

TRANSPORTATION CODE

CHAPTER 314. PURCHASE OR CONDEMNATION OF PROPERTY FOR HIGHWAYS BY
CERTAIN MUNICIPALITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 314.001. APPLICABILITY. This chapter applies only to a municipality with a population of more than 1,000.
Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER B. AUTHORITY TO PURCHASE OR CONDEMN PROPERTY

Sec. 314.011. ACQUISITION OF PROPERTY FOR HIGHWAY IMPROVEMENTS BY MUNICIPALITY. (a) The governing body of a municipality may purchase or condemn property to lay out, construct, improve, or extend any highway within its boundaries.

(b) Costs incurred in making improvements, including the costs of purchase or condemnation of or damage to property and the costs of making assessments or issuing certificates under this chapter, may be paid from any municipal fund available for that purpose.

(c) A municipality may sell property originally purchased for improvements but not used for the improvements on the terms it considers appropriate. The proceeds from the sale shall be deposited in a fund that may be used only to pay for costs described by Subsection (b).

(d) In this section, "highway" includes any street, alley, public place, or square dedicated to public use.
Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 314.012. RESOLUTION. (a) A governing body that determines to proceed under this chapter shall declare its determination by resolution that may:

(1) state the nature, extent, and limits of the improvement to be made; and

(2) describe the real property proposed to be condemned by:

(A) the lot or block number;

(B) the number of front feet;

(C) the name of the owner; or

(D) any other description that substantially identifies the property.

(b) A mistake or omission in the resolution does not invalidate it.

(c) Passage of the resolution is conclusive evidence of the public use and necessity of the proposed improvement.

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

Sec. 314.013. SURVEY. (a) On passage of the resolution, the municipal engineer or engineer designated by the governing body shall prepare and submit to the governing body:

(1) a plat showing:

(A) the nature and limits of the proposed improvements;

(B) the location of the proposed improvements; and

(C) the property through which the improvements are to be extended and that is to be condemned for the improvements; and

(2) a written estimate of the total cost of:

(A) the improvements; and

(B) each parcel of property to be condemned.

(b) The governing body shall examine the plat and report and correct any errors. An error or omission does not invalidate the plat or report or a subsequent proceeding held under the plat or report.

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

SUBCHAPTER C. PROCEDURE

Sec. 314.021. APPOINTMENT OF CONDEMNATION COMMISSION. (a) In addition to qualifying under Section 21.014(a), Property Code, a member of a condemnation commission must be a qualified voter.

(b) If a commissioner dies, becomes disabled, refuses to act, becomes incapacitated, or is absent for more than 30 days from the county, the judge shall promptly, in term time or vacation, appoint a new commissioner having the qualifications prescribed by Subsection (a). An action of the commission taken before the vacancy is valid. After the vacancy is filled, the commission shall proceed and take all actions provided by this chapter as if a vacancy had not occurred.

(c) A commissioner is entitled to receive as compensation not more than \$10 for each day the commissioner is employed in the

performance of the commissioner's duties.

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

Sec. 314.022. NOTICE OF CONDEMNATION. (a) The commission or the clerk, secretary, or recording officer of a municipality shall give written notice of a hearing before the commission to:

(1) each owner of property proposed to be condemned or damaged; and

(2) each person with an interest in or lien on the property.

(b) In addition to the requirements of Section 21.016(a), Property Code, the notice may contain:

(1) a brief statement of the nature and extent of the proposed improvement; and

(2) a description of the property proposed to be condemned.

(c) The description provided by Subsection (b)(2) may be by:

(1) lot and block number;

(2) front feet;

(3) the name of each owner; or

(4) any other description that substantially identifies the property.

(d) Notice of the hearing shall be given by publication for not less than three days in a newspaper of general circulation in the county in which the property is located beginning not later than the 10th day before the date of the hearing.

(e) Notice by publication is valid and binding on each owner or other person with an interest in or lien on the property if it generally notifies the person to appear and be heard without specifically designating the person by name. An error in the name of a person to whom the notice is directed does not invalidate the notice.

(f) A copy of the notice shall be delivered to:

(1) each owner, lienholder, or interested party who is a resident of the county where the property is located;

(2) the agent or attorney of a person described by Paragraph (1); or

(3) the guardian of the owner if the owner is a minor.

(g) The person serving the notice shall make a written return on the notice stating when and how the person served the notice.

(h) The governing body may provide for additional notice, but notice by publication is valid and binding regardless of whether any other notice is given.

(i) The governing body may provide for as many hearings in the course of condemnation proceedings as it determines necessary for whatever purposes it determines necessary.

(j) A notice and a return of a notice shall be filed with the municipality.

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

Sec. 314.023. HEARING ON CONDEMNATION. (a) Each owner, lienholder, or other interested party is entitled to appear at the hearing in person or by agent and be heard regarding:

(1) the value of the property proposed to be condemned;

(2) the damages to property not condemned resulting from the improvement;

(3) the legality of the proceedings; or

(4) any right of the owner or other party.

(b) An objection must be in writing and filed with the commission.

(c) The commission may not close the hearing until all interested parties appearing have been heard. At the conclusion of the hearing, the commission shall:

(1) determine the damages due the owners, lienholders, or other interested parties for property taken or damaged;

(2) apportion the damages determined under Subdivision (1) among the owners, lienholders, or other interested parties;

(3) date and sign two copies of a written report; and

(4) file one copy of the report with the clerk, secretary, or recording officer of the municipality and the second copy with the clerk of the court that appointed the commission.

(d) The governing body may record in its minutes the following items relating to a condemnation proceeding:

(1) proceedings of the governing body;

(2) notices issued and returns of the notices;
(3) orders, reports, and other proceedings of the commission; and
(4) certified copies of all orders or proceedings of a court.

(e) A record made under Subsection (d) or a certified copy of the record is prima facie evidence of the facts in the record.
Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 314.024. OBJECTIONS. (a) Not later than the 10th day after the date the commission files a report under Section 314.023 with the court, a party affected by the decision of the commission may file with the court an objection to the decision.

(b) If an objection is not timely filed:

(1) the determinations of the commission become final and binding on the parties and their heirs, successors, and assigns and may not subsequently be questioned in any proceeding; and

(2) the judge shall enter the report in the records of the court and adopt the report as the court's.

(c) The judge may issue process as necessary to enforce a judgment under Subsection (b)(2).

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

Sec. 314.025. LAW APPLICABLE. Except as otherwise provided by this chapter, Chapter 21, Property Code, applies to proceedings under this chapter.

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

Sec. 314.026. ERRORS. The governing body, the condemnation commission, and the judge before whom a condemnation proceeding is pending shall take all appropriate actions to correct any error or invalidity in the proceeding. An error or omission in a proceeding does not invalidate the proceeding, but a proceeding may be corrected, repeated, or adjourned until the correction is made or omission supplied.

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

SUBCHAPTER D. ASSESSMENTS

Sec. 314.041. ASSESSMENTS. (a) Except as provided by this section, the governing body may by resolution order an assessment to pay all or part of the costs of making an improvement as described by Section 314.011(b), with reasonable attorney's fees and the costs incurred in making the assessment, against the owner and property if the property is:

(1) adjacent to or in the vicinity of an improvement;
and

(2) specially benefited by the improvement.

(b) In its resolution, the governing body may designate:

(1) the property to be assessed; or

(2) a district containing property to be assessed.

(c) The governing body may apportion the costs of the assessment among the owners of the property assessed.

(d) In making an assessment, the governing body may not include the cost of property purchased but not actually used for making the improvement.

(e) An assessment may not be made against:

(1) property or its owner in excess of the special benefit to the property in the enhanced value of the property resulting from the improvement; or

(2) property that is exempt from execution.

(f) The owner of property exempt from assessment under Subsection (e)(2):

(1) shall be assessed an amount equal to the amount the assessment would have been if the property were not exempt; and

(2) is personally liable for the assessment.

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

Sec. 314.042. NOTICE TO OWNER OF ASSESSMENT. (a) An assessment may not be made against the property benefited or the owners of the property until after the owners, lienholders, and other interested parties are given a reasonable opportunity to be heard before the governing body or before the commission as provided by Section 314.047.

(b) The governing body or commission shall publish three times before the hearing reasonable notice of the hearing in a newspaper of general circulation in the municipality beginning not later than the 10th day before the date of the hearing.

(c) If an owner is a railway or street railway, the governing body or commission shall also give, not later than the 10th day before the date of the hearing, written notice:

(1) in person to the owner's local agent; or
(2) by mailing the notice through the post office in the municipality to the address of the office of the railway or street railway as it appears on the most recent tax roll of the municipality.

(d) The name of an owner, lienholder, or other interested party need not be specifically set out in the notice required by Subsection (b) or (c), but the real property proposed to be assessed shall be briefly described in the notice by:

(1) lot and block;
(2) number;
(3) front feet;
(4) reference to a plat, report, or record filed in connection with the proceedings; or
(5) any other description reasonably identifying the property.

(e) The governing body or commission may give notice in addition to the notice required by Subsections (b) and (c), but the notice required by those subsections is sufficient.

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

Sec. 314.043. NOTICE TO COUNTY CLERK OF ASSESSMENT. (a) A governing body that proposes to assess property abutting an improvement shall file notice with the county clerk of each county in which the property is located. The notice must be signed in the name of the municipality by its clerk, secretary, or mayor or the officer performing the duties of the clerk, secretary, or mayor.

(b) The notice required by Subsection (a) must:

(1) show substantially that the governing body has determined it necessary that the street be improved;

(2) give the name of:

(A) the street and the names of the two cross streets or other approximate lengthwise limits between which the street is to be or has been improved or otherwise identify or designate the street and the portion of the street to be improved; and

(B) the subdivision and affected blocks if the street abuts a subdivision for which a plat has been recorded in the county clerk's office; and

(3) state that a portion of the cost of the improvement is to be or has been specifically assessed as a lien on property abutting the street.

(c) A notice filed under Subsection (a) may include one or more streets or improvements.

(d) A governing body that proposes to assess property not abutting the improvement shall file a notice signed as required by Subsection (a) with the clerk of each county where the property is located.

(e) The notice required by Subsection (d) must:

(1) designate the property proposed to be assessed or the district within which assessments have been or may be made; or

(2) otherwise identify the property against which a lien is proposed to be assessed.

(f) A notice required by Subsection (a) or (d) need not give details or be sworn to or acknowledged. The notice may be filed at any time, and the county clerk with whom the notice is filed shall:

(1) record the notice in the same class of records as a mortgage or deed of trust; and

(2) index the notice in the name of the municipality and in the name or other designation of the street to which the notice relates.

(g) Substantial compliance with this section is sufficient.

(h) In this section, "street" includes any part of a street, alley, highway, public place, or square.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 827, Sec. 3, eff. Sept. 1, 2001.

Sec. 314.044. HEARING ON ASSESSMENT. (a) At a hearing under Section 314.042(a), an owner, lienholder, or other interested party may:

(1) object in writing to an assessment, special benefit to the property, invalidity of the assessment, or any prerequisite to the assessment; and

(2) present testimony in support of the objection.

(b) The governing body or the commission shall determine the amounts, if any, to be assessed.

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

Sec. 314.045. LIEN. (a) An assessment creates a lien on property prior to all other liens except a lien for ad valorem taxes.

(b) The lien takes effect on the filing of the notice provided by Section 314.043(a) or (d).

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

Sec. 314.046. ASSESSMENTS LEVIED. (a) The governing body may make an assessment only by ordinance.

(b) An assessment may:

(1) be made payable in not more than 16 installments maturing within 15 years; and

(2) bear interest at not more than eight percent a year.

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

Sec. 314.047. HEARING ON ASSESSMENT BEFORE CONDEMNATION COMMISSION. (a) The governing body may provide that the condemnation commissioners hold the hearing required under Section 314.042(a).

(b) The commission that holds the hearing:

(1) shall give notice as required by Section 314.042; and

(2) has the powers and duties conferred by this chapter on the governing body except as otherwise provided by this chapter.

(c) At the conclusion of the hearing, the commission shall report in writing its findings to the governing body. The governing body shall:

(1) examine the report and, if it finds the report to be correct, approve the report; and

(2) make an assessment in the proper amount against property and the owner of property found to be benefited by the improvement.

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

Sec. 314.048. CERTIFICATES. The municipality may:

(1) issue assignable certificates payable to the municipality or the purchaser of the certificates stating the liability of the property and the owner of the property for the payment of assessments; and

(2) set the terms of the certificates, including the time of payment, conditions of default, and date of maturity.

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

Sec. 314.049. ENFORCEMENT OF ASSESSMENT. An assessment may be enforced by:

(1) suit brought by the municipality for the benefit of a holder and owner of an assessment or a certificate issued on the assessment;

(2) suit brought by a holder and owner of an assessment or a certificate issued on the assessment; or

(3) sale of the assessed property in the same manner as nearly as possible as the sale of real property for municipal taxes.

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

Sec. 314.050. SUIT ON CERTIFICATE. In a suit to enforce a certificate issued under Section 314.048, the recitals of the certificate are sufficient to allege the proceedings of the governing body in making the improvements, the assessment for the improvements, and all prerequisites to the assessment. The allegations contained in the recitals need not be stated in the pleadings.

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

Sec. 314.051. REASSESSMENTS. (a) An error in a proceeding under this chapter, the description of property, or the name of the owner does not invalidate an assessment, and an assessment is in effect against the property and the owner of the property.

(b) A governing body that is advised of an error shall correct the error.

(c) At the request of an interested party, the governing body shall, after notice and hearing that comply with this chapter, reassess an owner or property erroneously assessed in accordance with special benefits as provided by this chapter as to original assessments. The governing body may set the terms of payment of a reassessment and may issue assignable certificates evidencing the reassessment in the same manner as for an original assessment.

(d) The governing body may not make a reassessment later than six years after the date of the ordinance making the original assessment. If the reassessment is contested in an action at law,

the time consumed in the action is not included in computing the six years.

(e) In making a reassessment, the governing body is not required to repeat an action relating to the original assessment, except as required by Subsection (c).

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

Sec. 314.052. DEFICIENCY ASSESSMENTS. (a) If, after an assessment is made under this chapter, the amount assessed and apportioned is insufficient to defray all the costs of an improvement:

(1) the governing body may assess the deficiency against property specially benefited and the owners of the property and apportion the deficiency among them, after notice and hearing as provided by this chapter and after complying with each provision of this chapter applicable to original assessments; or

(2) a deficiency assessment may be made after notice and hearing before the commission in the manner provided by Section 314.047.

(b) A municipality may issue assignable certificates evidencing the deficiency assessment.

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

Sec. 314.053. SUIT TO SET ASIDE OR CORRECT ASSESSMENT OR REASSESSMENT. (a) A suit to set aside or correct an assessment or reassessment or a proceeding relating to the assessment or reassessment because of an error or invalidity in the assessment or reassessment must be brought by a property owner against whom or whose property an assessment or reassessment has been made not later than the 10th day after the date of the assessment or reassessment.

(b) After the deadline prescribed by Subsection (a), the owner and the owner's heirs, successors, and assigns are barred from bringing an action described by that subsection or objecting to the validity of an assessment, reassessment, or proceeding.

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

Sec. 314.054. VALIDITY OF ASSESSMENT. An assessment or reassessment is valid and binding without regard to:

(1) an error, omission, or invalidity in a proceeding of the municipality under this chapter with reference to:

(A) the making of an improvement provided by this chapter;

(B) the taking or condemnation of property for an improvement; or

(C) the determination and payment of damages for property taken or damaged; or

(2) whether as of the date of the assessments the improvement was completed.

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