:

(1) make a new estimate of cost;

(2) order and hold a new hearing; and

(3) give new notices.

(d) If an improvement is abandoned, the new estimate, hearing, and notices are not required.

(e) A change in or abandonment of an improvement must be with the consent of the person who contracted with the municipality for the construction of the improvement.

(f) If an improvement is abandoned, a municipality shall adopt an ordinance that has the effect of canceling:

(1) any assessment imposed for the abandoned improvement; and

(2) all other proceedings relating to the abandoned improvement.

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

Sec. 313.054. ENFORCEMENT OF ASSESSMENT; PRIORITY OF LIEN; DEFENSES. (a) An assessment under this subchapter:

(1) is collectible with interest, expense of collection, and reasonable attorney's fees, if incurred;

(2) is a first and prior lien on the property on which the lien is created from the date the municipality orders the improvement; and

(3) is superior to any other lien or claim other than a lien or claim for county, school district, or municipal ad valorem taxes.

(b) A lien against property or the personal liability of a property owner that arises from an assessment made under this subchapter may be enforced by:

(1) suit; or

(2) sale of the property assessed in the manner provided by law for sale of property for municipal ad valorem taxes.

(c) In a suit on an assessment for which a certificate has been issued, it is sufficient to allege the substance of the recitals in the certificate and that the recitals are true. Additional allegations about the assessment proceedings are not necessary in the suit.

(d) In a suit to enforce an assessment, the only defenses are that:

(1) the notice of the hearing:

(A) was not mailed as required;

(B) was not published; or

(C) did not contain the substance of a requirement prescribed for the notice; or

(2) the assessment exceeded the amount of the estimate.

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

Sec. 313.055. CHAPTER NOT AFFECTED BY STATEMENTS OR ACTIONS OF MUNICIPAL OFFICERS OR EMPLOYEES. Nothing said or done by an employee or officer of a municipality, including a member of the governing body of the municipality, as shown in the municipality's written proceedings and other records, affects this chapter.

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