

CHAPTER 147

S.B. No. 894

AN ACT

relating to adoption of a nonsubstantive revision of the statutes relating to the executive branch of government, including penalties and conforming amendments.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. ADOPTION OF TITLE. Title 4, Executive Branch, Government Code, is adopted to read as follows:

TITLE 4. EXECUTIVE BRANCH

- CHAPTER 401. GOVERNOR AND LIEUTENANT GOVERNOR
- CHAPTER 402. ATTORNEY GENERAL
- CHAPTER 403. COMPTROLLER OF PUBLIC ACCOUNTS
- CHAPTER 404. STATE TREASURER
- CHAPTER 405. SECRETARY OF STATE
- CHAPTER 406. NOTARY PUBLIC; COMMISSIONER OF DEEDS

[Chapters 407–410 reserved for expansion]

CHAPTER 411. DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS

[Chapter 412 reserved for Texas Department of Corrections]

CHAPTER 413. CRIMINAL JUSTICE POLICY AND COORDINATING COUNCILS

CHAPTER 414. CRIME STOPPERS ADVISORY COUNCIL

CHAPTER 415. COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS  
AND EDUCATION

CHAPTER 416. COMMISSION ON FIRE PROTECTION PERSONNEL STANDARDS  
AND EDUCATION

CHAPTER 417. STATE FIRE MARSHAL

CHAPTER 418. EMERGENCY MANAGEMENT

[Chapters 419–430 reserved for expansion]

CHAPTER 431. STATE MILITIA

CHAPTER 432. TEXAS CODE OF MILITARY JUSTICE

CHAPTER 433. STATE OF EMERGENCY

CHAPTER 434. VETERAN ASSISTANCE AGENCIES

CHAPTER 435. TEXAS NATIONAL GUARD ARMORY BOARD

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CHAPTER 441. LIBRARIES AND ARCHIVES

CHAPTER 442. TEXAS HISTORICAL COMMISSION

CHAPTER 443. STATE PRESERVATION BOARD

CHAPTER 444. TEXAS COMMISSION ON THE ARTS

CHAPTER 445. TEXAS MUSIC COMMISSION

CHAPTER 446. GOVERNOR'S COMMISSION ON PHYSICAL FITNESS

[Chapters 447–460 reserved for expansion]

CHAPTER 461. TEXAS INDIAN COMMISSION

CHAPTER 462. TEXAS TOURIST DEVELOPMENT AGENCY

CHAPTER 463. AUTOMATED INFORMATION AND TELECOMMUNICATIONS  
COUNCIL

CHAPTER 464. BUILDING MATERIALS AND SYSTEMS TESTING LABORATORY

CHAPTER 465. TEXAS NATIONAL RESEARCH LABORATORY COMMISSION

#### TITLE 4. EXECUTIVE BRANCH

##### CHAPTER 401. GOVERNOR AND LIEUTENANT GOVERNOR

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§c. 401.004. INAUGURAL CONTRIBUTIONS

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- Sec. 401.022. DEFINITION
- Sec. 401.023. SUCCESSION
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- Sec. 401.025. EXCEPTION

CHAPTER 401. GOVERNOR AND LIEUTENANT GOVERNOR

SUBCHAPTER A. INAUGURATION

Sec. 401.001. INAUGURAL COMMITTEE. (a) Not later than the 10th day after the date of each election for governor and lieutenant governor, the secretary of state shall issue a proclamation stating who, in the secretary of state's opinion based on the best information then available, are the governor-elect and lieutenant governor-elect. The secretary of state shall promptly deliver certified copies of the proclamation to the individuals named in the proclamation.

(b) As soon as possible after receiving notice of the proclamation, the governor-elect and lieutenant governor-elect shall each file with the secretary of state a signed instrument. The governor-elect shall designate in that instrument one individual to serve as chairman of the inaugural committee and one individual to serve as a cochairman of the committee. The lieutenant governor-elect shall designate in that instrument one individual to serve as a cochairman of the committee. The governor-elect and lieutenant governor-elect may appoint by written instrument filed with the secretary of state other members to the inaugural committee as they consider necessary. An individual who holds a position of profit under this state or the United States is ineligible for appointment to the committee.

(c) If after issuing a proclamation under this section the secretary of state becomes aware of information that indicates that the previous designation of governor-elect or lieutenant governor-elect was incorrect, the secretary of state shall issue a corrected proclamation and deliver certified copies of it to the previous designee, the new designee, and each member of the inaugural committee appointed by the previous designee. Issuance of a corrected proclamation terminates the membership on the inaugural committee of appointees of the previous designee but does not affect an action taken by the committee before the proclamation was issued. As soon as possible after the new designee receives notice of designation as governor-elect or lieutenant governor-elect, the designee shall make the appropriate appointments under this section.

(d) A vacancy on the committee is filled by appointment by the original appointing authority according to the procedure applicable to original appointments.

(e) Designation of an individual as governor-elect or lieutenant governor-elect under this section has no legal effect except for purposes of this subchapter. (V.A.C.S. Art. 6145-12, Sec. 1.)

Sec. 401.002. ORGANIZATION, POWERS, AND DUTIES OF COMMITTEE. (a) As soon as possible after the members of the committee have been appointed, they shall convene at a time and place designated by the individual appointed chairman, take the constitutional oath of office, and hold an organizational meeting.

(b) The committee may hold subsequent meetings at times it determines or on the call of the chairman. The chairman presides at meetings. If the chairman is absent, one of the cochairmen presides.

(c) The committee may adopt rules to govern its proceedings.

(d) A member of the committee serves without compensation but may be reimbursed for actual and necessary expenses incurred in the performance of committee duties as provided by legislative appropriation.

(e) The committee shall make arrangements necessary for conducting ceremonies and events to observe the inauguration of the governor and lieutenant governor. The committee may employ staff or engage the services of consultants to assist in its work.

(f) The committee may request the cooperation of an agency or official of state or local government. The agency or official shall cooperate with the committee to the extent possible. (V.A.C.S. Art. 6145-12, Sec. 2.)

Sec. 401.003. INAUGURAL FUND. (a) The inaugural fund is a special fund in the state treasury. Money in the inaugural fund may be appropriated only for expenditures authorized by this chapter.

(b) The state treasurer shall credit to the inaugural fund a pro rata share of the interest received from the deposit of state funds as if the inaugural fund were a constitutional fund. (V.A.C.S. Art. 6145-12, Sec. 3.)

Sec. 401.004. INAUGURAL CONTRIBUTIONS. (a) A person may contribute funds, services, or other things of value to pay the expenses of or otherwise provide for an inauguration. This contribution is not a political contribution for purposes of state law regulating political contributions or prohibiting a contribution by a corporation or labor organization.

(b) A contribution may be made to the inaugural committee or the secretary of state. If the secretary of state receives a contribution while the inaugural committee exists, the secretary of state shall deliver the contribution to the committee. If the secretary of state receives a contribution at any other time, the secretary of state shall transmit the contribution to the state treasurer, who shall deposit it in the state treasury to the credit of the inaugural fund.

(c) On receipt of a contribution, the secretary of state shall execute duplicate copies of a receipt, give one copy to the contributor, and retain the other. The receipt must show:

- (1) the name and mailing address of the contributor;
- (2) the amount of the contribution;
- (3) the date of the contribution; and
- (4) that the contribution was received to pay inaugural expenses.

(d) The secretary of state shall keep the receipt on file in the office of the secretary of state for at least four years and shall maintain an index of the receipts, arranged alphabetically by contributor, showing the date of the contribution, the name and mailing address of the contributor, and the amount of each contribution. The index and receipts are public information. (V.A.C.S. Art. 6145-12, Sec. 4.)

Sec. 401.005. EXPENDITURES. (a) Subject to any conditions attached to a particular appropriation, money appropriated from the inaugural fund may be expended for:

- (1) printing;
- (2) the employment of staff;
- (3) the lease of office space and payment of utility expenses;
- (4) professional and consultant fees;
- (5) postage, telephone, and telegraph expenses;
- (6) payment of expenses incurred by committee members; and
- (7) any other public purpose reasonably related to conducting inaugural ceremonies and related events, including expenses of raising funds.

(b) Contributions received by the committee and not deposited in the state treasury may be expended for any purpose the committee considers appropriate.

(c) A voucher for an expenditure from the inaugural fund must be approved in writing by the chairman.

(d) Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), does not apply to the committee. (V.A.C.S. Art. 6145-12, Sec. 5.)

Sec. 401.006. COMPETITIVE BIDDING. The committee may not make a contract covered by the competitive bidding requirements of Article XVI, Section 21, of the Texas

Constitution unless before awarding the contract the committee obtains at least three bids. The committee shall award the contract to the lowest bidder who in the opinion of the committee is most responsible and is best able to fulfill the terms of the contract. The committee may reject all bids if none in the opinion of the committee is responsible and able to fulfill the terms of the contract at a reasonable price. (V.A.C.S. Art. 6145-12, Sec. 6.)

Sec. 401.007. **RECORDS OF EXPENDITURES.** In addition to maintaining records required by law with regard to the expenditure of appropriated funds, the committee shall maintain a record of each expenditure of nonappropriated funds. The record must contain the following information about each expenditure:

- (1) the name and address of the entity to whom the expenditure was paid;
- (2) the amount of the expenditure;
- (3) the date of the expenditure; and
- (4) the purpose of the expenditure. (V.A.C.S. Art. 6145-12, Sec. 7.)

Sec. 401.008. **FINAL REPORT; DISSOLUTION OF COMMITTEE.** (a) As soon after the inauguration as the committee determines that it has completed its work and has satisfied its financial obligations, but not later than June 30 of the year in which the inauguration is held, the committee shall file with the secretary of state a final report verified by a certified public accountant that shows:

- (1) the total amount of contributions received by the committee, including contributions paid to the secretary of state during the committee's existence;
- (2) the total amount of expenditures made by the committee from nonappropriated funds; and
- (3) the total amount of nonappropriated funds remaining in the committee's possession.

(b) On the date on which the committee files its final report with the secretary of state, the committee shall deliver to the state treasurer all unexpended nonappropriated funds it possesses. The treasurer shall deposit the funds in the state treasury to the credit of the inaugural fund.

(c) When the secretary of state determines that the committee has complied with Subsections (a) and (b), the secretary of state shall issue a proclamation to that effect. The committee is dissolved on the day after the date the proclamation is issued.

(d) The final report of the committee is public information. (V.A.C.S. Art. 6145-12, Sec. 8.)

Sec. 401.009. **CLAIMS FILED AFTER DISSOLUTION.** (a) If after dissolution of the committee a person files with the secretary of state a verified claim for an amount claimed to be due to the claimant under a contract made under this subchapter by the committee before its dissolution, the secretary of state shall submit a copy of the claim to the governor, lieutenant governor, and attorney general. If each of those officers files with the secretary of state a signed statement finding that the claim is valid, the secretary of state shall forward the original claim and the statements to the comptroller. If funds for the payment of expenses of the type covered by the claim have been appropriated and are available and if a legal reason does not exist for refusing payment, the comptroller shall pay the claim.

(b) Appropriations for the payment of claims under this section must be from the inaugural fund. (V.A.C.S. Art. 6145-12, Sec. 9.)

Sec. 401.010. **ADDITIONAL STATE FUNDING.** In addition to making appropriations from the inaugural fund as authorized by this subchapter, the legislature may appropriate other funds for any purpose for which money in the inaugural fund may be appropriated. (V.A.C.S. Art. 6145-12, Sec. 10.)

[Sections 401.011-401.020 reserved for expansion]

#### SUBCHAPTER B. EMERGENCY INTERIM SUCCESSION

Sec. 401.021. **SHORT TITLE.** This subchapter may be cited as the Emergency Interim Executive Succession Act. (V.A.C.S. Art. 6252-10, Sec. 1.)

Sec. 401.022. **DEFINITION.** In this chapter, “unavailable” means not able to exercise the powers and discharge the duties of the office of governor for any reason specified in the Texas Constitution. (V.A.C.S. Art. 6252-10, Sec. 2.)

Sec. 401.023. **SUCCESSION.** (a) If the governor, lieutenant governor, and president pro tempore of the senate are unavailable, the following officers in succeeding order shall exercise the powers and discharge the duties of the office of governor:

- (1) the speaker of the house of representatives;
- (2) the attorney general; and
- (3) the chief justices of the courts of appeals, in the numerical order of the supreme judicial districts the courts serve.

(b) An officer listed in this section acts as governor under this subchapter only if the preceding officers in the order of succession are unavailable. (V.A.C.S. Art. 6252-10, Sec. 3 (part).)

Sec. 401.024. **TERM OF SERVICE.** A person acts as governor under this subchapter until a new governor is elected and qualified or until a preceding officer in the order of succession becomes available. (V.A.C.S. Art. 6252-10, Sec. 3 (part).)

Sec. 401.025. **EXCEPTION.** The president pro tempore of the senate or speaker of the house of representatives may act as governor under this subchapter only if the person holds that office when the governor and lieutenant governor first become unavailable. (V.A.C.S. Art. 6252-10, Sec. 3 (part).)

## CHAPTER 402. ATTORNEY GENERAL

### SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 402.001. ASSISTANTS
- Sec. 402.002. REGISTER
- Sec. 402.003. REPORT
- Sec. 402.004. ADMISSION, AGREEMENT, OR WAIVER
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- Sec. 402.006. FEES
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- Sec. 402.008. OFFICE

[Sections 402.009–402.020 reserved for expansion]

### SUBCHAPTER B. DUTIES

- Sec. 402.021. REPRESENTATION OF STATE
- Sec. 402.022. COLLECTION SUITS
- Sec. 402.023. CORPORATE CHARTERS
- Sec. 402.024. DEFENSE OF DISTRICT JUDGE, GRAND JURY COMMISSIONER, OR GRAND JUROR
- Sec. 402.025. PROPERTY TRANSACTIONS
- Sec. 402.026. INSPECTION OF ACCOUNTS
- Sec. 402.027. FORMS

[Sections 402.028–402.040 reserved for expansion]

### SUBCHAPTER C. OPINIONS

- Sec. 402.041. DEFINITION
- Sec. 402.042. QUESTIONS OF PUBLIC INTEREST AND OFFICIAL DUTIES
- Sec. 402.043. QUESTIONS RELATING TO ACTIONS IN WHICH THE STATE IS INTERESTED
- Sec. 402.044. QUESTIONS RELATING TO BONDS
- Sec. 402.045. LIMITATION

## CHAPTER 402. ATTORNEY GENERAL

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 402.001. **ASSISTANTS.** (a) If the attorney general is absent or unable to act, the attorney general’s first office assistant shall perform the duties of the attorney general that are prescribed by law.

(b) The attorney general shall, at the request of an agency, designate one or more assistants to attend the meetings of the agency if the attorney general served as an ex officio member of the governing board of the agency on August 23, 1963. (V.A.C.S. Art. 4412.)

Sec. 402.002. REGISTER. (a) The attorney general shall keep in a proper book a register of:

- (1) the official acts and opinions of the attorney general; and
- (2) actions, demands, and related proceedings involving state revenue prosecuted or defended by the attorney general or a district or county attorney.

(b) The attorney general shall deliver the register to the successor to that office. (V.A.C.S. Art. 4406.)

Sec. 402.003. REPORT. The attorney general shall report to the governor on the first Monday of December of each even-numbered year. The report must include the following information for the preceding two years:

- (1) a statement of the number of indictments found by grand juries in the state and the offenses charged;
- (2) a statement of the number of trials, convictions, and acquittals for each offense;
- (3) a statement of the number of dismissals;
- (4) a summary of the judgments rendered on conviction, the nature and amount of penalties imposed, and the amount of fines collected;
- (5) a summary of the cases in which the state was a party that were acted on by the supreme court and court of criminal appeals; and
- (6) a summary of civil cases in which the state was a party that were prosecuted or defended by the attorney general in other state or federal courts. (V.A.C.S. Art. 4413.)

Sec. 402.004. ADMISSION, AGREEMENT, OR WAIVER. An admission, agreement, or waiver made by the attorney general in an action or suit to which the state is a party does not prejudice the rights of the state. (V.A.C.S. Art. 4411.)

Sec. 402.005. ACCEPTANCE OF MONEY. The attorney general may not accept or use money offered by an individual, firm, partnership, corporation, or association for investigating or prosecuting a matter. (V.A.C.S. Art. 4413a.)

Sec. 402.006. FEES. (a) For an affirmance of judgment in a case to which the state is a party and that involves liability to the state, the attorney general is entitled to a fee in an amount equal to 10 percent of the amount collected up to \$1,000 and five percent of the amount collected in excess of \$1,000. This fee shall be paid from the amount collected when it is collected.

(b) For a case involving a forfeiture of a charter heard on appeal before the supreme court or court of appeals, the attorney general is entitled to a fee of \$500.

(c) In a case in which the state is entitled to recover a penalty or damages the attorney general is entitled, on behalf of the state, to reasonable attorney's fees and court costs. (V.A.C.S. Art. 3917.)

Sec. 402.007. PAYMENT TO TREASURY. The attorney general shall immediately pay into the state treasury money received for a debt or penalty. (V.A.C.S. Art. 4407.)

Sec. 402.008. OFFICE. The attorney general shall keep the attorney general's office in Austin. (V.A.C.S. Art. 4394 (part).)

[Sections 402.009–402.020 reserved for expansion]

#### SUBCHAPTER B. DUTIES

Sec. 402.021. REPRESENTATION OF STATE. The attorney general shall prosecute and defend all actions in which the state is interested before the supreme court and courts of appeals. (V.A.C.S. Art. 4395.)

Sec. 402.022. COLLECTION SUITS. (a) The attorney general shall deliver to the proper district or county attorney, along with necessary instructions, a certified account, bond, or other demand that the comptroller has delivered to the attorney general for prosecution.

(b) The attorney general shall require each district and county attorney to submit a report, in the form prescribed by the attorney general, at the close of the courts of the attorney's district or county. The report must state the status of each suit for the collection of public money brought by the attorney. On the last day of October of each year and at other times on the comptroller's request, the attorney general shall submit to the comptroller a report on the status of these suits. (V.A.C.S. Art. 4396.)

Sec. 402.023. CORPORATE CHARTERS. (a) Unless provided otherwise by law, the attorney general shall seek a judicial forfeiture of a private corporation's charter if sufficient cause exists. If satisfactory evidence is presented to the attorney general that a corporation receiving state aid has forfeited its charter or rights under its charter, the attorney general shall immediately seek a judicial forfeiture of the charter.

(b) The attorney general shall inquire into the charter rights of each private corporation and act in the name of the state as proper and necessary to prevent the corporation from exercising a power or demanding or collecting a tax, toll, freight, or wharfage not authorized by law. (V.A.C.S. Arts. 4408, 4409.)

Sec. 402.024. DEFENSE OF DISTRICT JUDGE, GRAND JURY COMMISSIONER, OR GRAND JUROR. (a) The attorney general shall defend a state district judge or presiding judge of an administrative region in an action in a federal court if:

- (1) the judge is a defendant because of the judge's office; and
- (2) the judge requests the attorney general's assistance in the defense.

(b) The attorney general shall defend a state grand jury commissioner or grand juror who is a defendant in an action in a federal court if:

- (1) the suit involves an act of the person while in the performance of duties as a grand jury commissioner or grand juror; and
- (2) the person requests the attorney general's assistance in the defense. (V.A.C.S. Art. 4412b.)

Sec. 402.025. PROPERTY TRANSACTIONS. (a) If property is sold under a deed of trust or because of an execution, order, or sale on a judgment in favor of the state, except an execution on a judgment in a case of scire facias, the agent representing the state, with the advice and consent of the attorney general, shall purchase the property if the purchase is considered proper to protect the interest of the state in the collection of the judgment or debt. The agent's bid may not exceed the amount necessary to satisfy the judgment or debt and related costs. The officer selling the property shall execute and deliver to the state a deed to the property as if the state were an individual.

(b) The agent, with the advice and consent of the attorney general, may dispose of the property in the manner it was acquired, on the terms and conditions that the agent considers most advantageous to the state. Money received for the property in excess of the amount necessary to satisfy the judgment or debt and related costs shall be deposited in the state treasury to the credit of the general revenue fund. The attorney general, in the name of the state, shall deliver to the purchaser a deed to the property vesting right and title to the property in the purchaser. (V.A.C.S. Arts. 4401, 4402, 4403.)

Sec. 402.026. INSPECTION OF ACCOUNTS. At least monthly the attorney general shall inspect the accounts of the offices of the state treasurer, comptroller, and each other person responsible for collection or custody of state funds. The attorney general shall immediately bring or cause to be brought an action to recover state funds in the hands of a person in default or arrears and shall immediately begin criminal proceedings against a person who has illegally applied or retained state funds. (V.A.C.S. Art. 4400.)



Sec. 402.027. FORMS. On request of the comptroller, the attorney general shall prepare proper forms for contracts, obligations, and other instruments needed for state use. (V.A.C.S. Art. 4397.)

[Sections 402.028–402.040 reserved for expansion]

SUBCHAPTER C. OPINIONS

Sec. 402.041. DEFINITION. In this subchapter “opinion” means advice or a judgment or decision and the legal reasons and principles on which it is based. (V.A.C.S. Art. 4399(e).)

Sec. 402.042. QUESTIONS OF PUBLIC INTEREST AND OFFICIAL DUTIES. (a) On request of a person listed in Subsection (b), the attorney general shall issue a written opinion on a question affecting the public interest or concerning the official duties of the requesting person.

(b) An opinion may be requested by:

- (1) the governor;
- (2) the head of a department of state government;
- (3) a head or board of a penal institution;
- (4) a head or board of an eleemosynary institution;
- (5) the head of a state board;
- (6) a regent or trustee of a state educational institution;
- (7) a committee of a house of the legislature;
- (8) a county auditor authorized by law; or
- (9) the chairman of the governing board of a river authority.

(c) A request for an opinion must be in writing and sent by certified or registered mail, with return receipt requested, addressed to the office of the attorney general in Austin. The attorney general shall:

- (1) acknowledge receipt of the request not later than the 15th day after the date that it is received; and
- (2) issue the opinion not later than the 180th day after the date that it is received, unless before that deadline the attorney general notifies the requesting person in writing that the opinion will be delayed or not rendered and states the reasons for the delay or refusal.

(d) The attorney general and the requesting person by written agreement may waive the provisions of Subsections (a) and (c) if the waiver does not substantially prejudice any person’s legal rights. (V.A.C.S. Arts. 4399(a), (b).)

Sec. 402.043. QUESTIONS RELATING TO ACTIONS IN WHICH THE STATE IS INTERESTED. The attorney general shall advise a district or county attorney of this state, on the attorney’s request, in the prosecution or defense of an action in which the state is interested before a district or inferior court if the requesting attorney has investigated the question involved and submitted a brief to the attorney general. (V.A.C.S. Art. 4399(c) (part).)

Sec. 402.044. QUESTIONS RELATING TO BONDS. The attorney general shall advise the proper legal authorities in regard to the issuance of bonds that by law require the attorney general’s approval. (V.A.C.S. Art. 4399(c) (part).)

Sec. 402.045. LIMITATION. The attorney general may not give legal advice or a written opinion to a person other than a person named in this subchapter. (V.A.C.S. Art. 4399(d).)

CHAPTER 403. COMPTROLLER OF PUBLIC ACCOUNTS

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[Sections 403.008–403.010 reserved for expansion]

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CHAPTER 403. COMPTROLLER OF PUBLIC ACCOUNTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 403.001. DEFINITION. In any state statute, "comptroller" means the comptroller of public accounts of the State of Texas. (V.A.C.S. Art. 4342 (part).)

Sec. 403.002. PERFORMANCE OF DUTY. (a) Not later than the 20th day after the comptroller receives notice of election or appointment and before taking office, the comptroller shall give a bond with a good and solvent surety company authorized to do business in the state. The bond must be in the sum of \$75,000, payable to and approved by the governor, and conditioned that the comptroller will faithfully execute the duties of the office. The state by appropriation shall pay the expense necessary and incident to the execution of the bond.

(b) If the comptroller intentionally neglects or refuses to perform a duty of the office of comptroller, the comptroller is liable to the state for a penalty of not less than \$100 nor more than \$1,000 for each day of the neglect or refusal. The surety company executing the comptroller's bond is jointly and separately liable for this penalty.

(c) The attorney general, by suit in the name of the state, shall recover penalties provided by this chapter. Venue and jurisdiction of the suit are in a court of Travis County. (V.A.C.S. Art. 4343.)

Sec. 403.003. CHIEF CLERK. (a) The comptroller shall appoint a chief clerk who shall:

- (1) perform the duties of the comptroller when the comptroller is unavoidably absent or is incapable of discharging those duties;
- (2) act as comptroller if the office of comptroller becomes vacant until a comptroller is appointed and qualified; and
- (3) under the comptroller's direction, supervise the keeping of the books, records, and accounts of the office and perform other duties required by law or the comptroller.

(b) The chief clerk shall take the official oath and give bond in the amount of \$10,000, payable in the same manner as the comptroller's bond, and conditioned on the faithful performance of the duties of the office. (V.A.C.S. Art. 4352.)

Sec. 403.004. CHIEF OF CLAIMS DIVISION. The comptroller shall designate one person as chief of the claims division. The chief of the claims division shall prepare or have prepared all pay warrants and is accountable to the comptroller for warrants coming into the person's possession. (V.A.C.S. Art. 4359 (part).)

Sec. 403.005. APPROVAL OF ACCOUNTS. The comptroller's account against the state may not be sent to the treasurer until the secretary of state approves it. (V.A.C.S. Art. 4345.)

Sec. 403.006. INSPECTION OF ACCOUNTS. On request of a house or committee of the legislature, the comptroller shall exhibit for the house's or committee's examination any book, paper, voucher, or other matter relating to the office. (V.A.C.S. Art. 4347 (part).)

Sec. 403.007. DIVISIONS. The comptroller may organize and maintain divisions within the comptroller's office as necessary for the efficient and orderly operation of the office. (V.A.C.S. Art. 4344b, Sec. (1) (part).)

[Sections 403.008–403.010 reserved for expansion]

SUBCHAPTER B. GENERAL POWERS AND DUTIES

Sec. 403.011. GENERAL POWERS. The comptroller shall:

- (1) obtain a seal with "Comptroller's Office, State of Texas" engraved around the margin and a five-pointed star in the center, to be used as the seal of the office to authenticate official acts, except warrants drawn on the state treasury;
- (2) adopt regulations the comptroller considers essential to the speedy and proper assessment and collection of state revenues;
- (3) supervise, as the sole accounting officer of the state, the state's fiscal concerns and manage those concerns as required by law;
- (4) require all accounts presented to the comptroller for settlement not otherwise provided for by law to be made on forms that the comptroller prescribes;
- (5) prescribe and furnish the form or electronic format to be used in the collection of public revenue;
- (6) prescribe the mode and manner of keeping and stating of accounts of persons collecting state revenue;
- (7) prescribe forms or electronic formats of the same class, kind, and purpose so that they are uniform in size, arrangement, matter, and form;
- (8) from time to time require each person receiving money or managing or having disposition of state property of which an account is kept in the comptroller's office to render statements of the money or property to the comptroller;
- (9) require each person who has received and not accounted for state money to settle the person's account;
- (10) keep and settle all accounts in which the state is interested;
- (11) examine and settle the account of each person indebted to the state, certify the amount or balance to the treasurer, and direct and supervise the collection of the money;
- (12) audit each claim against the state the payment of which is provided for by law, unless the audit is otherwise specially provided for;
- (13) keep a book to register and index each audited claim against the state and at each regular session of the legislature make a minute report to each house stating the name and amount of each audited claim;
- (14) keep and state each account between the state and the United States;
- (15) keep journals through which all entries are made in the ledger;

(16) draw warrants on the treasury for payment of all money required by law to be paid from the treasury;

(17) suggest plans for the improvement and management of the general revenue; and

(18) preserve the books, records, papers, and other property of the comptroller's office and deliver them in good condition to the successor to that office. (V.A.C.S. Art. 4344 (part).)

**Sec. 403.012. ACCEPTANCE OF FEDERAL MONEY.** The comptroller may accept federal money for a state agency not otherwise restricted by statute or by rider or special provision in the General Appropriations Act, if the state agency has certified to the comptroller that the agency will be responsible for compliance with applicable federal and state law. (V.A.C.S. Art. 4344 (part).)

**Sec. 403.013. REPORT TO GOVERNOR.** On the first Monday of November of each year, and at other times the governor requires, the comptroller shall exhibit to the governor, in addition to the reports required by the constitution, an exact and complete statement showing:

(1) the funds and revenues of the state;

(2) public expenditures during the preceding year or during another period required by the governor; and

(3) a detailed estimate of the expenditures to be paid from the treasury during the next year, including a statement of:

(A) the object of the expenditures;

(B) which expenditures are provided for by general or special appropriation and which are required to be provided for by law; and

(C) the means from which the expenditures are to be defrayed. (V.A.C.S. Art. 4348(a).)

**Sec. 403.014. REPORT ON EFFECT OF CERTAIN TAX PROVISIONS.** (a) Before each regular session of the legislature, the comptroller shall report to the legislature and the governor on the effect, if it is possible to assess, of exemptions, discounts, exclusions, and special methods of reporting relating to sales, excise, and use tax under Chapter 151, Tax Code, and exemptions from and special rates relating to franchise tax under Chapter 171, Tax Code.

(b) The report must include an analysis of each special provision that reduces the amount of tax payable and an estimate of the loss of revenue. The report may include a recommendation for retaining, eliminating, or amending the provision. The report may be included in any other report made by the comptroller.

(c) The comptroller may request from any state officer or agency information necessary to complete the report. Each state officer or agency shall cooperate with the comptroller in providing information or analysis for the report. (V.A.C.S. Art. 4348c.)

**Sec. 403.015. ELECTRONIC COMPUTING AND DATA PROCESSING.** The comptroller may:

(1) establish and operate a central electronic computing and data processing center to:

(A) maintain the central accounting records of the state;

(B) prepare payrolls and other warrants;

(C) audit tax reports; and

(D) perform other accounting and data processing activities for which this equipment economically and practically may be used;

(2) prescribe and revise claim forms, registers, warrants, and other documents submitted in support of payroll or other claims or to support tax or other payments to the state, in order to provide for the orderly and economical use of equipment under this section; and

(3) prescribe and revise procedures, techniques, and formats for electronic data transmission, in order to improve the flow of data between state agencies. (V.A.C.S. Art. 4344b, Sec. 2 (part).)

Sec. 403.016. ELECTRONIC FUNDS TRANSFER. (a) The comptroller may establish and operate an electronic funds transfer system to transfer directly into payees' accounts in financial institutions only:

- (1) employees' gross state salaries, less deductions specifically authorized by state or federal law, or reimbursement for employees' travel and subsistence;
- (2) payments to annuitants by the Employees Retirement System of Texas or the Teacher Retirement System of Texas under either system's administrative jurisdiction;
- (3) recurring payments to governmental entities; and
- (4) payments to vendors designated by the comptroller.

(b) An authorized payee must request in writing to participate in the system.

(c) A single transfer may contain payments to multiple payees. Individual warrants are not required for each payee. The comptroller shall establish procedures for administering the system and may use the services of financial institutions, automated clearinghouses, and the federal government.

(d) The state treasurer may not make payment of a state employee's salary before the first working day of the month following the payroll period. The use of electronic funds transfer or any other payment means does not create a right that would not have been created if an individual state warrant had been used. (V.A.C.S. Art. 4344b, Sec. (3).)

Sec. 403.017. CUSTODY OF DEEDS AND OBLIGATIONS TO STATE. (a) Except as provided by Subsection (b) or otherwise specifically provided, the following documents shall be deposited in the office of the comptroller:

- (1) a deed to the state;
- (2) a lien, mortgage, bond, note, or other security for money given to the state or an officer for the use of the state; and
- (3) a contract or other document involving a pecuniary obligation to the state.

(b) A deed conveying land or an interest in land to the state for highway purposes shall be deposited in the Austin office of the State Department of Highways and Public Transportation. (V.A.C.S. Art. 4346 (part).)

Sec. 403.018. ASSISTANCE IN RECONSTRUCTING DESTROYED RECORDS. The comptroller may assist any taxpayer in reconstructing and recompiling business records that are damaged or destroyed by natural disaster. (V.A.C.S. Art. 4348b.)

[Sections 403.019–403.030 reserved for expansion]

#### SUBCHAPTER C. ACCOUNTING

Sec. 403.031. GENERAL ACCOUNTING DUTIES. (a) The comptroller shall keep ledgers and accounts as necessary to show the sources of state revenues and the purposes for which expenditures are made and shall provide proper accounting controls to protect state finances.

(b) The comptroller shall maintain a double entry system of bookkeeping. (V.A.C.S. Art. 4364 (part).)

Sec. 403.032. LEDGERS. The comptroller shall keep:

- (1) a state general ledger;
- (2) a tax collectors' control ledger;
- (3) a tax collectors' ledger for cash accounts;
- (4) a tax collectors' ledger for current year assessments;
- (5) a tax collectors' ledger for occupation taxes;
- (6) a tax collectors' ledger for insolvent taxes;
- (7) a tax collectors' ledger for delinquent taxes;

- (8) an office suspense ledger;
- (9) a general land office suspense ledger;
- (10) a bond ledger for state-owned bonds;
- (11) a securities ledger;
- (12) an appropriation ledger; and
- (13) other ledgers found necessary. (V.A.C.S. Art. 4364 (part).)

Sec. 403.033. SUPPORTING AND ANALYSIS RECORDS. The comptroller shall keep:

- (1) a general journal;
- (2) deposit warrant registers;
- (3) pay warrant registers;
- (4) a warrants canceled register;
- (5) a suspense cash book;
- (6) a bond authorization register;
- (7) a securities register;
- (8) a tax collectors' journal;
- (9) a tax collectors' report register;
- (10) an occupation tax register;
- (11) a revenue analysis;
- (12) an expense analysis; and
- (13) other supporting records or analyses found necessary. (V.A.C.S. Art. 4364 (part).)

Sec. 403.034. STATE GENERAL LEDGER. (a) The comptroller shall record all entries to the state general ledger in a general journal and make postings from the general journal. The ledger contains controlling and fund accounts, including:

- (1) a state treasurer cash account;
- (2) a state treasurer bond account;
- (3) a state treasurer securities in trust account;
- (4) a warrants payable account;
- (5) an office suspense account;
- (6) a general land office suspense account;
- (7) securities in trust funds accounts showing net balances, with a separate account for each fund;
- (8) fund accounts for bonds owned, with a separate account for each fund; and
- (9) other accounts found necessary.

(b) The comptroller shall charge the accounts with the state treasurer with the cash on hand and in depository banks and with all bonds and securities held for state funds or in trust. The comptroller shall charge the state treasurer in totals of all deposit warrants and the deposit receipts as issued and credit the treasurer with warrants paid, so that the balance in the treasurer's hands plus the balance in the state depositories equals the balance shown by the accounts.

(c) The comptroller shall keep accounts to show the amounts of outstanding pay warrants of each class and shall credit the accounts with warrants issued and charge the accounts for warrants paid, so that the balances of the accounts represent the total amount of outstanding warrants.

(d) The comptroller shall keep a separate account for each fund and shall credit each account with deposit warrants and charge each account with warrants issued. The balance of the account must represent balances in the fund, considering all warrants issued. The comptroller shall keep accounts showing the bonds or securities owned by each fund. (V.A.C.S. Art. 4364 (part).)

Sec. 403.035. **SUSPENSE LEDGER.** The comptroller shall keep a suspense ledger that states the accounts of the state treasurer with respect to money the state treasurer holds pending the issuance of deposit warrants and money and securities the treasurer holds other than those for state purposes. The comptroller shall issue deposit receipts for this money and post the money to the ledger. The ledger must also include accounts for all money received by heads of agencies and deposited in suspense with the state treasurer. (V.A.C.S. Art. 4364 (part).)

Sec. 403.036. **APPROPRIATION LEDGERS.** (a) The comptroller shall keep an account for each legislative appropriation and shall credit the account with the appropriation and charge the account with all pay warrants issued under the authority of the appropriation. Each account must show the law authorizing the appropriation.

(b) The comptroller shall credit the total of all appropriations to a control account called the appropriations voted account. The comptroller shall charge the daily total of warrants issued to this account so that the balance represents the amount of unused appropriations. The comptroller monthly shall balance the individual appropriation accounts against the appropriations voted account.

(c) The head of each state agency or institution, and each other state officer or employee who is authorized to make purchases or incur debt to be paid from appropriated funds, shall keep accounts of the appropriations as they apply to the officer's or employee's agency or institution and shall balance the accounts monthly against the similar accounts kept by the comptroller. (V.A.C.S. Art. 4364 (part).)

Sec. 403.037. **TAX ASSESSOR-COLLECTORS' ACCOUNT LEDGER.** (a) The comptroller shall keep a ledger containing controlling accounts against which individual accounts with tax assessor-collectors are balanced. The ledger must be self-balancing and must be balanced at the close of each month.

(b) Individual accounts shall be kept with tax assessor-collectors. The accounts shall be charged with the amount of taxes due the state that have not been collected and the amount of taxes collected that have not been paid to the state treasurer. The accounts shall be credited with all payments, commissions, cancellations, and other adjustments permitted by law. The accounts shall be balanced monthly with the controlling accounts.

(c) Separate accounts shall be kept for current taxes and delinquent taxes, and other accounts may be kept as necessary. (V.A.C.S. Art. 4364 (part).)

Sec. 403.038. **REVENUE AND EXPENSE ANALYSIS RECORDS.** (a) The comptroller shall keep a revenue analysis record and shall make in the record a distribution of revenues derived by the state from all sources and the amounts derived from each source. The comptroller shall post to the record the sources of revenue as represented by deposit warrants that the comptroller issued for the revenue.

(b) The comptroller shall keep an expense analysis record and shall make in the record a distribution of the disbursements made from state funds, classified by agencies or institutions, objects of expenditure, or other criteria considered advisable. (V.A.C.S. Art. 4364 (part).)

[Sections 403.039–403.050 reserved for expansion]

#### SUBCHAPTER D. WARRANTS, RECEIPTS, AND REGISTERS

Sec. 403.051. **DEPOSIT WARRANTS AND REGISTERS.** (a) A deposit may not be made into or within the state treasury on any account except on a deposit warrant issued as provided by this chapter. The comptroller shall have printed uniform deposit warrants.

(b) The comptroller shall provide for use of the comptroller's office a warrant register in which the comptroller shall register, in consecutive order, each deposit warrant when it is prepared. A distribution of the amount stated in each deposit warrant shall be entered on the revenue analysis record containing accounts for each source of revenue.

(c) The comptroller shall furnish the treasurer with a copy of the deposit warrant register for deposits made each day. This copy is the treasurer's deposit warrant register. (V.A.C.S. Art. 4353 (part).)



Sec. 403.052. DEPOSIT RECEIPTS AND REGISTERS. (a) The comptroller shall issue deposit receipts to cover money and securities received and held by the state treasurer for bond investment surety and insurance companies, state depository banks, and others for which a deposit warrant is not issued or for which the issuance is deferred. The comptroller shall have printed uniform deposit receipts. The comptroller shall provide separate series of deposit receipts or authorization certificates for the receipt of bonds or securities purchased for the permanent funds of the state and relinquishment of bonds sold or redeemed.

(b) The comptroller shall provide the comptroller's office with appropriate registers in which the comptroller shall register deposit receipts issued in a similar manner to the registration of deposit warrants. The comptroller shall provide a separate ledger and keep in the ledger appropriate accounts for all matters for which deposit receipts are issued. (V.A.C.S. Art. 4354 (part).)

Sec. 403.053. FORM AND HANDLING OF DEPOSIT WARRANTS AND RECEIPTS. (a) A deposit warrant or receipt must be serially numbered.

(b) A deposit warrant or receipt and the warrant register shall be:

(1) prepared in triplicate, with the three parts marked "original," "duplicate," and "triplicate," respectively; and

(2) prepared and arranged so that by use of carbon sheets all three parts may be prepared by a single writing.

(c) On receipt of the money or items stated in a deposit warrant or receipt, the treasurer shall:

(1) retain the original of the warrant or receipt and file it numerically;

(2) mark the duplicate as received and return it to the comptroller, who shall file it numerically; and

(3) mark the triplicate as received and deliver it to the person making the deposit. (V.A.C.S. Arts. 4353 (part), 4354 (part).)

Sec. 403.054. DUPLICATE WARRANT OR EVIDENCE OF INDEBTEDNESS. (a) Subject to Subsection (b), the comptroller may issue a duplicate warrant in place of an original warrant drawn on the state treasury if the comptroller is satisfied that:

(1) the original warrant has been lost, destroyed, or stolen;

(2) the original warrant has not been received; or

(3) the payee's endorsement on the original warrant has been forged.

(b) The comptroller may not issue a duplicate unless the applicant has filed with the comptroller an affidavit stating that the applicant is the true owner of the original and that the original has been lost, destroyed, or stolen, that it has not been received, or that the payee's endorsement on the instrument has been forged. If the applicant is a government agency, the head of the agency and one other person connected with the handling of warrants for the agency shall make this affidavit for a lost or destroyed warrant belonging to the agency. An applicant, other than a government agency, shall also file with the comptroller a bond in the amount of the claim, payable to the governor, approved by the comptroller, and conditioned that the applicant will hold the state harmless and return to the comptroller on demand the duplicate or the amount of money specified in the duplicate and all costs of the state in collecting the amount. For the purposes of this subsection, "government agency" means a state agency, court, school, school district, or a federal agency.

(c) If the comptroller determines that a duplicate was improperly issued or that the applicant or the person to whom the duplicate was issued was not its owner, the comptroller shall immediately demand return of the duplicate or, if the duplicate has been paid, the amount paid by the state. If this demand is not satisfied, the comptroller shall file suit on the bond in Travis County.

(d) An entity other than a law enforcement official that has possession of a stolen warrant or a warrant on which the payee's endorsement has been forged shall immediately

ly deliver the warrant to the issuing agency or the comptroller on request. The agency or comptroller shall issue a receipt for the warrant.

(e) Failure to reimburse the state on demand constitutes a debt to the state and further payment to the applicant shall be held as provided by Section 403.055.

(f) The comptroller shall adopt rules and forms regarding the issuance of duplicate warrants. (V.A.C.S. Art. 4365.)

Sec. 403.055. **ISSUANCE TO DEBTORS PROHIBITED.** A warrant may not be issued to a person, or to the person's agent or assignee, if the person is indebted or owes delinquent taxes to the state, or owes delinquent taxes under a tax that the comptroller administers or collects, until the debt or taxes are paid. (V.A.C.S. Art. 4350.)

Sec. 403.056. **REGISTRATION AND DELIVERY OF PAY WARRANT.** (a) When a pay warrant is prepared the following information shall be recorded in the pay warrant register:

- (1) the amount of the warrant;
- (2) the name of the payee;
- (3) the appropriation to which the warrant is charged; and
- (4) other information that the comptroller considers advisable.

(b) After the warrant has been registered under Subsection (a), it shall be delivered to the comptroller for the comptroller's authorization or signature as provided by law. Then the warrant and a copy of the warrant register shall be delivered to the state treasury and the state treasurer shall register it in the treasury, authorize or sign it as provided by law, and return it to the comptroller's office.

(c) Following return of the warrant the comptroller shall deliver the warrant to the person entitled to receive it. The comptroller may obtain a receipt for the warrant and file the receipt in the comptroller's office.

(d) A pay warrant prepared under this section is considered for all purposes to be issued on the due date of the claim. (V.A.C.S. Art. 4359 (part).)

Sec. 403.057. **SIGNATURE ON PAY WARRANT AFTER CHANGE IN OFFICE.** If the comptroller or treasurer ceases to hold or perform the duties of office, existing stocks of pay warrants bearing the person's printed name, signature, or facsimile signature may be used until they are exhausted, and the person succeeding to the office or the duties of the office shall have the warrants issued with:

- (1) the obsolete printed name, signature, or facsimile signature struck through;
- (2) the successor's printed name substituted for the obsolete printed name, signature, or facsimile signature; and
- (3) the inscription "Printed name authorized by law" near the successor's printed name. (V.A.C.S. Art. 4359a.)

Sec. 403.058. **REGISTRATION OF CANCELED WARRANTS.** The comptroller shall enter in the warrants canceled register the details of all warrants canceled. (V.A.C.S. Art. 4359 (part).)

Sec. 403.059. **PENSION WARRANTS.** This subchapter does not apply to an application for a pension or the issuance of a pension warrant. Pension warrants shall be separately serially numbered. (V.A.C.S. Art. 4360.)

[Sections 403.060–403.070 reserved for expansion]

#### SUBCHAPTER E. CLAIMS

Sec. 403.071. **CLAIMS AND AVAILABLE MONEY; OFFENSE.** (a) A warrant may not be prepared unless a properly audited claim, verified as to correctness by the agency submitting the claim, is presented to the warrant clerk.

(b) A claim may not be paid from an appropriation unless the claim is presented to the comptroller for payment not later than two years after the end of the fiscal year for which the appropriation was made. However, a claim may be presented not later than four years after the end of the fiscal year for which the appropriation from which the

claim is to be paid was made if the appropriation relates to new construction contracts, or repair and remodeling projects that exceed the amount of \$20,000, including furniture and other equipment, architects' and engineering fees, and other costs related to the contracts or projects.

(c) A claim not presented before the deadline provided by Subsection (b) may be presented to the legislature as other claims for which appropriations are not available.

(d) A warrant may not be drawn against an appropriation from a special fund unless the fund contains in the state treasury sufficient cash to pay the warrant. The comptroller may not release or deliver a warrant unless the appropriation against which the warrant is drawn has a balance sufficient to pay the warrant.

(e) As a claim is paid it shall be filed according to the method the comptroller finds most advisable. After two years after a claim is filed, it shall be removed from the files and stored as a record.

(f) A person commits an offense if the person knowingly makes a false certificate on a claim against the state for the purpose of authenticating a claim against the state. An offense under this section is punishable by imprisonment in the Texas Department of Corrections for not less than two or more than five years. (V.A.C.S. Art. 4357.)

Sec. 403.072. PAYROLL CLAIMS. (a) A court, school, or other state agency may prepare and present a payroll claim to the comptroller before the end of the payroll period. The claim must be verified as to services performed during the payroll period before the date of the claim but need not be verified as to services to be performed during the payroll period after the date of the claim.

(b) The comptroller shall accept the claim when presented, prepare a warrant in payment of the claim before the date it becomes due and payable, and hold the warrant for delivery until it becomes due and payable. The warrant must be dated as of the date of the claim and may not be delivered to the claimant until the due date. The treasurer may countersign the warrant and make entry to properly account for it.

(c) To allow such a warrant to be ready for delivery on the due date, the comptroller may adopt rules necessary to administer this section. (V.A.C.S. Art. 4359 (part).)

Sec. 403.073. SPECIAL CLAIMS. A person holding a claim against the state for which a warrant has not been issued and for which the appropriation has been exhausted shall present the claim to the comptroller for the comptroller's consideration not later than 30 days before the meeting of each regular session of the legislature. The comptroller may not audit such a claim presented after this deadline until the comptroller has considered and passed on all claims presented before the deadline. (V.A.C.S. Art. 349.)

Sec. 403.074. MISCELLANEOUS CLAIMS. (a) The comptroller shall pay, from available funds appropriated for that purpose, miscellaneous claims for which an appropriation does not otherwise exist, including state ad valorem tax refund claims qualifying under this section.

(b) A warrant may not be prepared for payment of a miscellaneous claim unless the claim has been:

- (1) verified and substantiated by the administrator of the special fund or account against which the claim is to be charged;
- (2) audited by the state auditor; and
- (3) verified by the attorney general as a legally enforceable obligation of the state.

(c) The comptroller shall keep a record of each transaction made under this section, showing:

- (1) the amount of the claim paid;

- (2) the identity of the claimant;
- (3) the purpose of the claim; and
- (4) the fund or account against which the claim is to be charged.

(d) A single claim in excess of \$10,000, or an aggregate of claims by a single claimant during a biennium in excess of \$10,000, may not be paid under this section. For the purposes of this subsection, all claims that were originally held by one person are considered held by a single claimant regardless of whether those claims were later transferred. (V.A.C.S. Art. 4351b.)

Sec. 403.075. DEFICIENCIES. (a) A person having the power to contract for supplies or pledge the credit of the state for a deficiency that may arise under the person's management or control shall, before the occurrence of a deficiency, make a sworn estimate of the amount necessary to cover a deficiency until the meeting of the next legislature. The person must make the estimate not later than the 30th day before the date the deficiency occurs and shall immediately submit the claim to the governor.

(b) The governor shall:

- (1) carefully examine the claim;
- (2) approve or disapprove it in whole or part;
- (3) endorse the approval on the claim or the part approved;
- (4) designate the amount and items approved and the items disapproved; and
- (5) file the claim with the comptroller.

(c) The comptroller may draw a deficiency warrant for, and the treasurer may pay, only the part of a claim approved and filed as provided by this section. If a sufficient deficiency appropriation exists to meet the claim, the comptroller shall draw a warrant and the claim shall be paid. If such an appropriation does not exist or is not sufficient to pay the claim, the comptroller shall issue a deficiency warrant and the claim may not be paid until the legislature provides for the payment.

(d) If injury or damage occurs to public property from a flood, storm, or unavoidable cause, an estimate may be filed under this section immediately. The estimate must be approved by the governor as provided by this section.

(e) The governor may not approve warrants under this section in an aggregate amount exceeding \$200,000. A warrant approved above this amount is invalid and the state treasurer may not redeem it.

(f) This section does not apply to fees and dues for which the state may be liable under general law. (V.A.C.S. Arts. 4351, 4351a.)

Sec. 403.076. TAX REFUNDS. (a) The comptroller shall pay from available funds claims for refunds of taxes collected under:

- (1) the Alcoholic Beverage Code;
- (2) Sections 11 and 12, Article 1.14-1; Section 12, Article 1.14-2; and Articles 4.10 and 4.11, Insurance Code; and
- (3) Section 1, Chapter 619, Acts of the 51st Legislature, Regular Session, 1949 (Article 4769, Vernon's Texas Civil Statutes).

(b) The comptroller shall keep records of each transaction made under this section, showing:

- (1) the amount of the claim paid;
- (2) the identity of the claimant;
- (3) the purpose of the claim; and

(4) the fund or account against which the claim is to be charged. (V.A.C.S. Art. 4344f.)

Sec. 403.077. **IMPROPER COLLECTIONS.** (a) The comptroller may refund the amount of money collected or received by a state agency through mistake of fact or law and deposited in the state treasury, including money not due the state and money collected or received in excess of the amount required to be collected or received. The agency must make written request to the comptroller for the refund, showing the reason for and amount of the refund. At any time the comptroller may require further written evidence for the refund and may withhold payment until the comptroller is satisfied that the refund is justified.

(b) A warrant for the payment of the refund must be signed by the comptroller and state treasurer and shall be drawn against the fund or account into which the money was deposited. The refund shall be made from funds appropriated for that purpose.

(c) This section does not affect Subchapter C, Chapter 111, Tax Code, or any statute requiring payment of unrefundable fees. (V.A.C.S. Art. 4351c.)

Sec. 403.078. **FORM.** All claims and accounts against the state shall be submitted on forms or according to the method and format that the comptroller prescribes. The claims and accounts shall be prepared to provide for entering on the claim or account, for use of the comptroller's office, the following:

- (1) authorization of the head of the office or other person responsible for the expenditure;
- (2) the appropriation against which the disbursement is to be charged;
- (3) information required by the comptroller's rules; and
- (4) other appropriate matters. (V.A.C.S. Art. 4355.)

[Sections 403.079–403.090 reserved for expansion]

**SUBCHAPTER F. MANAGEMENT OF FUNDS IN TREASURY**

Sec. 403.091. **DORMANT FUND.** At any time the comptroller, with the consent and approval of the state auditor and the state treasurer, may transfer to the general revenue fund a balance in a dormant fund if the source of the fund is unknown or the purpose for which it was collected is moot. The legislature at any time after the transfer may appropriate the balance as a refund if the source and purpose of the fund become known and active. (V.A.C.S. Art. 4344a.)

Sec. 403.092. **TEMPORARY TRANSFER OF SURPLUS CASH.** (a) To allow efficient management of the cash flow of the general revenue fund and to avoid temporary cash deficiency in that fund, the comptroller, with the consent of the state treasurer, may transfer surplus cash, except constitutionally dedicated revenues, between funds in the state treasury. As soon as practicable the comptroller shall return the surplus cash to the fund from which it was transferred. The comptroller shall preserve the fund equity and the state treasurer shall allocate the depository interest as if the transfer had not been made.

(b) If the comptroller submits a statement under Article III, Section 49a, of the Texas Constitution when surplus cash transferred under this section is in the general revenue fund, the comptroller shall indicate in that statement that the transferred surplus cash is in the general revenue fund, is a liability of that fund, and is not available for appropriation by the legislature. (V.A.C.S. Art. 4344c.)

Sec. 403.093. **ALLOCATIONS FROM GENERAL REVENUE FUND.** (a) Each month the comptroller shall withdraw from the general revenue fund authorized withdrawals and transfers.

(b) Each month during April, May, June, July, and August the comptroller shall transfer from the general revenue fund to the farm-to-market road fund \$3 million.

(c) Each month the comptroller shall transfer from the general revenue fund to the state contribution account of the teacher retirement system trust fund the equal monthly payment provided by Section 35.404, Title 110B, Revised Statutes. If the appropriation provided by the legislature is different from the amount of state contributions required, the comptroller, after the end of the fiscal year, shall make adjustments in the teacher retirement fund and the general revenue fund so that the total transfers during the year equal the total amount of the state contribution required.

(d) The comptroller shall transfer from the general revenue fund to the foundation school fund an amount of money necessary to fund the foundation school program as provided by Chapter 16, Education Code. The comptroller shall make the transfers in installments as necessary to comply with Section 16.260, Education Code. An installment must be made not earlier than two days before the date an installment to school districts is required by Section 16.260, Education Code, and must not exceed the amount necessary for that payment.

(e) Except as provided by Subsection (f), when state revenue is allocated in proportional amounts to the available school fund and to the general revenue fund, the comptroller shall deposit all revenue to the credit of the general revenue fund and then, as a ministerial duty on the 10th day of each month and on the last day of the fiscal year, the comptroller shall transfer from the general revenue fund to the available school fund an amount equal to the proper proportional amount required by law to be allocated to the available school fund from revenue received from the tax during the preceding month, or in the case of the last month of the fiscal year, during the last month of the fiscal year.

(f) All net revenue from taxes imposed by Chapter 154, Tax Code, shall be deposited to the credit of the general revenue fund. The comptroller, as a ministerial duty on the 10th day of each month and on the last day of each fiscal year, shall transfer from the general revenue fund to the proper funds and accounts the amounts computed by the comptroller equal to the amounts required by that chapter.

(g) If on the 10th day of a month the amount available for transfer as provided by this section is insufficient, subsequent credits to the general revenue fund shall be accumulated in an amount sufficient to make the required transfer. (V.A.C.S. Arts. 4344e, 4364a.)

Sec. 403.094. SUSPENSE ACCOUNTS. The comptroller may create and use suspense accounts and funds for the collection, allocation, and distribution of revenue, including the allocation of revenue required to be deposited to the credit of the available school fund. (V.A.C.S. Art. 4344d.)

[Sections 403.095–403.100 reserved for expansion]

#### SUBCHAPTER G. FUNDS

Sec. 403.101. FLOOD AREA SCHOOL AND ROAD FUND. (a) The comptroller may receive and give a receipt for money due or payable under 33 U.S.C. Section 701c-3 (1986). The money shall be placed in a separate account called the flood area school and road fund to the credit of the comptroller. The money may not be part of the general funds of the state.

(b) Each person having the duty to collect school or road taxes for a school district, county, or other political subdivision all or part of which is within a flood control district or flood control area created or designated under law shall prepare and file with the comptroller a sworn report showing:

(1) the total number of acres acquired by the United States for flood control purposes within the boundaries of the school district, county, or other political subdivision; and

(2) the tax rate for each \$100 of valuation for school and road purposes levied by the school district, county, or other political subdivision for the year in which the report is made.

(c) On or before September 15 of each year the comptroller shall pay to a school district, county, or other political subdivision the proportionate share of money in the flood area school and road fund that was produced by leases on land acquired by the United States for flood control purposes within the school district, county, or other political subdivision. The school district, county, or other political subdivision is entitled to a proportionate part of the money in the fund based on the ratio that the district's, county's, or subdivision's tax rate bears to the sum of the school tax rate and the road tax rate. The money may be used for the purposes permitted by federal law.

(d) If during a school year money distributable to a school district is in the flood area school and road fund, the comptroller, on application of a school district, may distribute the money on a date other than a date permitted by Subsection (c). (V.A.C.S. Art. 4366a.)

Sec. 403.102. FEDERAL REVENUE SHARING TRUST FUND. (a) The federal revenue sharing trust fund exists to receive money authorized under the federal revenue sharing law (31 U.S.C. Section 6701 et seq. (1983)) and money earned by the use of that money. Expenditures from the fund must be authorized by the legislature. The comptroller shall administer the fund and may adopt rules providing for the availability of money for use among the entities funded from the fund. Costs related to salary and wages for employer contributions to the state retirement programs, to the Federal Old Age and Survivors Insurance Program (42 U.S.C. Section 401 et seq. (1983)), and for the unemployment benefit program computed at the maximum contributor rate shall be applied to salaries and wages paid from the fund and credited to the general revenue fund.

(b) To ensure that the state obtains full benefit of the federal revenue sharing trust fund, the comptroller may invest money in the fund that is determined to exceed cash requirements for current expenditures in:

- (1) direct obligations of, or obligations the principal and interest of which are guaranteed by, the United States;
- (2) direct obligations of or participation certificates guaranteed by the Federal Intermediate Credit Bank, Federal Land Banks, Federal National Mortgage Association, Federal Home Loan Banks, or Banks for Cooperatives;
- (3) savings and loan associations insured by the Federal Savings and Loan Insurance Corporation;
- (4) certificates of deposit of a bank or trust company the deposits of which are fully secured by a pledge of securities listed in Subdivisions (1)-(3);
- (5) other securities made eligible by law for this investment; or
- (6) any combination of those investments. (V.A.C.S. Art. 4366b.)

Sec. 403.103. SCHOOL TAXING ABILITY PROTECTION FUND. The school taxing ability protection fund is a special fund in the state treasury. Money in the fund may be appropriated to finance formulas designed to protect school districts against estimated revenue losses resulting from implementation of Article VIII, Sections 1-b(c), 1-b(d), and 1-d-1, of the Texas Constitution and shall be allocated to school districts on the basis of formulas, conditions, and limitations prescribed by law. (V.A.C.S. Art. 4366c (part).)

Sec. 403.104. FEDERAL RESOURCE RECEIPTS DISTRIBUTION FUND. (a) The federal resource receipts distribution fund is a fund in the state treasury. Money received by the state under 30 U.S.C. Section 191 or 355 (1984) shall be deposited to the credit of the fund. The comptroller shall distribute money in the fund to each eligible county in the amount and manner and for the purposes provided by federal law and this section.

(b) A county is eligible to receive funds under this section if federal land for which the state receives a portion of the money from sales, bonuses, royalties, or rentals under 30 U.S.C. Section 191 or 355 (1984) is located in the county. An eligible county is entitled to receive from the fund all of the money paid to the state and deposited in the fund from all

sales, bonuses, royalties, and rentals received from federal public land located in the county.

(c) Not later than the 10th day after the date that a county receives a payment from the comptroller under this section the county shall distribute the payment as follows:

(1) 50 percent of the payment is available for distribution to the independent school districts located in whole or part in the county, with each school district receiving a proportionate share according to Subsection (d);

(2) 15 percent of the payment is available for distribution to the incorporated municipalities located in whole or part in the county, with each municipality receiving a proportionate share according to Subsection (e); and

(3) 35 percent of the payment is available for the county to retain.

(d) The proportionate share of an independent school district is determined by multiplying the total amount of the payment available for distribution to school districts by the ratio that the average daily attendance for students who reside in the county and who attend that school district bears to the average daily attendance for all students who reside in the county and who attend any independent school district. However, if there are fewer than 10 independent school districts located in whole or part in the county and if an independent school district would receive under this formula less than 10 percent of the total payment available for distribution to independent school districts, the school district's share shall be increased to 10 percent of the total payment and the shares of the school districts that would receive more than 10 percent under the formula shall be reduced proportionately, but not to an amount less than 10 percent of the total payment. Each independent school district shall develop a reasonable method for determining the average daily attendance for students who reside in the county and who attend the school district.

(e) The proportionate share of a municipality is determined by multiplying the total payment available for distribution to municipalities by the ratio that the number of residents of that municipality who live in the county bears to the total number of residents of all municipalities who live in the county. The number of residents shall be determined according to the most recent federal census.

(f) Money from the fund may be used only for planning, for constructing and maintaining public facilities, and for providing public service.

(g) The comptroller shall administer this section and distribute money from the fund to eligible counties as provided by this section and rules adopted under this section. The comptroller shall adopt rules establishing:

(1) procedures for determining eligible counties and the amounts of money to be distributed from the fund to each of those counties;

(2) methods for monitoring the uses and expenditures of the money; and

(3) other methods and procedures necessary to carry out this section and federal laws and rules governing the money distributed. (V.A.C.S. Art. 4366d.)

Sec. 403.105. LOCAL GOVERNMENT CORPORATE BANKING FRANCHISE TAX FUND. (a) The local government corporate banking franchise tax fund is a fund in the state treasury. The comptroller shall keep records of the amount of money deposited to the credit of the fund from franchise tax collections from each bank paying the franchise tax under Chapter 171, Tax Code, for each bank franchise tax reporting period. The franchise tax collected from a banking corporation shall be apportioned through the fund among the taxing units in which the banking corporation's principal office in this state is located. The apportionment shall be made according to the percentage relationship that the property tax rate of each taxing unit for the preceding property tax year bears to the total of the property rates imposed for the preceding tax year by all of those taxing units.

(b) On or before September 30 of each year, the comptroller shall make a report to each taxing unit stating:



(1) the name, address, and account number of each banking corporation having its principal office in this state within the taxing unit;

(2) the total amount of franchise tax remitted to the comptroller by that banking corporation;

(3) the amount of tax remitted by each banking corporation that is apportionable to the taxing unit under Subsection (a); and

(4) whether any banking corporation has failed to pay franchise tax or has made only a partial payment of the tax.

(c) If, within one year after the date that a report under Subsection (b) is due, a taxing unit determines that a banking corporation whose principal office in this state is within the taxing unit is not included in the report, the taxing unit shall report the name and address of the banking corporation to the comptroller before the expiration of the one-year period. Not later than 60 days after the date on which this report is received, the comptroller shall send a response.

(d) As promptly as feasible the comptroller shall send to each taxing unit's treasurer or the officer performing that function the taxing unit's share of the banking corporation franchise tax and the prorated share of any penalty or interest on delinquent taxes that may be collected. Before sending the money the comptroller shall deduct two percent of the amount allocated to each taxing unit during the period as a charge by the state for its services under this section. The comptroller shall deposit the deducted amount in the state treasury to the credit of the comptroller's operating fund. The comptroller may retain in the local government corporate banking franchise tax fund a portion not to exceed five percent of each taxing unit's share and may use this amount to make refunds of overpayments made to the fund and redeem dishonored checks and drafts deposited to the credit of the fund. The legislature may appropriate money in the local government corporate banking franchise tax fund to the comptroller only for the purposes provided by this section. Interest earned on all deposits made with the state treasurer under this section shall be credited to the general revenue fund.

(e) A taxing unit that is not satisfied with the supplemental banking corporation report filed by a banking corporation under Section 171.2021, Tax Code, or with the response of the comptroller under Subsection (c) may file a petition for review with the comptroller. The petition must be filed not later than the 30th day after the date that the taxing unit receives the supplemental banking corporation report or response, as applicable. The petition must set forth each specific ground on which the taxing unit believes the report or response is erroneous or incomplete. If a petition is not filed before the expiration of the 30-day period, the apportionment percentages set forth in the supplemental banking corporation report or any determination set forth in the comptroller's response becomes final at the end of the period.

(f) The comptroller shall consider a petition for review filed within the 30-day period. All affected taxing units and the banking corporation, if the amount of the total franchise tax is questioned, should be joined in the review proceeding. The comptroller should give these entities written notice of the filing of the petition. On request of a taxing unit or banking corporation involved in the review proceeding, the comptroller shall grant an oral hearing and give all parties to the proceeding written notice of the time and place of the hearing as required by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(g) A taxing unit that is dissatisfied in whole or part with a decision of the comptroller on a petition for review may file a motion for rehearing before the decision becomes final. The motion must set forth in writing each specific ground on which the taxing unit believes the decision is erroneous. If the comptroller denies the motion for rehearing, the taxing unit may bring suit against the comptroller and all affected taxing units on the grounds set forth in the petition for review by filing a petition in a district court of Travis County not later than the 30th day after the date that the denial of the motion for

rehearing was issued. Only the issues set forth in the motion for rehearing may be raised in the suit. The attorney general shall represent the comptroller in the suit. If the taxing unit does not bring the suit within the period specified, the unit waives objection to the apportionment of the banking corporation's franchise tax among taxing units and the apportionment is presumed to comply with this section.

(h) Money distributed to taxing units under this section may be used only by the taxing unit and only for public purposes.

(i) Money distributed to a municipality under this section may be used only for:

(1) payment of salaries and benefits of municipal law enforcement officers having a duty to enforce or engaged in the enforcement of state law;

(2) payment of salaries and benefits to municipal fire fighters having a duty to protect or engaged in the protection of state or county property, including public roadways and rights-of-way for public roadways;

(3) purchase of law enforcement and fire-fighting equipment reasonably related to the services provided to the state under Subdivisions (1) and (2);

(4) acquisition of rights-of-way for, and the construction and maintenance of, municipal streets that provide access to and departure from the state highway system;

(5) provision of health protection services, including the removal and disposition of hazardous and solid wastes, and disease prevention services; and

(6) protection of the public safety through the adoption and enforcement of building codes.

(j) Money distributed under this section to a school district may be used only for:

(1) payment of salaries and benefits of employees of the school district; and

(2) maintenance of schools and school district property.

(k) Money distributed under this section to a county may be used only for:

(1) payment of salaries and benefits of county law enforcement personnel having a duty to enforce or engaged in the enforcement of state law; and

(2) acquisition of rights-of-way for, and the construction and maintenance of, county roads and highways that provide access to and departure from the state highway system.

(l) Money distributed under this section to taxing units other than municipalities, school districts, or counties may be used only for public purposes and to promote the general health, safety, and welfare of citizens of this state.

(m) For the purposes of this section, "taxing unit" has the meaning given by Section 1.04(12), Tax Code. (V.A.C.S. Art. 4366e.)

[Sections 403.106–403.110 reserved for expansion]

#### SUBCHAPTER H. SECURITIES

Sec. 403.111. REGISTRATION. (a) The comptroller shall obtain suitable books for use as bond registers by the comptroller's office. The volumes of the books shall be separately designated.

(b) In the bond registers the comptroller shall alphabetically register each bond required by law to be registered by the comptroller. For each bond the comptroller shall enter in the register only:

(1) the name of the issuing authority;

(2) the names and official capacities of the officers signing the bond;

- (3) the date of issue;
- (4) the date of registration;
- (5) the principal amount;
- (6) the date of maturity;
- (7) the number;
- (8) the time of option of redemption;
- (9) the rate of interest; and
- (10) the day of the month of each year when interest becomes due.

(c) On the same line where the entry under Subsection (b) is made, a blank space shall be provided for entry of the date of payment or redemption of the bond.

(d) The bond itself, the opinion of the attorney general, and the record or other papers or documents relating to the bond need not be included in the register.

(e) When a bond is paid or redeemed, the proper officer or authority paying the bond shall notify the comptroller of the occurrence and date of the payment or redemption. All papers and documents relating to the bonds shall be filed and appropriately numbered. (V.A.C.S. Art. 4361.)

Sec. 403.112. ACCOUNTS. (a) The comptroller shall keep an appropriate account for each state fund, showing a short description of the essential features of the fund, of each bond or other security belonging to the fund, and of the purchase of the bond or other security. An account shall be charged with the principal of the bond or other security and with each separate item of interest accruing on the bond or other security. The account shall be credited with payments as made.

(b) The comptroller shall keep controlling or total accounts of the bonds or other securities, showing the total amount of bonds or other securities belonging to each fund.

(c) The comptroller shall set up controlling accounts for interest accruing on the bonds or securities. For bonds or securities owned at the beginning of the fiscal year the account shall be set up at that time and account for interest accruing during the fiscal year. For bonds or securities purchased during the fiscal year the account shall be set up at the time of the purchase.

(d) A controlling account shall be balanced monthly and shall correspond with the similar accounts kept by the state treasurer. (V.A.C.S. Art. 4363.)

Sec. 403.113. CANCELLATION OF UNNEEDED BONDS. (a) The comptroller from time to time shall cancel by perforation all unneeded bonds of entities authorized by law to issue bonds to be registered in the comptroller's office and shall return them by express or freight mail to the issuer at the issuer's expense. The comptroller shall make a permanent record in the comptroller's office of the cancellation or return.

(b) Not later than the 30th day before the date that the comptroller cancels bonds under this section, the comptroller shall give notice of the proposed cancellation by registered or certified mail to the entity. The notice must be addressed according to the latest information available in the comptroller's office. If the comptroller becomes aware that the notice is undeliverable, the comptroller shall notify the county judge of the county in which the entity was situated in whole or part of the proposed cancellation. The notice to the county judge must be given not later than 30 days before the date the bonds are canceled and must indicate that the notice to the entity was undeliverable.

(c) Before the date fixed for the cancellation, the entity or county judge, on written notice and execution of a receipt in the form the comptroller prescribes, may repossess the bonds. Any shipping expense involved in the transaction shall be paid by the entity or the county whose county judge repossessed the bonds.

(d) An entity's registered or unregistered bonds that remain in the comptroller's office may be considered unneeded after five years after the date of the bonds. (V.A.C.S. Art. 4346a.)

Sec. 403.114. BOND CLERK. (a) The comptroller shall appoint a bond clerk. Before taking office the bond clerk shall take the official oath and give bond in the amount of \$10,000, payable to the comptroller, and conditioned on the faithful performance of the bond clerk's duties. The bond clerk serves at the pleasure of the comptroller.

(b) The bond clerk, under the comptroller's supervision, direction, and authority, shall perform all duties relating to the registration of bonds imposed on the comptroller by this chapter. The bond clerk may sign the comptroller's name to a certificate of registration of a bond that the bond clerk registers and that is required by law to be registered by the comptroller. In the absence of the bond clerk the chief clerk may perform the bond clerk's duties.

(c) The comptroller shall designate and appoint, from the employees of the comptroller's office, assistants to the bond clerk. The designation and appointment must be in writing, certified under the seal of the comptroller, and filed with the bond clerk. The assistants, under the direction and authority of the comptroller, shall perform all duties relating to the registration of bonds imposed on the comptroller by this chapter. Each assistant may sign the comptroller's name to a certificate of registration of a bond that the assistant registers and that is required by law to be registered by the comptroller. The duties assigned by the comptroller to the assistants are in addition to other duties that may be assigned to the assistants. (V.A.C.S. Art. 4362.)

[Sections 403.115–403.120 reserved for expansion]

#### SUBCHAPTER I. REVENUE ESTIMATES

Sec. 403.121. CONTENTS OF ESTIMATE. (a) In the statement required by Article III, Section 49a, of the Texas Constitution the comptroller shall list outstanding appropriations that may exist after the end of the current fiscal year but may not deduct them from the cash condition of the treasury or the anticipated revenues of the next biennium for the purpose of certification. The comptroller shall base the reports, estimates, and certifications of available funds on the actual or estimated cash condition of the treasury and shall consider outstanding and undisbursed appropriations at the end of each biennium as probable disbursements of the succeeding biennium in the same manner that earned but uncollected income of a current biennium is considered in probable receipts of the succeeding biennium. The comptroller shall consider as probable disbursements warrants that will be issued by the state before the end of the fiscal year.

(b) The comptroller shall include in the statement the detailed computations and all other pertinent information that the comptroller considered in arriving at the estimates of anticipated revenues. (V.A.C.S. Art. 4348a, Subsecs. a (part), b (part).)

Sec. 403.122. COMMITTEE ON STATE REVENUE ESTIMATES. (a) The Committee on State Revenue Estimates is an agency of the state. The committee is composed of the governor or the governor's duly appointed representative, the director of the Legislative Budget Board, and the state auditor. The governor or the governor's duly appointed representative is chairman of the committee.

(b) The committee shall carefully review all estimates submitted by the comptroller under Article III, Section 49a, of the Texas Constitution and shall report the result of the review in an official public document to the budget divisions of the governor's office, the legislature, and the comptroller. The comptroller shall furnish additional information to the committee, as the committee considers necessary, to clarify the revenue estimates.

(c) The Committee on State Revenue Estimates is subject to the Texas Sunset Act (Chapter 325). Unless continued in existence as provided by that Act, the committee is abolished September 1, 1989. (V.A.C.S. Art. 4348a, Subsecs. b (part), c.)

CHAPTER 404. STATE TREASURER

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CHAPTER 404. STATE TREASURER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 404.001. DEFINITIONS. In this chapter:

- (1) "Board" means the State Depository Board.
- (2) "Demand deposit" means a deposit that is payable on demand.
- (3) "Direct security repurchase agreement" means an agreement under which the state buys, holds for a specified time, and then sells back any of the following securities, obligations, or participation certificates:
  - (A) United States government securities;
  - (B) direct obligations of or obligations the principal and interest of which are guaranteed by the United States; or
  - (C) direct obligations of or participation certificates guaranteed by the Federal Intermediate Credit Bank, a federal land bank, the Federal National Mortgage Association, a federal home loan bank, or a bank for cooperatives.
- (4) "Market value" means the fair and reasonable prevailing price at which a security is being sold on the open market at the time of the appraisalment of the security by the treasurer.
- (5) "Reverse security repurchase agreement" means an agreement under which the state sells and after a specified time buys back any of the securities, obligations, or participation certificates listed in Subdivision (3).

(6) "Time deposit" means a deposit for which there is in force a contract providing that neither the whole nor a part of the deposit may be withdrawn before the expiration of the period of notice that must be given in writing in advance of a withdrawal.

(7) "Treasurer" means the state treasurer.

(8) "Treasury" means state funds subject to the custody and control of the state treasurer and available for appropriation by the legislature. (V.A.C.S. Art. 4393-1, Sec. 1.001.)

[Sections 404.002-404.010 reserved for expansion]

#### SUBCHAPTER B. STATE DEPOSITORY BOARD

Sec. 404.011. BOARD MEMBERSHIP. (a) The State Depository Board is composed of the treasurer, one citizen of the state who is appointed by the governor with the advice and consent of the senate for a two-year term, the banking commissioner, and the comptroller.

(b) Appointment to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

(c) The citizen member or an employee of the board may not be an officer, employee, or paid consultant of a trade association in the banking industry.

(d) The citizen member or an employee of the board may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the banking industry.

(e) A person who is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation in or on behalf of a profession related to the operation of the board may not serve as a citizen member of the board or act as the general counsel to the board.

(f) It is a ground for removal from the board that the citizen member violates a prohibition established by this section. The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of the citizen member of the board existed. (V.A.C.S. Art. 4393-1, Sec. 2.001.)

Sec. 404.012. APPLICATION OF SUNSET, OPEN MEETINGS, AND ADMINISTRATIVE PROCEDURE LAWS. (a) The board is subject to the Texas Sunset Act (Chapter 325). Unless continued in existence as provided by that Act, the board is abolished effective September 1, 1995.

(b) The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4393-1, Sec. 2.003.)

Sec. 404.013. RULES. The board may adopt and enforce rules governing the establishment and conduct of state depositories, the handling of funds in the depositories, and the investment of state funds that the public interest requires and that are not inconsistent with the law governing the depositories and investments. The rules must be entered in the minutes of the board. (V.A.C.S. Art. 4393-1, Sec. 2.002.)

[Sections 404.014-404.020 reserved for expansion]

#### SUBCHAPTER C. STATE DEPOSITORIES AND INVESTMENT OF STATE FUNDS

Sec. 404.021. ELIGIBLE INSTITUTIONS. (a) Any private, state, or national bank doing business in the state may be designated by the board as a state depository. A private bank organized according to state banking law that seeks to become a state depository must agree in writing to submit itself to examination to determine its solvency.

(b) Any savings and loan association domiciled in the state may be designated by the board as a state depository.

(c) Any institution in the state whose accounts or deposits are insured according to the laws of the United States may be designated by the board as a state depository and may

accept state funds to the extent of that insurance, regardless of the amount of its paid-up capital stock and permanent surplus. (V.A.C.S. Art. 4393-1, Sec. 2.011.)

Sec. 404.022. APPLICATIONS. (a) The treasurer is the secretary of the board.

(b) The board, through its secretary, on the second Tuesday in June of each odd-numbered year shall mail to each eligible institution a letter stating the conditions with which applicants for designation as a state depository must comply. The treasurer shall keep on file in the treasurer's office and make available for inspection by any person a list of institutions to which letters have been sent.

(c) The application for designation as a state depository must include a statement:

- (1) of the amount of the applicant's paid capital stock and permanent surplus, if any, or if the applicant is a private bank, the amount of net proprietorship;
- (2) of the maximum amount of state funds the applicant will accept;
- (3) of the applicant's condition on the date the application is submitted; and
- (4) that the books and accounts of the institution, if it is designated as a state depository, will be open at all times for inspection by the board or a member or accredited representative of the board.

(d) An application shall be mailed to the treasurer at Austin and must be received before noon of the first day of August of the year in which the letter is sent. An application received after that time may be considered at the option of the board. The board shall charge a processing fee of \$25 for each application and shall deposit the fees to the credit of the general revenue fund.

(e) On receipt of an application under this section, the treasurer shall endorse on the application the date of its receipt. The treasurer shall prepare a list of the names of the applicants and the amount for which each has applied and shall furnish a copy of the list to each board member.

(f) The board shall meet on the first Monday in August of each odd-numbered year and at other appropriate times to consider applications. The board may approve those applicants that are acceptable and may reject those whose management or condition, in the opinion of the board, does not warrant the placing of state funds in their possession. An application for state funds may not be granted if the applicant's liabilities for borrowed money are in excess of its capital stock, but the board may in its discretion waive this provision.

(g) The board may designate an applicant as a state depository if the applicant has complied with all of the conditions set by the board. The designation as a state depository is effective for a period of not more than two years.

(h) As soon as practicable after the board has made its designations, the treasurer shall inform all applicants whether they have been designated as state depositories.

(i) If more depositories are required at any time, the treasurer may send to all eligible institutions notice that further applications for designation as a state depository for the unexpired term will be accepted. (V.A.C.S. Art. 4393-1, Sec. 2.012.)

Sec. 404.023. DESIGNATION. The board shall designate one or more state depository banks in centrally located cities to be used for clearing checks and other obligations due the state. (V.A.C.S. Art. 4393-1, Sec. 2.013.)

Sec. 404.024. AUTHORIZED INVESTMENTS. (a) The board may determine and designate the amount of state funds to be deposited in state depositories, the amount of those deposits that shall be demand deposits and the amount that shall be time deposits, and the amount of state funds that shall be invested by the treasurer in:

- (1) direct security repurchase agreements;
- (2) reverse security repurchase agreements;
- (3) direct obligations of or obligations the principal and interest of which are guaranteed by the United States; and
- (4) direct obligations of or participation certificates guaranteed by the Federal Intermediate Credit Bank, Federal Land Banks, Federal National Mortgage Association, Federal Home Loan Banks, and Banks for Cooperatives.



(b) The amount invested in obligations and participations authorized by Subsections (a)(3) and (4) at any one time may not exceed 20 percent of the average daily balance of all state funds eligible for deposit or investment under this chapter. Investments in direct security repurchase agreements may be made only with state or national banks domiciled in this state.

(c) The board may contract with a depository for the payment of interest on time or demand deposits at a rate not to exceed a rate that is lawful under an Act of Congress and rules and regulations of the board of governors of the Federal Reserve System, the board of directors of the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, and the Federal Home Loan Banking Board.

(d) Not more than 20 percent of the aggregate funds on deposit at any time may be in depository institutions other than banks. (V.A.C.S. Art. 4393-1, Sec. 2.014.)

Sec. 404.025. ELIGIBLE SECURITY. (a) A state depository may accept deposits of state funds only if it has:

(1) deposited a depository bond that is:

(A) signed by a surety company authorized to do business in Texas;

(B) in an amount equal to not less than double the amount of state funds allotted;

(C) payable to the treasurer;

(D) in the form prescribed by the board; and

(E) approved by the board; or

(2) pledged with the treasurer eligible investment securities accepted by the board in an amount not less than the amount of deposits to be secured.

(b) Eligible investment securities include a direct obligation of the United States; an obligation that, in the opinion of the attorney general of the United States, is a general obligation of the United States and backed by its full faith and credit; an obligation guaranteed by the United States; an evidence of indebtedness of or a participation certificate guaranteed by a federal intermediate credit bank, a federal land bank, a bank for cooperatives, the federal farm credit system, a federal home loan bank, or the Federal National Mortgage Association; a federal financing bank participation certificate in the federal asset financing trust; new housing authority bonds and project notes fully secured by contracts with the United States, but not including an obligation with a declining principal balance; or a general or special obligation issued by a public agency and approved by the attorney general that is payable from taxes, revenues, or both. For the purposes of this subsection, "public agency" means a board, authority, agency, department, commission, political subdivision, municipal corporation, district, public corporation, body politic, instrumentality of this state, or any other type of political or governmental entity of this state.

(c) A bond accepted as collateral security shall be registered under the same rules and regulations as a bond in which permanent school funds are invested.

(d) Subject to the approval of the board, a state depository may secure its deposits of state funds in part by an acceptable surety bond and in part by acceptable collateral. A loss sustained by a depository that has secured its deposits in part by a surety bond and in part by collateral may be enforced against the surety bond or the collateral.

(e) A warrant drawn on the treasury may not be accepted as collateral unless the warrant is accompanied by an affidavit, sworn to by an officer of the bank offering the warrant, stating that the warrant was not transferred or assigned by the original payee of the warrant for a consideration less than 98 percent of the face value of the warrant, and that the warrant was not obtained from the original payee by loaning money at a rate of interest greater than eight percent a year.

(f) The board may reject collateral or a surety bond tendered by a state depository without assigning a reason for the rejection, and its action is final and not subject to review.

(g) Security is not required for deposits to the extent that the deposits are insured by the Federal Deposit Insurance Corporation under Section 12b, Federal Reserve Act, or by the Federal Savings and Loan Insurance Corporation. (V.A.C.S. Art. 4393-1, Sec. 2.015.)

Sec. 404.026. ELEEMOSYNARY FUNDS. The board may invest the permanent funds of the Texas School for the Blind, Texas School for the Deaf, Austin State Hospital, and Corsicana State Home and may invest other permanent funds, the investment of which is not otherwise provided for, that have \$1,000 or more on deposit with the treasurer that are not invested. The board shall invest the funds in the same classes of bonds as are authorized for investment of the permanent school fund. (V.A.C.S. Art. 4393-1, Sec. 2.016.)

[Sections 404.027-404.030 reserved for expansion]

#### SUBCHAPTER D. TREASURER AS SECRETARY OF BOARD

Sec. 404.031. COLLATERAL. (a) The treasurer shall determine the market value of securities pledged to secure state funds for the purpose of determining the adequacy of the amount of collateral. The treasurer's valuation of the securities is final and not subject to review.

(b) If the market value of the securities pledged by a depository becomes less than the amount of funds on deposit in the depository, the treasurer shall require additional security. If the collateral pledged by a state depository is in excess of the amount required by this chapter, the treasurer may permit the release of the excess security. If the balance of state funds in a state depository is increased, the depository shall increase the security for the deposits to the amount required by this chapter.

(c) A state depository may substitute one group of eligible securities for another group of securities pledged with the treasurer.

(d) Except as provided by Subsections (e) and (f), a state depository shall deposit any pledged securities with the treasurer. The treasurer shall give the depository a receipt for the securities and place them in the vaults of the treasury.

(e) Instead of depositing pledged securities with the treasurer, a depository may deposit them with a state or national bank that has been designated a state depository. The securities shall be held in trust by the custodian bank to secure funds deposited by the treasurer in the state depository pledging the securities. On receipt of the securities, the custodian bank shall immediately issue and deliver to the treasurer controlled trust receipts for the securities pledged. The security evidenced by the trust receipts is subject to inspection by the board or its agents at any time. The custodian bank must have a capital stock and permanent surplus of not less than \$500,000. The depository pledging the securities shall pay the charges, if any, of the custodian bank for accepting and holding the securities.

(f) Instead of depositing pledged securities with the treasurer, a state depository may deposit pledged securities with the Federal Reserve Bank of Dallas. The securities shall be held by the bank to secure funds deposited by the treasurer in the state depository pledging the securities. When the pledged securities are deposited, the Federal Reserve Bank of Dallas may apply book entry to the securities. The records of the Federal Reserve Bank of Dallas shall at all times reflect the name of the state depository depositing the pledged securities, and the bank shall issue an advice of transaction to the treasurer and the state depository pledging the securities.

(g) A custodian bank holding in trust securities of a state depository under Subsection (e) may deposit the pledged securities with the Federal Reserve Bank of Dallas if the Federal Reserve Bank of Dallas is the third party to the transaction. The securities shall be held by the Federal Reserve Bank of Dallas to secure funds deposited by the treasurer in the state depository pledging the securities. When the pledged securities held by a custodian bank are deposited, the Federal Reserve Bank of Dallas may apply book entry procedures to the securities. The records of the Federal Reserve Bank of Dallas shall at all times reflect the name of the custodian bank depositing the pledged securities, and the bank shall issue an advice of transaction or other document evidencing each deposit of securities to the custodian bank. The custodian bank shall immediately issue and deliver

to the treasurer controlled trust receipts for the pledged securities. The trust receipts shall indicate that the custodian bank has deposited with the Federal Reserve Bank of Dallas the pledged securities held in trust for the state depository pledging the securities.

(h) On request of the owner or owners, the treasurer or custodian bank may surrender interest coupons or other evidence of interest on securities deposited by state depositories, when the interest is due, if the securities are sufficient to meet the collateral requirements of the state.

(i) A state depository making deposits of securities with the treasurer may cause the securities to be endorsed or stamped, as it considers proper, to show that they are deposited as collateral and not transferable except as provided by this chapter.

(j) If a state depository fails to pay a deposit or part of a deposit on the check of the treasurer, the treasurer may immediately sell or otherwise convert the securities to money and disburse the money, according to law, on warrants drawn by the comptroller on the funds which the securities secured.

(k) The treasurer regularly shall provide the board with a status report relating to the collateral position of the treasury. (V.A.C.S. Art. 4393-1, Sec. 3.001.)

Sec. 404.032. DEPOSITS AND INVESTMENTS. (a) The treasurer shall deposit state funds in depositories that satisfy the security requirements of this chapter or invest the funds in investments authorized by the board. The treasurer may deposit funds designated as demand deposits only in banks designated as centrally located depositories and in other depositories authorized by the board.

(b) A depository may not keep on deposit state funds in an amount in excess of its paid-up capital stock and permanent surplus. A reduction in the capital stock and permanent surplus of a depository reduces correspondingly the amount of state funds that it may retain as a depository, and the treasurer may withdraw from the depository funds in excess of its capital stock and permanent surplus. However, this limitation does not apply if the depository pledges as security for the state funds warrants drawn on the treasury against the general revenue fund. In this case the amount of state funds to be deposited in the depository shall be determined by the board. This subsection does not affect arrangements for clearing checks made by the board with state depositories.

(c) If a surplus of state funds remains after all depositories are designated, the surplus shall be prorated among the designated banks after collateral and stock and surplus requirements have been met.

(d) A state depository shall collect all checks, drafts, and demands for money deposited with it by the treasurer. If the depository uses due diligence, it is not liable for the collections until the proceeds of the collections are duly received by the depository bank. An expense incurred in collection that the depository is not permitted to pay by reason of an Act of Congress or a rule or regulation adopted under such an Act by the board of governors of the Federal Reserve System or the board of directors of the Federal Deposit Insurance Corporation shall be charged to and paid by the treasurer out of money appropriated by the legislature for that purpose.

(e) The treasurer shall keep sufficient money on deposit in demand deposit accounts in depositories designated by the board as clearing institutions to meet all current claims on the state. Items received by the treasurer for collection shall be deposited with a clearing institution to be credited to the demand deposit account in the depository. Checks, drafts, or warrants drawn by the treasurer for the payment of obligations due by the state may be drawn on such an account in such a depository or on the demand deposit account in another state depository so that the checks, drafts, or warrants of the state may at all times pass current as cash. (V.A.C.S. Art. 4393-1, Sec. 3.002.)

Sec. 404.033. WITHDRAWALS AND REMITTANCES. (a) Funds on deposit with a depository are subject to withdrawal at any time by the treasurer, except funds designated as time deposits, which may be withdrawn in the manner agreed on in the contract under which the funds were deposited. The depository shall remit the withdrawal on demand and free of charge, except charges that the depository is not permitted to pay by reason of an Act of Congress or a rule or regulation adopted under such an Act by the

board of governors of the Federal Reserve System or the board of directors of the Federal Deposit Insurance Corporation.

(b) A remittance to the treasurer by a state depository or another person may be made by any method authorized by the treasurer, including cash, money order, or bank draft. The liability of the depository or other person making the remittance continues until the money is received by the treasurer. A depository that refuses to make a remittance required by this chapter forfeits its right to receive further deposits, on order of the board. The board may withdraw all funds from the depository, which after the withdrawal ceases to be a state depository. (V.A.C.S. Art. 4393-1, Sec. 3.003.)

[Sections 404.034-404.040 reserved for expansion]

#### SUBCHAPTER E. GENERAL DUTIES

Sec. 404.041. **TRUSTEE.** The treasurer is the trustee of funds in the treasury. (V.A.C.S. Art. 4393-1, Sec. 3.011.)

Sec. 404.042. **BONDS AND EMPLOYEES.** (a) Not later than the 20th day after the date on which notice of election is received and before entering the duties of office, the treasurer shall give a bond with a good and solvent surety company authorized to do business in this state, in the sum of \$70,000, payable to and approved by the governor and conditioned that the treasurer shall faithfully execute the duties of that office. Expenses necessary and incident to the execution of the bond shall be paid by the state.

(b) The treasurer shall also give any special bond required by an Act of Congress or by a federal department or official to protect federal funds deposited with the treasurer. Expenses necessary and incident to the execution of the bond shall be paid by the state.

(c) The treasurer shall appoint a first assistant who shall give bond with a good and solvent surety company authorized to do business in this state, in the sum of \$70,000, payable to and approved by the governor, and conditioned that the first assistant shall faithfully execute the duties of that office. If the treasurer is not able to act, the first assistant shall sign the first assistant's own name as acting treasurer and perform the duties of the treasurer. The legal acts and signatures of the first assistant as acting treasurer are valid as the acts and signatures of the treasurer.

(d) The treasurer shall appoint other employees that are authorized by law. Employees who as part of their duties handle money, or drafts, checks, bills of exchange, warrants, securities, or other evidences of debt that are or may be convertible into money, or other valuable property shall give bond with a good and solvent surety company authorized to do business in this state, payable to the treasurer in the sum that the treasurer requires, conditioned that the employee shall faithfully execute and perform the duties of that employee's position. The treasurer may also require an employee to be insured in the manner and in the sum that the treasurer requires.

(e) The expense incident to the execution of the bonds and any insurance of the first assistant and other employees shall be paid by the state. (V.A.C.S. Art. 4393-1, Sec. 3.012.)

Sec. 404.043. **SECURITY OFFICERS.** The treasurer shall employ security officers to provide needed security services for the treasury and may commission the officers as peace officers. The security officers shall give bond in the same manner required by this chapter for employees who handle money or other valuable property as part of their duties. (V.A.C.S. Art. 4393-1, Sec. 3.013.)

Sec. 404.044. **REVIEW OF BONDS.** The attorney general, with the comptroller, shall on the first day of the fiscal year examine the bonds and insurance of the treasurer, first assistant, and other employees and make diligent inquiry into the condition of the sureties on the bonds and policies. If the attorney general finds that a bond or insurance policy is not sufficient to protect and secure the state, the attorney general shall notify the treasurer in writing of the insufficiency of the bond or policy, and the treasurer shall secure a sufficient bond or insurance. (V.A.C.S. Art. 4393-1, Sec. 3.014.)

Sec. 404.045. **RECEIPT OF MONEY FROM COMPTROLLER.** The treasurer shall receive, on the warrants of the comptroller, all money paid into the treasury and shall

give a receipt for the money to the comptroller and to the person depositing the money. (V.A.C.S. Art. 4393-1, Sec. 3.015.)

Sec. 404.046. **PAYMENT FROM TREASURY.** The treasurer shall countersign and pay warrants drawn by the comptroller on the treasury that are authorized by law. Money may not be paid out of the treasury except on the warrants of the comptroller, and a warrant may not be paid by the treasurer unless presented for payment before two years after the close of the fiscal year in which the warrant was issued. Claims for the payment of warrants presented after that time may be presented to the legislature for appropriations from which the claims may be paid. (V.A.C.S. Art. 4393-1, Sec. 3.016.)

Sec. 404.047. **ACCOUNTS.** The treasurer shall keep accounts of the receipt and expenditure of the money in the treasury and close the accounts on August 31 of each year. The treasurer shall keep proper legal vouchers, distinguishing between the receipts and disbursements of each fiscal year. (V.A.C.S. Art. 4393-1, Sec. 3.017.)

Sec. 404.048. **REPORT.** In addition to the reports required by the constitution, the treasurer shall submit to the governor on the first Monday in November of each year, and at other times the governor requires, an exact statement of the condition and situation of the treasury, a statement of the balance of money remaining in the treasury to the credit of the state, and a summary of the receipts and disbursements of the treasury during the preceding year or for another period of time that may be specially required. The treasurer shall exhibit all books, papers, vouchers, and other matters pertaining to the office for examination on request by the legislature or a branch or committee of the legislature. (V.A.C.S. Art. 4393-1, Sec. 3.018.)

Sec. 404.049. **MONEY IN TREASURY.** Money received by the treasurer as trustee of funds in the treasury shall be kept in the treasury. The treasurer may not keep or receive into the treasury money, or the representative of money, belonging to an individual except as provided by law. The treasurer may not appropriate to the treasurer's own use or lend, sell, or exchange money, or the representative of money, in the treasurer's custody or control. (V.A.C.S. Art. 4393-1, Sec. 3.019.)

Sec. 404.050. **DELIVERY TO SUCCESSOR.** The treasurer shall, at the close of the term of office, deliver into the possession of the successor treasurer the money, securities, and all other property of the state in the treasurer's possession and the books, vouchers, papers, evidences of property, and all other matters and things pertaining to the office. (V.A.C.S. Art. 4393-1, Sec. 3.020.)

Sec. 404.051. **MONEY RETURNED TO COUNTY OR MUNICIPALITY.** If money is in the treasury for the purpose of paying an obligation due from a county or municipality and the comptroller finds from certified copies of the records of the commissioners court or by other satisfactory evidence that the obligation is no longer outstanding against the county or municipality, the comptroller shall draw a warrant on the treasury in favor of the county or municipality for that amount of money. The treasurer shall pay the money on the warrant of the comptroller to the treasurer of the county or municipality for the benefit of its general fund. (V.A.C.S. Art. 4393-1, Sec. 3.021.)

Sec. 404.052. **OBLIGATIONS OF MUNICIPALITIES, DISTRICTS, AND POLITICAL SUBDIVISIONS.** (a) A bond, warrant, or other evidence of indebtedness issued by a municipality, district, or political subdivision of this state and any interest, at the discretion of the municipality, district, or political subdivision may be payable at the office of the state treasurer. The treasurer serves as ex officio treasurer and fiscal agent of the municipality, district, or political subdivision for the purposes of receiving funds for the payment of the obligation and interest, making payment of the obligation and interest, and for all other purposes designated by this chapter or necessary or incidental to the service.

(b) The state treasurer shall deposit money received by the treasurer under this section and shall keep a separate account for each municipality, district, or political subdivision. As payment of interest and principal becomes due on an obligation, the treasurer of the municipality, district, or political subdivision shall remit to the state treasurer, not later than the 15th day before the date of maturity, the amounts due or to become due on maturity. On receipt of those amounts by the state treasurer, the treasurer of the municipality, district, or political subdivision shall request the comptroller

to issue a warrant to the state treasurer for the payment, and the state treasurer shall pay the same at the office of the state treasurer. The warrant shall state on its face:

- (1) that the proceeds of the warrant are to be applied by the state treasurer to the payment of certain specified bonds or interest coupons described in the warrant;
  - (2) the name of the municipality, district, or political subdivision that issued the obligations;
  - (3) the numbers, amounts, and dates of maturity of the obligations and interest to be paid; and
  - (4) instructions to the state treasurer to return the obligation to the treasurer of the municipality, district, or political subdivision on receipt.
- (c) On return of the obligation, the treasurer of the municipality, district, or political subdivision shall record the payment and cancellation.
- (d) The state treasurer shall collect for the use of the state from the municipality, district, or political subdivision a fee in an amount established by rule of the state treasurer that is sufficient to pay the state treasurer's cost of administration. The treasurer of the municipality, district, or political subdivision, at the time of the remittance for the payment of the maturing obligation or interest, shall remit the fee to the state treasurer as ex officio treasurer of the municipality, district, or political subdivision. On receipt of the fee, the state treasurer shall credit it to the fees earned. The amount of the fees earned, or as much as necessary, is reserved to the state treasurer to be used in the administration of this chapter. Any balance remaining at the end of a fiscal year is available for use in the next fiscal year.
- (e) It is the general intent of this section to provide an inexpensive and feasible means for the payment of bonds and interest coupons issued by municipalities, districts, and political subdivisions in the state at the office of the state treasurer, and this section shall be broadly construed to carry out that intent. An official or a municipality, district, or political subdivision concerned with the administration of this section shall perform the acts and duties necessary or appropriate to facilitate and expedite the operation of this section to the end that bonds and interest may be promptly paid and the payment clearly evidenced and accounted for.
- (f) The state treasurer shall cancel and return to the municipality, district, or political subdivision depositing funds for the payment of interest coupons or the retirement of bonds the coupons and bonds that have matured or been retired by purchase, together with a statement of the account of the municipality, district, or subdivision showing the amounts received and placed to its credit, service charges, and amount of coupons or bonds retired. At the request of the municipality, district, or political subdivision, the state treasurer shall remit to the municipality, district, or subdivision any balance remaining in custody of the treasurer for more than two years for which bonds or coupons have not been presented for payment. The municipality, district, or political subdivision shall pay these coupons or bonds when presented. A municipality, district, or political subdivision is entitled at any reasonable time to a statement of its account with the state treasurer. (V.A.C.S. Art. 4393-1, Sec. 3.022.)

Sec. 404.053. DEPOSIT WARRANT REGISTER. The treasurer shall keep on file a deposit warrant register prepared by the comptroller and designed with columns for state revenue, available school funds, miscellaneous, and other necessary items. Warrants shall be entered consecutively and distributed to the proper columns. The treasurer's deposit warrant register shall be a carbon copy of the deposit warrant register kept by the comptroller and shall be furnished to the treasurer together with the deposit warrants for money deposited each day. (V.A.C.S. Art. 4393-1, Sec. 3.023.)

Sec. 404.054. DAILY TOTALS. The treasurer shall post the daily totals of deposit warrants to the proper fund and control accounts in the general ledger. The treasurer shall keep a transit record, in which the treasurer shall record the essential details of cash, checks, money orders, drafts, or other items deposited or cashed each day, showing the items deposited in each depository bank or otherwise disposed of. The totals of deposits shall be charged to the accounts of the respective depositories on the books of the treasury. The treasurer shall keep a journal of all journal vouchers or other

memoranda of transfers between funds or accounts. Postings shall be made from this journal to the proper accounts on the books of the treasury. (V.A.C.S. Art. 4393-1, Sec. 3.024.)

Sec. 404.055. TIME AND DEMAND DEPOSITS; RECORDS AND ANNUAL REPORT. (a) The treasurer shall maintain records of the daily balances of and the interest income from funds deposited by the treasurer or the board in time and demand deposit accounts in each bank acting as a state depository. The treasurer shall maintain and preserve those records according to the provisions of the Preservation of Essential Records Act (Article 5441d, Vernon's Texas Civil Statutes) and of the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

(b) The treasurer annually shall make a complete report to the legislature and to the governor of the amounts of interest income earned on funds deposited by the treasurer or the board in each state depository. The report must contain the following:

- (1) the name of each institution serving as a state depository during the fiscal year;
- (2) for each institution, the balance at the beginning of the fiscal year, the balance at the end of the fiscal year, and the average daily balance in demand deposit accounts placed by the treasurer or the board;
- (3) for each institution, the balance at the beginning of the fiscal year, the balance at the end of the fiscal year, the average daily balance in time deposit accounts placed by the treasurer or the board, and the amount of interest income earned on those accounts; and
- (4) the totals of those amounts aggregated for all state depositories. (V.A.C.S. Art. 4393-1, Sec. 3.025.)

Sec. 404.056. REGISTRATION OF WARRANTS. The treasurer shall keep on file one register for each class of warrant issued. The comptroller shall furnish the registers. The treasurer shall keep a warrants paid register in which the number and amount of each warrant paid shall be entered. Warrants may be grouped by classes, and separate totals of warrants paid from each class may be shown, as well as the total of all warrants paid each day. The treasurer, on request of the comptroller, shall furnish to the comptroller each day a copy of the warrants paid register. The treasurer shall keep a register of warrants canceled in which the details of all warrants canceled shall be entered. The treasurer may, with the consent of the comptroller, substitute a recapitulation of the totals of warrants paid each day for the copy of the warrants paid register. (V.A.C.S. Art. 4393-1, Sec. 3.026.)

Sec. 404.057. OTHER ACCOUNTS. (a) The treasurer shall keep accounts called:

- (1) warrants payable, general;
- (2) warrants payable, special; and
- (3) warrants payable, pensions.

(b) To each account, the treasurer shall credit daily totals of the registers of warrants issued and charged and the daily total of warrants paid of each class, so that the balance of those accounts represents the aggregate amount of outstanding warrants. (V.A.C.S. Art. 4393-1, Sec. 3.027.)

Sec. 404.058. OUTSTANDING WARRANTS. Outstanding warrants shall be listed each month from the registers of warrants issued, and the list shall be sent to the comptroller for his record. The treasurer shall furnish with this list a statement showing the aggregate amount of general, special, and pension warrants paid during the month. (V.A.C.S. Art. 4393-1, Sec. 3.028.)

Sec. 404.059. GENERAL LEDGER ACCOUNTS. The treasurer shall charge the daily totals of the general warrants, pension warrants, special warrants, and all other classes of warrants to the respective funds and control accounts in the general ledger to which they apply. (V.A.C.S. Art. 4393-1, Sec. 3.029.)

Sec. 404.060. PRIORITY OF WARRANTS. (a) Warrants on the treasury shall be general warrants and shall be on an equal basis with each other, except that if a question

arises concerning the priority of payment of the warrants and necessity requires, they shall be paid in order of their serial number.

(b) Warrants shall be numbered in the order the accounts are received in the comptroller's office.

(c) This section does not apply to:

- (1) warrants drawn on the game, fish, and water safety fund or on funds collected for and appropriated to the State Department of Highways and Public Transportation;
- (2) a special fund created or provided for in the constitution; or
- (3) a special fund consisting of taxes set aside and remitted or donated by the legislature to a county or municipality. (V.A.C.S. Art. 4393-1, Sec. 3.030.)

Sec. 404.061. STATE WARRANTS PAYABLE TO U.S. POSTAL SERVICE. A warrant for the purchase of United States postage stamps or for the payment of post office box rental by a board or department of the state shall be drawn on the treasury by the comptroller in favor of the United States Postal Service. The treasurer shall pay the warrant out of funds appropriated for that purpose, regardless of the serial number of the warrant and the priority of the issuance of the warrant. The warrant shall be endorsed by the postmaster of the post office to which it is made payable. (V.A.C.S. Art. 4393-1, Sec. 3.031.)

Sec. 404.062. DAILY STATEMENT. (a) The head of each department shall send to the treasurer daily a detailed list of persons remitting money the status of which is undetermined or that is awaiting the time when it can be taken into the treasury and the departments' remittances to the treasury. The treasurer shall cash the remittances and place them in the treasury vaults or in legally authorized depository banks if the necessity arises.

(b) The report from the General Land Office shall include all money for interest, principal, and leases of school, university, asylum, and other lands.

(c) A deposit receipt shall be issued by the comptroller for the daily total of those remittances. The cashier of the treasury department shall keep a cash book, to be called the suspense cash book, in which are entered those deposit receipts and other receipts issued for cash received for which a deposit warrant may not be issued or for which issuance of a deposit warrant is delayed.

(d) When the status of money placed with the treasurer on a deposit receipt is determined, the money shall be transferred from the suspense account by placing the portion of it belonging to the state in the treasury by the issuance of a deposit warrant, and the part not belonging to the state shall be refunded.

(e) When a deposit warrant is issued, it and any refunds shall be entered in the suspense cash book, and the balance shall represent the aggregate of the items still in suspense. Separate series of warrants shall be used for making refunds. Those warrants shall be called refund warrants and shall be written and signed by the comptroller and countersigned by the treasurer. The warrants shall be charged against the suspense funds to which they apply and then returned to the comptroller and delivered by the comptroller to the person entitled to receive them. (V.A.C.S. Art. 4393-1, Sec. 3.033.)

Sec. 404.063. VIOLATION. A person who knowingly or wilfully violates this chapter commits an offense. An offense under this chapter is punishable by a fine of not less than \$50 nor more than \$500, by confinement in the county jail for not less than 30 days nor more than six months, or by both a fine and confinement. (V.A.C.S. Art. 4393-1, Sec. 3.034.)

Sec. 404.064. OFFICE FEE BOOK. The treasurer shall keep an office fee book in which the treasurer shall enter in detail the fees earned by the treasury department. Those fees shall be deposited in the treasury at the end of each month, to the credit of the general revenue fund, on a deposit warrant issued by the comptroller. (V.A.C.S. Art. 4393-1, Sec. 3.035.)

Sec. 404.065. CASH BALANCING BOOK. The treasurer shall keep a book, to be called the cash balancing book, for the purpose of arriving at the daily cash balance. The



daily totals of receipts and disbursements and the amount of cash on hand and in depository banks shall be entered in the book. A copy of the book entry for each day shall be furnished daily to the comptroller. (V.A.C.S. Art. 4393-1, Sec. 3.036.)

Sec. 404.066. LEDGER. (a) The general ledger kept by the treasurer shall contain accounts for each fund. Those accounts shall be credited with the existing balances and the daily totals of deposit warrants. Pay warrants issued shall be charged to the fund accounts from the warrants issued registers in daily totals.

(b) The ledger shall contain control accounts for cash, depository banks, bonds, interest, securities, warrants payable, and other necessary accounts. Postings shall be made to the ledger daily from the deposit warrant register, warrants issued registers, warrants paid register, and other supporting records.

(c) The ledger shall be balanced daily. (V.A.C.S. Art. 4393-1, Sec. 3.037.)

Sec. 404.067. BOND BOOK. (a) The treasurer shall keep a bond book in which shall be entered warrants or authorizations to receive or relinquish bonds held by the treasurer and belonging to a state fund.

(b) The treasurer shall keep appropriate ledger accounts that include a short description of the essential features of each, of each bond or of each purchase of similar bonds or other securities purchased by and belonging to the permanent school fund and other funds of the state. Those accounts shall be charged with the principal of the bond or purchase and with each separate item of interest to accrue to the principal and shall be credited with payments as made.

(c) The treasurer shall keep controlling or total accounts of bonds or other securities in the general ledger. Those accounts shall be kept with respect to the total amount of bonds or other securities belonging to each separate fund.

(d) The treasurer shall keep controlling accounts for interest to accrue on the bonds. The accounts shall be set up at the beginning of the fiscal year for bonds or other securities owned at that time and for subsequent purchases when the bonds or securities are purchased.

(e) Those controlling accounts shall be balanced monthly with the sum of the individual accounts for bonds or securities, which also shall be balanced monthly, and shall correspond to similar accounts kept by the comptroller. (V.A.C.S. Art. 4393-1, Sec. 3.038.)

Sec. 404.068. SECURITIES REGISTER. (a) The treasurer shall keep a suitable register in which shall be entered all bonds, cash, and other securities deposited with the treasurer by bond investment, surety, and insurance companies and state depository banks and all other bonds or securities deposited with the treasurer under a statute if the registration of the bonds or securities is not otherwise provided for by law. The treasurer shall enter in the register the deposit receipts or other authorizations to receive or relinquish the bonds or securities.

(b) The treasurer shall keep a securities ledger in which appropriate accounts for all matters for which those deposit receipts or authorizations are issued shall be kept. That ledger shall be balanced monthly against control accounts kept in the general ledger and against corresponding accounts kept by the comptroller. (V.A.C.S. Art. 4393-1, Sec. 3.039.)

Sec. 404.069. TRUST FUNDS. (a) All money and securities placed in the hands of the treasurer in trust for any legal purpose may be received by the treasurer on a deposit receipt issued by the comptroller as provided by Section 403.053. The money or securities shall be held in trust by the treasurer in the same manner as the departmental suspense account. Withdrawal shall be by trust and suspense draft in the case of money and withdrawal authorization in the case of securities. Those instruments shall be issued serially by the comptroller.

(b) Money received in trust or for any legal purpose for which a state deposit warrant has not or may not immediately be issued shall be handled by the treasurer in the same manner as items deposited in the departmental suspense account.

(c) Adequate registers, ledgers, and files shall be maintained by the treasurer and by the comptroller to account for the receiving and disposing of trust and suspense money and securities. Those registers, ledgers, and files shall be known as the trust and suspense record. (V.A.C.S. Art. 4393-1, Sec. 3.040.)

Sec. 404.070. VALIDITY OF SUSPENSE AND TRUST REFUND WARRANTS. (a) A warrant issued by the comptroller in payment of refunds from a suspense or trust fund in the treasury, called a suspense and trust fund refund warrant, becomes void unless presented to the treasurer for payment before two years after the end of the fiscal year in which the warrant was issued. The sum of money represented by a warrant voided under this section shall be transferred by the comptroller from the suspense fund from which the warrant was originally issued to the general revenue fund. Claims for the payment of a voided warrant may be presented to the legislature for appropriation from which the warrant may be paid. This section does not affect the laws regulating the payment of other types or classes of warrants issued by the comptroller.

(b) When a transfer of money under this section is made, the treasurer shall prepare a list of the outstanding warrants representing the transfer. The list must show the name of the payee, the date of the original warrant, the departmental suspense account against which the warrant was originally drawn, the original warrant number, and the amount of the original warrant. The list shall be maintained as a permanent record in the office of the treasurer and proper notation shall be made on each entry on the list when the legislature makes appropriation for the refund of the amount listed. (V.A.C.S. Art. 4393-1, Sec. 3.041.)

Sec. 404.071. DISPOSITION OF INTEREST ON INVESTMENTS. (a) Interest received from investments of money in funds and accounts in the charge of the treasurer shall be allocated on a monthly basis as follows:

(1) the pro rata portion of the interest received due to each constitutional fund shall be credited to that fund; and

(2) the remainder of the interest received, except the portion required by other statutes to be credited on a pro rata basis to protested tax payments, shall be credited to the general revenue fund.

(b) If a deficit occurs in the general revenue fund, the treasurer may place with a designated depository bank an offsetting compensating balance in a special depository account known as a special demand account secured by general revenue warrants only.

(c) The treasurer is entitled to rely on the opinion and advice of the attorney general for the proper interpretation and application of this section. (V.A.C.S. Art. 4393-1, Sec. 3.042.)

Sec. 404.072. EXAMINATION BY STATE AUDITOR. The state auditor shall:

(1) examine the disbursements of the treasurer at the end of each quarter;

(2) cancel, with the treasurer, paid warrants to prevent their future circulation; and

(3) examine whether receipts acknowledged by the treasurer during the quarter correspond with the deposits and whether the balance of money reported to be in the treasurer's hands is actually in the treasurer's hands. (V.A.C.S. Art. 4366.)

Sec. 404.073. FUNDS OUTSIDE TREASURY. (a) The treasurer may be the trustee of funds or property outside the treasury.

(b) The treasurer functioning as the trustee of funds or property outside the treasury may contract with the treasury to manage the funds or property in a manner similar to the management of funds in the treasury.

(c) Interest that has been and that will be accrued or earned from deposits made under the following laws is state funds not subject to allocation or distribution to taxing units, cities, or transportation authorities under:

(1) Section 205.02, Alcoholic Beverage Code;

(2) Section 26, Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes);

(3) Section (d), Article 4366e, Revised Statutes;

(4) Section 7 or Subsection (a), Section 8, Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes);

(5) Paragraph (4), Subdivision (e), or Subdivision (f), Subsection (B), Section 11B, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes); or

(6) Paragraph (D), Subdivision (4), or Subdivision (5), Subsection (f), Section 16, Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4393-1, Sec. 3.051.)

[Sections 404.074-404.090 reserved for expansion]

SUBCHAPTER F. STATE FUNDS REFORM ACT

Sec. 404.091. **SHORT TITLE.** This subchapter may be cited as the State Funds Reform Act. (V.A.C.S. Art. 4393-1, Sec. 4.001.)

Sec. 404.092. **DEFINITION.** In this subchapter, "state agency" means an office, institution, or other agency that is in the executive branch of state government, has authority that is not limited to a geographical portion of the state, and was created by the constitution or a statute of this state, but does not include an institution of higher education as defined by Section 61.003, Education Code. (V.A.C.S. Art. 4393-1, Sec. 4.002.)

Sec. 404.093. **APPLICABILITY OF SUBCHAPTER; EXEMPTIONS.** (a) This subchapter applies to a state agency only to the extent that it is not otherwise required to deposit funds in the treasury.

(b) This subchapter does not apply to:

(1) funds pledged to the payment of bonds, notes, or other debts if the funds are not otherwise required to be deposited in the treasury;

(2) funds held in trust or escrow for the benefit of a person or entity other than a state agency;

(3) funds set apart out of earnings derived from investment of funds held in trust for others, as administrative expenses of the trustee agency;

(4) funds, grants, donations, and proceeds from funds, grants, and donations, given in trust to the Texas State Library and Archives Commission for the establishment and maintenance of regional historical resource depositories and libraries in accordance with Section 441.074; or

(5) funds under the management of the secretary-treasurer of the Anatomical Board of the State of Texas, as provided by Article 4589, Revised Statutes. (V.A.C.S. Art. 4393-1, Sec. 4.003.)

Sec. 404.094. **FUNDS TO BE DEPOSITED IN TREASURY.** (a) Fees, fines, penalties, taxes, charges, gifts, grants, donations, and other funds collected or received by a state agency under law shall be deposited in the treasury, credited to a special fund or funds, and subject to appropriation only for the purposes for which they are otherwise authorized to be expended or disbursed. A deposit shall be made at the earliest possible time that the treasury can accept those funds, but not later than the seventh day after the date of receipt.

(b) Money that is required by this subchapter or by another law to be deposited in the treasury shall be deposited to the credit of the general revenue fund unless the money is expressly required to be deposited to another fund, trust fund, or special account not in the general revenue fund. This subsection does not affect the authority of the comptroller or the treasurer to establish and use accounts necessary to manage and account for state revenues and expenditures.

(c) Money collected or received by a state agency by mistake of fact or law, including money that is not due the state and money collected and received in excess of the amount required to be collected or received, shall, if not refunded as permitted or required by law, be deposited in the treasury to the credit of the general revenue fund. This section does not apply to unrefunded motor fuel taxes or to other unrefunded money that is required

by law to be deposited to the credit of another fund, trust fund, or account not in the general revenue fund. (V.A.C.S. Art. 4393-1, Sec. 4.004.)

[Sections 404.095-404.100 reserved for expansion]

#### SUBCHAPTER G. TEXAS TREASURY SAFEKEEPING TRUST COMPANY

Sec. 404.101. DEFINITIONS. In this subchapter:

(1) "The state and its agencies" includes the Employees Retirement System of Texas and the Teacher Retirement System of Texas.

(2) "Trust company" means the Texas Treasury Safekeeping Trust Company. (V.A.C.S. Art. 4393-1, Sec. 5.001.)

Sec. 404.102. CREATION OF TRUST COMPANY. (a) The treasurer may incorporate a special-purpose trust company called the Texas Treasury Safekeeping Trust Company. The sole purpose of the trust company is to provide a means for the treasurer to obtain direct access to services provided by the Federal Reserve System to enable the treasurer to manage, disburse, transfer, safekeep, and invest public funds and securities more efficiently and economically. The treasurer may deposit public funds and securities with the trust company to achieve its purpose.

(b) The trust company is a special-purpose trust company with necessary and implied powers to accomplish its purpose and is subject to regulation only as provided by this subchapter. The trust company may not engage in commercial banking activity. (V.A.C.S. Art. 4393-1, Sec. 5.002.)

Sec. 404.103. POWERS. (a) The trust company may receive, transfer, and disburse money and securities belonging to the state and its agencies in a manner that qualifies the trust company as a "depository institution" as defined by Section 19, Federal Reserve Act (12 U.S.C. Section 461).

(b) While qualified as a depository institution, the trust company may enter into contracts and trust agreements or other fiduciary instruments with the treasurer to provide the following federal reserve services:

(1) safekeeping book-entry United States Treasury and agency securities owned by the state and its agencies;

(2) using the federal reserve wire transfer system to transfer money and book-entry securities and to settle securities transactions involving book-entry United States Treasury and agency securities owned by the state and its agencies;

(3) collecting, through the Federal Reserve System, checks deposited with the treasury;

(4) receiving payments from and making payments to the federal government on behalf of the state and its agencies;

(5) originating automated clearinghouse transactions or other electronic transfers to make payments on behalf of the state and its agencies, collecting revenues due the state and its agencies, and transferring money between state depositories;

(6) paying warrants drawn on the treasury and presented through the Federal Reserve System for payment; and

(7) safekeeping collateral pledged to secure deposits of public funds.

(c) The trust company may adopt and amend articles of incorporation, bylaws, resolutions, and other documents necessary to carry out its purposes. (V.A.C.S. Art. 4393-1, Sec. 5.003.)

Sec. 404.104. DUTIES OF TREASURER. (a) The treasurer is the sole officer, director, and shareholder of the trust company. The state treasury department shall manage the trust company.

(b) The treasurer may enter into contracts, trust agreements, and other instruments with the trust company as provided by Section 404.103(b).

(c) The treasurer annually shall submit to the Legislative Budget Board an audited report regarding the operations of the trust company. The state auditor shall conduct the audit. (V.A.C.S. Art. 4393-1, Sec. 5.004.)

Sec. 404.105. CAPITAL OR RESERVE REQUIREMENTS. The trust company shall have capital stock or reserve balances in an amount required by applicable regulatory bodies for eligibility for federal reserve services, but the amount may not be more than \$1 million. The stock of the trust company is an authorized investment for state funds, shall be held by the treasurer, and shall be acquired by the treasurer on an order of the state depository board. (V.A.C.S. Art. 4393-1, Sec. 5.005.)

Sec. 404.106. EARNINGS; AUTHORIZED INVESTMENTS. (a) Any net earnings of the trust company attributable to capital or investments shall be credited annually to the account of the treasury and shall be allocated annually to the funds held and managed by the treasurer in accordance with Section 404.071(a).

(b) Funds held by the trust company shall be invested in obligations authorized by law for the investment of funds held and managed by the treasurer. (V.A.C.S. Art. 4393-1, Sec. 5.006.)

Sec. 404.107. FEES. Any fees or assessments imposed by state law for the incorporation, regulation, or operation of trust companies do not apply to the Texas Treasury Safekeeping Trust Company. (V.A.C.S. Art. 4393-1, Sec. 5.007(a).)

[Sections 404.108–404.120 reserved for expansion]

#### SUBCHAPTER H. TAX AND REVENUE ANTICIPATION NOTES

Sec. 404.121. DEFINITIONS. In this subchapter:

- (1) "Committee" means the cash management committee.
- (2) "Tax and revenue anticipation notes" and "notes" mean notes issued under this section, including any obligations under agreements entered into by the treasurer in connection with the issuance of the notes.
- (3) "Temporary cash shortfall" means the cumulative cash flow deficit at any time during a period within a fiscal year in which the cash balance of taxes and revenues in the general revenue fund, as projected by the treasurer, is insufficient to honor the authorized expenditures from that fund during that period and to establish an amount reasonably required as a cash balance in the general revenue fund. (V.A.C.S. Art. 4393-1, Sec. 3.043(b).)

Sec. 404.122. CASH MANAGEMENT COMMITTEE. The cash management committee is composed of the governor, lieutenant governor, speaker of the house of representatives, comptroller, and treasurer. The lieutenant governor and the speaker of the house of representatives are ex officio, nonvoting members of the committee. (V.A.C.S. Art. 4393-1, Sec. 3.043(c).)

Sec. 404.123. NOTES AUTHORIZED. (a) In anticipation of a temporary cash shortfall in the general revenue fund during any fiscal year, the treasurer, subject to Section 404.124, may issue, sell, and deliver tax and revenue anticipation notes on behalf of the state.

(b) The sum of the total amount of the notes outstanding and the total outstanding liability of the general revenue fund under Section 403.092 may not at any time exceed 20 percent of the taxes and revenues to be credited to the general revenue fund for the fiscal year as determined by the treasurer, based on the certification made by the comptroller in the enactment of the General Appropriations Act applicable to that fiscal year.

(c) Tax and revenue anticipation notes are not debts of the state within the meaning of any state constitutional prohibition. The notes may be used solely to coordinate the state's cash flow within each fiscal year.

(d) All notes must mature and be paid in full during the fiscal year in which they were issued. The notes must be signed by the governor. The interest rate on the notes must be set so that the amount equal to the total amount of interest to be paid on the notes plus the costs of issuance of the notes does not exceed the amount of interest that would

be paid on the notes if the interest rate on the notes were one percent less than the average interest yield being earned on funds invested by the treasurer as of the date of the notes' issuance, as computed by the treasurer. (V.A.C.S. Art. 4393-1, Sec. 3.043(d).)

Sec. 404.124. **SHORTFALL FORECAST; COMMITTEE APPROVAL.** (a) Before issuing notes the treasurer shall submit to the committee a general revenue cash flow shortfall forecast, based on the comptroller's most recent anticipated revenue estimate. The forecast must contain a detailed report of estimated revenues and expenditures for each month and each major revenue and expenditure category and must demonstrate the maximum general revenue cash flow shortfall that may be predicted.

(b) Based on the forecast the committee may approve the amount of notes that may be issued and determine whether the notes shall be sold on a negotiated or competitive bid basis. If the committee determines that competitive bids are appropriate, the underwriter of any notes issued under this section shall be selected by the solicitation of sealed bids and an appropriate bid notice shall be published at least one time in one or more recognized financial publications of general circulation published within the state and one or more recognized financial publications of general circulation published outside the state. Unless all bids are rejected, the underwriter shall be selected from the bids received.

(c) The committee may not approve the issuance of notes in excess of the amount reasonably necessary to meet the temporary cash shortfall. The treasurer may not issue notes in excess of the amount approved or sell the notes in a manner not approved. (V.A.C.S. Art. 4393-1, Sec. 3.043(e).)

Sec. 404.125. **ISSUANCE OF NOTES.** (a) The treasurer, consistent with the committee's determinations under Section 404.124, shall authorize the issuance, sale, and delivery of the notes by order.

(b) The proceeds of the notes shall be deposited in a special fund in the treasury called the tax and revenue anticipation note fund. The treasurer may pay the costs of issuance of the notes from the fund and, with notice to the comptroller, from time to time shall transfer the net proceeds to the general revenue fund to honor authorized expenditures from the general revenue fund. The treasurer may invest any funds held in the tax and revenue anticipation note fund in the authorized investments described in Section 404.024 until used in accordance with this section.

(c) In connection with the issuance of the notes, the treasurer may exercise the powers granted to the governing body of an issuer in connection with the issuance of obligations under Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717g, Vernon's Texas Civil Statutes), to the extent not inconsistent with this section. The notes are subject to review and approval by the attorney general in the same manner and with the same effect as is provided by that Act.

(d) The treasurer is an authorized issuer under the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes), and the procedures, terms, and provisions of that Act apply to the tax and revenue anticipation notes authorized in this subchapter.

(e) Amounts in the tax and revenue anticipation note fund may be pledged to secure payment of the notes and performance of the other obligations relating to the notes. The treasurer may make covenants to carry out the purposes of this subchapter and take other actions necessary, desirable, or appropriate to complete the issuance of the notes. The state pledges to and agrees with the holders of any notes that the state will not limit or alter the rights vested in the treasurer to fulfill the terms of any agreements made with the holders, or in any way impair the rights and remedies of the holders, until the notes are fully discharged. (V.A.C.S. Art. 4393-1, Secs. 3.043(f), (g), (j), (l).)

Sec. 404.126. **FUND TRANSFERS; INTEREST; PAYMENT OF NOTES.** (a) Cash received from the collection of taxes and revenues credited to the general revenue fund during the fiscal year in which the notes are issued is available to restore the balance of the tax and revenue anticipation note fund. The treasurer, with notice to the comptroller, periodically shall transfer the cash to the fund to ensure the timely payment in full of the notes. Transfers to the tax and revenue anticipation note fund under this subsection may not exceed the amount that has been transferred from that fund to the general revenue fund and has not been restored to the tax and revenue anticipation note fund. The

comptroller shall transfer surplus cash into the general revenue fund under Section 403.092, as is necessary to complete the transfers required by this section.

(b) Notwithstanding any other provision of law, depository interest in the tax and revenue anticipation note fund shall be credited to that fund. Depository interest shall be calculated and credited to the fund monthly as if transfers to the general revenue fund had not been made.

(c) On payment in full of all outstanding notes and all costs of issuance of the notes, the treasurer, with notice to the comptroller, shall transfer to the general revenue fund any amounts remaining in the tax and revenue anticipation note fund. To the extent that the amounts credited to the tax and revenue anticipation note fund are insufficient to pay the principal, premium, if any, and interest on the notes when due and any issuance costs related to the notes, amounts in the general revenue fund are available for appropriation by the legislature to make those payments. Amounts in the tax and revenue anticipation note fund are available for appropriation by the legislature to carry out the purposes of this subchapter.

(d) Payment of the notes and performance of official duties prescribed by the state constitution and by this subchapter may be enforced in the state supreme court by mandamus or other appropriate proceeding. (V.A.C.S. Art. 4393-1, Secs. 3.043(h), (i), (k).)

Sec. 404.127. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 1989. Money in the tax and revenue anticipation note fund on that date shall be transferred to the general revenue fund. (V.A.C.S. Art. 4393-1, Sec. 3.043(m).)

CHAPTER 405. SECRETARY OF STATE

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 405.001. OFFICE
- Sec. 405.002. APPLICATION OF SUNSET ACT
- Sec. 405.003. BOND
- Sec. 405.004. ASSISTANT SECRETARY OF STATE

[Sections 405.005-405.010 reserved for expansion]

SUBCHAPTER B. DUTIES

- Sec. 405.011. OFFICIAL DOCUMENTS
- Sec. 405.012. EXCHANGES
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- Sec. 405.017. MISCELLANEOUS DUTIES

[Sections 405.018-405.030 reserved for expansion]

SUBCHAPTER C. FEES

- Sec. 405.031. GENERAL FEES
- Sec. 405.032. EXPEDITED HANDLING
- Sec. 405.033. REVOCATION OF FILING FOR NONPAYMENT
- Sec. 405.034. REFUND

CHAPTER 405. SECRETARY OF STATE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 405.001. OFFICE. The secretary of state shall keep the office of secretary of state in Austin or if a session of the legislature is held in another place, in that place. (V.A.C.S. Art. 4331 (part).)

Sec. 405.002. **APPLICATION OF SUNSET ACT.** The office of secretary of state is subject to the Texas Sunset Act (Chapter 325), but is not abolished under that Act. The office shall be reviewed under that Act during the same period as agencies abolished in 1995 and every 12th year after 1995. (V.A.C.S. Art. 4330a.)

Sec. 405.003. **BOND.** Before taking office, the appointee to the office of secretary of state shall give a bond in the amount of \$25,000. The bond must be payable to and approved by the governor and conditioned on the appointee's faithful execution of the duties of the office. (V.A.C.S. Art. 4330 (part).)

Sec. 405.004. **ASSISTANT SECRETARY OF STATE.** (a) The secretary of state shall appoint an assistant secretary of state who shall:

(1) perform the duties prescribed by law for the secretary of state when the secretary of state is absent or unable to act; and

(2) perform other duties required by the secretary of state.

(b) The assistant secretary of state serves at the pleasure of the secretary of state. (V.A.C.S. Art. 4340.)

[Sections 405.005–405.010 reserved for expansion]

#### SUBCHAPTER B. DUTIES

Sec. 405.011. **OFFICIAL DOCUMENTS.** (a) The secretary of state shall arrange and preserve books, maps, parchments, records, documents, and papers properly deposited in the secretary of state's office and sealed with the state seal and shall arrange and preserve copies of acts, laws, and resolutions of the United States.

(b) A copy of an original deposited under this section is as legal and conclusive in evidence in a state court as the original.

(c) On request of the governor, the legislature, or a house of the legislature, the secretary of state shall furnish a copy of an original deposited under this section. (V.A.C.S. Art. 4331 (part).)

Sec. 405.012. **EXCHANGES.** (a) The secretary of state shall send, as the secretary of state considers appropriate, copies of laws and judicial reports printed and published by order of the legislature at the expense of the state to:

(1) the librarian of congress;

(2) the United States secretary of state;

(3) the United States secretary of the treasury;

(4) the executive department of each state; and

(5) each foreign librarian or government with whom a system of library exchange is established.

(b) Subject to the requirements of Subsection (c), the secretary of state, for the benefit of The University of Texas law library, shall exchange the reports of the supreme court, court of criminal appeals, and courts of appeals, state session laws and revised statutes, and other state publications and state department reports for similar material of the United States, other states, or foreign countries.

(c) The secretary of state shall keep on hand a sufficient number of copies of state publications to meet the reasonable demands of the state. (V.A.C.S. Arts. 4331 (part), 4331b.)

Sec. 405.013. **COURT REPORTS.** (a) The secretary of state shall receive the printed and bound volumes of the Supreme Court Reports and the Reports of the Court of Criminal Appeals from the supreme court reporter.



(b) The secretary of state may sell single copies of these reports for a price equal to the contract price for printing, excluding postage or express charges, and, after receiving the price for a volume, may send advance sheets of the volume as publishing progresses.

(c) The secretary of state shall deliver money received from sales under this section to the treasurer and shall make a full statement of the sales in the secretary of state's biennial report.

(d) The secretary of state shall deliver one copy of these reports to:

- (1) the governor;
- (2) the attorney general;
- (3) each appellate and district judge;
- (4) each county judge, for the use of the county;
- (5) each law professor of The University of Texas; and
- (6) the librarian of The University of Texas.

(e) The secretary of state shall deliver to each United States district judge for Texas one copy of these reports for each branch of the judge's court.

(f) The secretary of state may not send more than one copy of a report to a person under Subsection (d) or (e) unless it is proved, as evidenced by certificate of the person requesting the additional copy, that the first copy of the report has been destroyed by fire or rendered valueless by long use. (V.A.C.S. Arts. 4332, 4333, 4334.)

**Sec. 405.014. ACTS OF THE LEGISLATURE.** (a) At each session of the legislature the secretary of state shall obtain the bills that have become law. Immediately after the closing of each session of the legislature, the secretary of state shall:

- (1) bind all enrolled bills and joint resolutions in a volume on which the date of the session is placed;
- (2) keep the volume in the secretary of state's office;
- (3) deliver a certified copy and index of the volume to the State Purchasing and General Services Commission; and
- (4) correct each error in the printed copy after examining it and comparing it with the certified copy.

(b) The secretary of state may sell copies of published state laws at a price not more than 25 percent over the publishing cost, but shall reserve a sufficient number of copies for use of the state. The secretary of state shall deposit money received in excess of the costs related to the sale in the state treasury to the credit of the general revenue fund. (V.A.C.S. Arts. 4331 (part), 4337.)

**Sec. 405.015. RECEIVING OFFICER.** When an officer receives a copy of a report, statute, digest, or journal, the officer shall give a receipt to the distributing officer, who shall file the receipt in his office. This material is the property of the receiving officer's office and is open to inspection by the public at all reasonable hours. An officer who does not deliver the material to the successor to the office is liable to the successor for the cost of replacing the material. (V.A.C.S. Art. 4339.)

**Sec. 405.016. COMMISSION.** The secretary of state is not required to send copies of laws to or attest the authority of a state officer who does not take out the officer's commission. (V.A.C.S. Art. 4341.)

**Sec. 405.017. MISCELLANEOUS DUTIES.** The secretary of state shall:

- (1) affix the state seal to all official documents issued from the secretary of state's office;
- (2) unless provided otherwise by law, commission state officers;
- (3) keep in a separate suitable book a register of all state officers;

(4) immediately on receipt, deliver to the person in charge of the state library all books, maps, charts, printed volumes of the laws of a nation, territory, or another state, or other political or miscellaneous publications received in the secretary of state's office;

(5) immediately on receipt, deliver to the supreme court librarian reports of courts of a nation, territory, or another state received in the secretary of state's office; and

(6) deliver to each county clerk, for use of the county, one copy of each Act of Congress received in the secretary of state's office. (V.A.C.S. Art. 4331 (part).)

[Sections 405.018–405.030 reserved for expansion]

#### SUBCHAPTER C. FEES

Sec. 405.031. GENERAL FEES. (a) The secretary of state shall charge for the use of the state the following:

(1) for each official certificate, a fee of \$5; and

(2) for a certified copy of a record in the secretary of state's office, a fee of \$1 a page and \$1 for certification.

(b) The secretary of state may charge a fee of \$2 for a search of records in the secretary of state's office if written evidence of the search is required.

(c) The fees established by the State Purchasing and General Services Commission under Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), apply to uncertified copies of records in the secretary of state's office.

(d) A fee paid under this section shall be paid in advance to the secretary of state's office. The secretary of state shall deposit the money monthly in the state treasury. (V.A.C.S. Arts. 3914, 3916.)

Sec. 405.032. EXPEDITED HANDLING. (a) The secretary of state may set and collect the following:

(1) for the expedited handling of a certified record search under Chapter 9 or 35, Business & Commerce Code, or Subchapter C, Chapter 113, Tax Code, a fee of not more than \$5; and

(2) for the expedited filing or reviewing of a document relating to a profit or nonprofit corporation, professional corporation or association, cooperative association, or limited partnership, a fee of not more than \$10.

(b) If the secretary of state collects a fee under Subsection (a)(2), the secretary of state shall collect it in advance.

(c) The secretary of state shall deposit the fees in the state treasury to the credit of the general revenue fund. (V.A.C.S. Art. 3916A.)

Sec. 405.033. REVOCATION OF FILING FOR NONPAYMENT. The secretary of state may revoke the filing of a document filed by or on behalf of a corporation with the office of the secretary of state if the secretary of state determines that the filing fee for the document has not been paid or was paid by an instrument that was dishonored when presented by the state for payment. The secretary of state shall return the document and give notice of revocation to the filing party by regular mail. Failure to give or receive notice does not invalidate the revocation. (V.A.C.S. Art. 3916B, as enacted Sec. 33, Ch. 297, Acts 67th Leg., R.S., 1981.)

Sec. 405.034. REFUND. If the secretary of state deposits in the state treasury a fee that is not due or is in an amount exceeding the amount due the state, the fee or excess is subject to refund. (V.A.C.S. Art. 3916B, as enacted Ch. 404, Acts 67th Leg., R.S., 1981.)

CHAPTER 406. NOTARY PUBLIC; COMMISSIONER OF DEEDS

SUBCHAPTER A. NOTARY PUBLIC

- Sec. 406.001. APPOINTMENTS
- Sec. 406.002. TERM
- Sec. 406.003. JURISDICTION
- Sec. 406.004. RESIDENCE AND AGE
- Sec. 406.005. APPLICATION
- Sec. 406.006. QUALIFICATION; REAPPLICATION
- Sec. 406.007. FEES PAID TO SECRETARY OF STATE
- Sec. 406.008. COMMISSION; NOTARY MATERIALS
- Sec. 406.009. REJECTION OF APPOINTMENT; SUSPENSION OR REVOCATION OF COMMISSION
- Sec. 406.010. BOND; OATH
- Sec. 406.011. EXPIRING TERM
- Sec. 406.012. INSPECTION OF RECORDS
- Sec. 406.013. SEAL
- Sec. 406.014. NOTARY RECORDS
- Sec. 406.015. COPIES CERTIFIED BY COUNTY CLERK
- Sec. 406.016. AUTHORITY
- Sec. 406.017. REPRESENTATION AS ATTORNEY
- Sec. 406.018. REMOVAL FROM OFFICE
- Sec. 406.019. CHANGE OF ADDRESS
- Sec. 406.020. REMOVAL FROM STATE
- Sec. 406.021. REMOVAL FROM PRECINCT
- Sec. 406.022. EFFECT OF VACANCY
- Sec. 406.023. ADMINISTRATION AND ENFORCEMENT
- Sec. 406.024. FEES CHARGED BY NOTARY PUBLIC

[Sections 406.025–406.050 reserved for expansion]

SUBCHAPTER B. COMMISSIONER OF DEEDS

- Sec. 406.051. APPOINTMENT
- Sec. 406.052. TERM
- Sec. 406.053. OATH
- Sec. 406.054. SEAL
- Sec. 406.055. AUTHORITY

CHAPTER 406. NOTARY PUBLIC; COMMISSIONER OF DEEDS

SUBCHAPTER A. NOTARY PUBLIC

- Sec. 406.001. APPOINTMENTS. The secretary of state may appoint a notary public at any time. (V.A.C.S. Art. 5949, Sec. 1 (part).)
- Sec. 406.002. TERM. The term of a notary public expires four years after the date the notary public qualifies. (V.A.C.S. Art. 5949, Sec. 1 (part).)
- Sec. 406.003. JURISDICTION. A notary public has statewide jurisdiction. (V.A.C.S. Art. 5949, Sec. 1 (part).)
- Sec. 406.004. RESIDENCE AND AGE. To be eligible for appointment as a notary public an individual must be a resident of this state and at least 18 years old. (V.A.C.S. Art. 5949, Sec. 2.)
- Sec. 406.005. APPLICATION. (a) To be appointed a notary public an individual must apply to the secretary of state on a form prescribed by the secretary of state. The application must satisfy the secretary of state that the applicant is qualified. The

application must state that the applicant has never been convicted of a crime involving moral turpitude and must also state:

- (1) the applicant's name to be used in acting as a notary public;
- (2) the applicant's post office address;
- (3) the applicant's county of residence;
- (4) the applicant's business address;
- (5) the county in which the applicant's business is located; and
- (6) the applicant's social security number.

(b) The secretary of state shall act on an application at the earliest practicable time and notify the applicant whether an appointment has been made. (V.A.C.S. Art. 5949, Sec. 3(a) (part).)

Sec. 406.006. **QUALIFICATION; REAPPLICATION.** (a) On receiving notice of appointment, the applicant must, not later than the 20th day after the date of appointment, qualify as provided by this subchapter. If the applicant does not qualify within that period, the appointment is void.

(b) An individual qualifies by:

- (1) taking the official oath and providing the bond required by Section 406.010; and
- (2) paying the fees required by Section 406.007.

(c) An individual whose appointment becomes void under Subsection (a) must reapply to be appointed. (V.A.C.S. Art. 5949, Secs. 3(b), 7 (part).)

Sec. 406.007. **FEES PAID TO SECRETARY OF STATE.** (a) The applicant must submit to the secretary of state:

- (1) a fee of \$4 for approving and filing the bond of the notary public; and
- (2) a fee of 50 cents to be appropriated to and used by the secretary of state only for hiring an investigator and for preparing and distributing the materials required to be distributed under Section 406.008.

(b) The secretary of state shall charge for use of the state a fee of \$10 for a notary public commission. The applicant must pay the fee in advance to the secretary of state. (V.A.C.S. Arts. 3914 (part), 3916 (part); Art. 5949, Sec. 4.)

Sec. 406.008. **COMMISSION; NOTARY MATERIALS.** (a) Immediately after the qualification of a notary public, the secretary of state shall issue a commission to the notary public. The commission is effective as of the date of qualification.

(b) When the commission is issued, the secretary of state shall supply the notary public with:

- (1) materials outlining the powers and duties of the office;
- (2) a list of prohibited acts; and
- (3) sample forms for an acknowledgment, jurat, and verification and for the administering of an oath, protest, and deposition.

(c) This section does not prevent a qualified notary public from performing the duties of office after qualifying and before receiving the commission. (V.A.C.S. Art. 5949, Sec. 5(a).)

Sec. 406.009. **REJECTION OF APPOINTMENT; SUSPENSION OR REVOCATION OF COMMISSION.** (a) The secretary of state may, for good cause, reject an application or suspend or revoke the commission of a notary public.

(b) An action by the secretary of state under this section is subject to the rights of notice, hearing, adjudication, and appeal.

(c) An appeal under this section is to the district court of Travis County. The secretary of state has the burden of proof, and the trial is conducted de novo.

(d) In this section, "good cause" includes:

- (1) a final conviction for a crime involving moral turpitude;
- (2) a false statement knowingly made in an application;
- (3) the failure to comply with Section 406.017; and

(4) a final conviction for a violation of a law concerning the regulation of the conduct of notaries public in this or another state. (V.A.C.S. Art. 5949, Secs. 5(e), (f).)

Sec. 406.010. BOND; OATH. (a) An individual appointed a notary public shall, before entering the official duties of office, execute a bond in the amount of \$2,500 with a solvent surety company authorized to do business in this state as a surety. The bond must be approved by the secretary of state, payable to the governor, and conditioned on the faithful performance of the duties of office.

(b) The individual shall take the official oath of office and subscribe the individual's name and social security number to the oath. The oath and the certificate of the official administering the oath must be endorsed on the notary bond.

(c) The notary bond shall be deposited in the office of the secretary of state, is not void on first recovery, and may be sued on in the name of the injured party from time to time until the whole amount of the bond is recovered.

(d) The State Board of Insurance may approve rates for a four-year notary bond issued after January 1, 1980, equivalent to twice the rate set previously for two-year notary bonds. (V.A.C.S. Art. 5949, Sec. 7 (part).)

Sec. 406.011. EXPIRING TERM. (a) Not later than the 90th day before the date on which a qualified notary public's term expires, the secretary of state shall send the notary public an application for reappointment, a notary bond, and an oath of office.

(b) On receiving the properly executed application for reappointment, notary bond, oath of office, and statutory fees, the secretary of state shall issue a commission to the notary public for another term of office unless the notary public has been convicted of a felony or a crime involving moral turpitude during the term of office.

(c) A notary public who is not reappointed before the expiration date of the term the notary public is serving must apply for appointment in the manner provided by Section 406.005. (V.A.C.S. Art. 5949, Secs. 6(a), (b).)

Sec. 406.012. INSPECTION OF RECORDS. (a) After a notary public qualifies, all records concerning the appointment and qualification of the notary public shall be kept in the office of the secretary of state. The records are public information.

(b) The secretary of state is not required to provide a list of notaries that includes the names of individuals who have been appointed but have not yet qualified or a list of an unreasonable number of qualified notaries public. (V.A.C.S. Art. 5949, Sec. 9.)

Sec. 406.013. SEAL. (a) A notary public shall provide a seal of office that clearly shows, when embossed, stamped, or printed on a document, the words "Notary Public, State of Texas" around a star of five points, the notary public's name, and the date the notary public's commission expires. The notary public shall authenticate all official acts with the seal of office.

(b) The seal may be a circular form not more than two inches in diameter or a rectangular form not more than one inch in width and 2-½ inches in length. The seal must have a serrated or milled edge border.

(c) The seal must be affixed by a seal press or stamp that embosses or prints a seal that legibly reproduces the required elements of the seal under photographic methods.

An indelible ink pad must be used for affixing by a stamp the impression of a seal on an instrument to authenticate the notary public's official act.

(d) The use by a qualified notary public of a seal that contains the words "Notary Public, State of Texas" or "Notary Public" and the name of the county, but does not contain the name of the notary public and the expiration date of the notary public's commission, does not invalidate an acknowledgment or the notary public's official act. If a seal is used that does not contain the notary public's name and the expiration date of the notary public's commission, the notary public shall print or stamp the name and expiration date under the notary public's signature. Failure to print or stamp the name or expiration date does not invalidate an acknowledgment or the notary public's official act, but does subject the notary public to possible suspension or revocation of the notary public's commission. (V.A.C.S. Arts. 5960, 5960a.)

Sec. 406.014. NOTARY RECORDS. (a) A notary public shall keep in a well-bound book a record of:

- (1) the date of each instrument acknowledged;
- (2) the date of the acknowledgment;
- (3) the name of the grantor or maker;
- (4) the grantor's or maker's residence or alleged residence;
- (5) whether the grantor or maker is personally known by the notary public or was introduced to the notary public and, if introduced, the name and residence or alleged residence of the individual introducing the grantor or maker;
- (6) if the instrument is proved by a witness, the residence of the witness, whether the witness is personally known by the notary public or was introduced to the notary public and, if introduced, the name and residence of the individual introducing the witness;
- (7) the name and residence of the grantee; and
- (8) if land is conveyed or charged by the instrument, the name of the original grantee and the county where the land is located.

(b) Entries in the notary's book are public information.

(c) A notary public shall, on payment of all fees, provide a certified copy of any record in the notary public's office to any person requesting the copy. (V.A.C.S. Art. 5955.)

Sec. 406.015. COPIES CERTIFIED BY COUNTY CLERK. (a) A copy of a record, declaration, protest, or other official act of a notary public may be certified by the county clerk with whom the instrument is deposited.

(b) A copy of an instrument certified by the county clerk under Subsection (a) has the same authority as if certified by the notary public by whom the record, declaration, protest, or other official act was originally made. (V.A.C.S. Art. 5956.)

Sec. 406.016. AUTHORITY. (a) A notary public has the same authority as the county clerk to:

- (1) take acknowledgments or proofs of written instruments;
- (2) protest instruments permitted by law to be protested;
- (3) administer oaths;
- (4) take depositions; and
- (5) certify copies of documents not recordable in the public records.

(b) A notary public shall sign an instrument in Subsection (a) in the name under which the notary public is commissioned.

(c) A notary public may not issue an identification card.

(d) A notary public not licensed to practice law in this state may not give legal advice or accept fees for legal advice. (V.A.C.S. Arts. 5954(a), (b).)

Sec. 406.017. REPRESENTATION AS ATTORNEY. (a) A notary public who is not an attorney and who advertises the services of a notary public in a language other than English, whether by signs, pamphlets, stationery, or other written communication or by radio or television, shall post or otherwise include with the advertisement a notice that the notary public is not an attorney.

(b) The notice must be in English and in the language of the advertisement and in letters of a conspicuous size. If the advertisement is by radio or television, the statement may be modified, but must include substantially the same message. The notice must include the fees that a notary public may charge and the following statement:

“I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN TEXAS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.”

(c) Literal translation of the phrase “Notary Public” into Spanish is prohibited. In this subsection, “literal translation” means the translation of a word or phrase without regard to the true meaning of the word or phrase in the language that is being translated.

(d) Failure to comply with this section is, in addition to a violation of any other applicable law of this state, a deceptive trade practice actionable under Chapter 17, Business & Commerce Code. (V.A.C.S. Art. 5949, Secs. 5(b), (c), (d).)

Sec. 406.018. REMOVAL FROM OFFICE. (a) A notary public guilty of wilful neglect of duty or malfeasance in office may be removed from office in the manner provided by law.

(b) A notary public indicted for and convicted of a wilful neglect of duty or official misconduct shall be removed from office. The court shall include the order for removal as part of its judgment. (V.A.C.S. Arts. 5957, 5988.)

Sec. 406.019. CHANGE OF ADDRESS. A notary public shall notify the secretary of state of a change of the notary public’s address not later than the 10th day after the date on which the change is made. (V.A.C.S. Art. 5949, Sec. 6(c).)

Sec. 406.020. REMOVAL FROM STATE. A notary public who removes his residence from this state vacates the office. (V.A.C.S. Art. 5949, Sec. 6(d).)

Sec. 406.021. REMOVAL FROM PRECINCT. An ex officio notary public who moves permanently from the notary public’s precinct vacates the office. (V.A.C.S. Art. 5958.)

Sec. 406.022. EFFECT OF VACANCY. (a) If the office of a notary public becomes vacant due to resignation, removal, or death, the county clerk of the county in which the notary public resides shall obtain the record books and public papers belonging to the office of the notary public and deposit them in the county clerk’s office.

(b) The owner of the seal of a notary public whose office is vacant may sell the seal to a qualified notary public in the county. (V.A.C.S. Art. 5959.)

Sec. 406.023. ADMINISTRATION AND ENFORCEMENT. (a) The secretary of state shall adopt rules necessary for the administration and enforcement of this subchapter. The rules must be consistent with the provisions of this subchapter.

(b) The secretary of state may employ an investigator to aid in the enforcement of this subchapter.

(c) The secretary of state may provide for the appointment of county clerks as deputy custodians for the limited authentication of notary public records deposited in the clerks’ offices. (V.A.C.S. Art. 5949, Sec. 10.)

Sec. 406.024. FEES CHARGED BY NOTARY PUBLIC. (a) A notary public may charge the following fees:

(1) for protesting a bill or note for nonacceptance or nonpayment, register and seal, a fee of \$3;

- (2) for each notice of protest, a fee of 50 cents;
- (3) for protesting in all other cases, a fee of 50 cents for each 100 words;
- (4) for certificate and seal to a protest, a fee of \$3;
- (5) for taking the acknowledgment or proof of a deed or other instrument in writing, for registration, including certificate and seal, a fee of \$3 for the first signature and \$1 for each additional signature;
- (6) for administering an oath or affirmation with certificate and seal, a fee of \$3;
- (7) for a certificate under seal not otherwise provided for, a fee of \$3;
- (8) for a copy of a record or paper in the notary public's office, a fee of 50 cents for each page;
- (9) for taking the deposition of a witness, 50 cents for each 100 words;
- (10) for swearing a witness to a deposition, certificate, seal, and other business connected with taking the deposition, a fee of \$3; and
- (11) for a notarial act not provided for, a fee of \$3.

(b) A notary public may charge a fee only for an acknowledgment or official act under Subsection (a). The fee charged may not exceed the fee authorized by Subsection (a). (V.A.C.S. Arts. 3945, 5954(c).)

[Sections 406.025–406.050 reserved for expansion]

#### SUBCHAPTER B. COMMISSIONER OF DEEDS

Sec. 406.051. **APPOINTMENT.** (a) The governor may biennially appoint and commission one or more individuals in other states, territories, or foreign countries or in the District of Columbia to serve as commissioner of deeds.

(b) An appointment may be made only on the recommendation of the executive authority of the state, territory, or foreign country or of the District of Columbia. (V.A.C.S. Art. 1270 (part).)

Sec. 406.052. **TERM.** The term of office of a commissioner of deeds is two years. (V.A.C.S. Art. 1270 (part).)

Sec. 406.053. **OATH.** Before performing the duties of office, a commissioner of deeds shall take and subscribe an oath to well and faithfully perform the duties of office under the laws of this state. The oath shall be:

- (1) taken before the clerk of a court of record in the city, county, or country in which the commissioner resides;
- (2) certified to by the clerk under the clerk's hand and seal of office; and
- (3) filed in the office of the secretary of state of this state. (V.A.C.S. Art. 1271.)

Sec. 406.054. **SEAL.** A commissioner of deeds shall provide a seal with a star of five points in the center and the words "Commissioner of the State of Texas" engraved on the seal. The seal shall be used to certify all official acts of the commissioner of deeds. An instrument that does not have the impression of the seal, or an act of the commissioner of deeds that is not certified by the impression of the seal, is not valid in this state. (V.A.C.S. Art. 1272.)

Sec. 406.055. **AUTHORITY.** A commissioner of deeds has the same authority as a notary public to take acknowledgments and proofs of written instruments, to administer oaths, and to take depositions to be used or recorded in this state. (V.A.C.S. Art. 1273.)



[Chapters 407–410 reserved for expansion]

CHAPTER 411. DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS

SUBCHAPTER A. GENERAL PROVISIONS AND ADMINISTRATION

- Sec. 411.001. DEFINITIONS
- Sec. 411.002. DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS
- Sec. 411.003. PUBLIC SAFETY COMMISSION
- Sec. 411.004. DUTIES AND POWERS OF COMMISSION
- Sec. 411.005. DIRECTOR AND ASSISTANT DIRECTOR
- Sec. 411.006. DUTIES OF DIRECTOR
- Sec. 411.007. OFFICERS AND EMPLOYEES
- Sec. 411.008. DISTRICT HEADQUARTERS
- Sec. 411.009. LOCAL COOPERATION
- Sec. 411.010. ASSISTANCE OF STATE AGENCIES
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- Sec. 411.012. COMMAND BY GOVERNOR
- Sec. 411.013. EXPENDITURES AND APPROPRIATIONS
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- Sec. 411.015. ORGANIZATION
- Sec. 411.016. SUPPLEMENTAL PAY
- Sec. 411.017. UNAUTHORIZED ACTS INVOLVING DEPARTMENT NAME, INSIGNIA, OR DIVISION NAME

[Sections 411.018–411.020 reserved for expansion]

SUBCHAPTER B. TEXAS RANGERS

- Sec. 411.021. COMPOSITION
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- Sec. 411.023. SPECIAL RANGERS

[Sections 411.024–411.030 reserved for expansion]

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- Sec. 411.031. COMPOSITION
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[Sections 411.033–411.040 reserved for expansion]

SUBCHAPTER D. ADMINISTRATIVE DIVISION

- Sec. 411.041. COMPOSITION
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CHAPTER 411. DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS

SUBCHAPTER A. GENERAL PROVISIONS AND ADMINISTRATION

Sec. 411.001. DEFINITIONS. In this chapter:

- (1) "Commission" means the Public Safety Commission.
- (2) "Department" means the Department of Public Safety of the State of Texas.
- (3) "Director" means the public safety director. (V.A.C.S. Arts. 4413(1) (part), 4413(2) (part), 4413(5) (part).)

Sec. 411.002. DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS. (a) The Department of Public Safety of the State of Texas is an agency of the state to enforce the laws protecting the public safety and provide for the prevention and detection

of crime. The department is composed of the Texas Rangers, the Texas Highway Patrol, the administrative division, and other divisions that the commission considers necessary.

(b) The department shall have its principal office and headquarters and shall keep all of its records in Austin.

(c) The Department of Public Safety of the State of Texas is subject to the Texas Sunset Act (Chapter 325). Unless continued in existence as provided by that Act, the department is abolished September 1, 1993. (V.A.C.S. Arts. 4413(1) (part), 4413(1a), 4413(10).)

Sec. 411.003. PUBLIC SAFETY COMMISSION. (a) The Public Safety Commission controls the department.

(b) The commission is composed of three citizens of this state appointed by the governor with the advice and consent of the senate. Members must be selected because of their peculiar qualifications for the position. In making an appointment the governor shall consider, among other things, the person's knowledge of laws, experience in the enforcement of law, honesty, integrity, education, training, and executive ability.

(c) Members serve staggered six-year terms with the term of one member expiring January 1 of each even-numbered year.

(d) The commission annually shall elect a member to serve as chairman. The commission shall meet at the times and places specified by commission rule or at the call of the chairman or any two members.

(e) A member serves without compensation for service on the commission but is entitled to per diem for expenses as provided by the General Appropriations Act. (V.A.C.S. Arts. 4413(2) (part), 4413(3).)

Sec. 411.004. DUTIES AND POWERS OF COMMISSION. The commission shall:

(1) formulate plans and policies for:

(A) enforcement of state criminal, traffic, and safety laws;

(B) prevention of crime;

(C) detection and apprehension of persons who violate laws; and

(D) education of citizens of this state in the promotion of public safety and the observance of law;

(2) organize the department and supervise its operation;

(3) adopt rules considered necessary for carrying out the department's work;

(4) maintain records of all proceedings and official orders; and

(5) biennially submit a report of its work to the governor and legislature, including the commission's and director's recommendations. (V.A.C.S. Art. 4413(4), Subsecs. (1), (2) (part), (3), (4), (5) (part).)

Sec. 411.005. DIRECTOR AND ASSISTANT DIRECTOR. (a) The commission shall appoint a citizen of this state as public safety director. The director serves until removed by the commission.

(b) The commission shall appoint an assistant director who shall perform the duties that the director designates.

(c) The commission shall select the director and assistant director on the basis of the persons' training, experience, and qualifications for the positions. The director and assistant director must have five years' experience, preferably in police or public administration. The director and assistant director are entitled to annual salaries as provided by the legislature. (V.A.C.S. Art. 4413(5) (part).)

Sec. 411.006. DUTIES OF DIRECTOR. The director shall:

(1) be directly responsible to the commission for the conduct of the department's affairs;

(2) act as executive director of the department;

(3) act with the commission in an advisory capacity, without vote;

(4) adopt rules, subject to commission approval, considered necessary for the control of the department;

(5) issue commissions as law enforcement officers, under the commission's direction, to all members of the Texas Rangers and the Texas Highway Patrol and to other officers of the department;

(6) appoint, with the advice and consent of the commission, the chiefs of the bureaus provided for by this chapter;

(7) issue and sign requisitions as provided by law for the purchase of supplies for the office and officers of the department, suitable uniforms, arms, and equipment;

(8) quarterly, annually, and biennially submit to the commission detailed reports of the operation of the department, including statements of its expenditures; and

(9) prepare, swear to, submit to the governor, and file in the department's records a quarterly statement containing an itemized list of all money received and its source and all money spent and the purposes for which it was spent. (V.A.C.S. Arts. 4413(4), Subsec. (5) (part); 4413(5) (part); 4413(6), Subsecs. (1), (2) (part); 4413(7); 4413(8).)

**Sec. 411.007. OFFICERS AND EMPLOYEES.** (a) Subject to the commission's approval and the provisions of this chapter, the director may appoint, promote, reduce, suspend, or discharge any officer or employee of the department.

(b) Appointment or promotion of an officer or employee must be based on merit determined by examination under commission rules that take into consideration the applicant's age, physical condition, experience, and education. Each person who has an application on file for a position in the department shall be given reasonable written notice of the time and place of those examinations.

(c) An applicant for a position in the department must be a United States citizen. An applicant may not be questioned regarding the applicant's political affiliation or religious faith or beliefs. A person in the department may not contribute money or another thing of value for political purposes or engage in political activities or campaign for or against a candidate for public office in the state. A person violating this subsection forfeits the person's position with the department.

(d) At least annually the chiefs of the divisions and bureaus, after due investigation, shall make a report to the commission of the efficiency of each employee within the division or bureau. These reports shall be kept in the commission's permanent files and shall be given proper consideration in all matters of promotion and discharge.

(e) An officer or employee of the department may not be discharged without just cause. The director shall determine whether an officer or employee is to be discharged. An officer or employee ordered discharged may appeal to the commission, and during the appeal the officer or employee shall be suspended without pay.

(f) The commission shall establish grades and positions for the department. For each grade and position the commission shall designate the authority and responsibility within the limits of this chapter, set standards of qualifications, and fix prerequisites of training, education, and experience. The commission shall adopt necessary rules for the appointment, promotion, reduction, suspension, and discharge of all employees after hearing before the commission. A discharged officer or employee is entitled, on application to the commission, to a public hearing before the commission, who shall affirm or set aside the discharge. A person inducted into the service of the department is on probation for the first six months of service and at any time during that period may be discharged without the public hearing provided for by this subsection if the director, with the advice and consent of the commission, finds the person to be unsuitable for the work. (V.A.C.S. Arts. 4413(4), Subsec. (1) (part); 4413(6), Subsec. (2) (part); 4413(9).)

**Sec. 411.008. DISTRICT HEADQUARTERS.** The commission may establish district headquarters and stations at various places in the state and provide personnel and equipment necessary for their functioning and operation. (V.A.C.S. Art. 4413(18).)

**Sec. 411.009. LOCAL COOPERATION.** (a) The sheriff and constables of each county and chief of police of each municipality are associate members of the department and are entitled to the rights and privileges granted to them by the department.

(b) The director may require a sheriff or other police officer in a county or municipality, within the limits of the officer's jurisdiction, to aid or assist in the performance of a duty imposed by this chapter. The officer shall comply with the order to the extent requested.

(c) The director with the advice and consent of the commission shall formulate and put into effect plans and means of cooperating with sheriffs, local police, and other peace officers throughout the state to prevent and discover crime, apprehend criminals, and promote public safety. Each local police and peace officer shall cooperate with the director in the plans.

(d) Each telegraph and telephone company and radio station operating in the state shall grant priority of service to a police agency and the department when notified that the service is urgent in the interests of the public welfare.

(e) The commissioners court of each county may furnish to the department necessary building space for establishing a branch crime detection laboratory to serve the general area of the state in which the county is located. If the county offers to furnish necessary space, the department may equip and operate the laboratory within the limits of its general authority and available appropriations. Unless the legislature has specifically directed the establishment and operation of a branch laboratory, the commission has discretion to decide whether a branch laboratory should be established or maintained.

(f) If the Commissioners Court of El Paso County furnishes without cost to the state the necessary building space, the department shall establish and operate a branch crime detection laboratory in El Paso County to serve the West Texas area, if the department determines that efficient enforcement of law requires establishment of the laboratory and sufficient funds are available in the department. (V.A.C.S. Arts. 4413(18a), 4413(19), 4413(20), 4413(21).)

Sec. 411.010. ASSISTANCE OF STATE AGENCIES. The attorney general, the State Department of Highways and Public Transportation, the Texas Department of Health, and all other departments of state government shall cooperate with the department in the execution of this chapter and the enforcement of state laws concerning public safety and crime prevention and detection. (V.A.C.S. Art. 4413(23) (part).)

Sec. 411.011. ASSISTANCE OF STATE EDUCATIONAL INSTITUTIONS. (a) The University of Texas and all other state-supported educational institutions shall:

- (1) cooperate with the department in carrying out this chapter;
- (2) assist in the giving of instruction in the training schools conducted by the bureau of education; and
- (3) assist the bureau of identification and records in making necessary chemical tests and analyses and in making statistical analyses, charts, and reports of law enforcement and violations of law.

(b) The commission and the president of the educational institution called on for assistance shall agree on and arrange the nature and extent of the assistance. (V.A.C.S. Art. 4413(22).)

Sec. 411.012. COMMAND BY GOVERNOR. The governor may assume command and direct the activities of the commission and department during a public disaster, riot, insurrection, or formation of a dangerous resistance to enforcement of law, or to perform the governor's constitutional duty to enforce law. The governor shall use the personnel of the Texas Highway Patrol only if the other personnel of the department are unable to cope with the emergency. (V.A.C.S. Art. 4413(24).)

Sec. 411.013. EXPENDITURES AND APPROPRIATIONS. (a) In addition to other authority provided by law, the department may spend public funds for salaries, seasonal or contingent help, travel, transportation, automobile maintenance and repair, aircraft maintenance and repair, gas, oil, tires, bond premiums, office and equipment rental, storage, repairs, forage, duplicating supplies, printing, telephone, telegraph, postage, stationery, clothing and furnishings, express, freight, drayage, utilities, service materials, office supplies, books, drugs, medical, hospital, and laboratory expense, funeral expense if death occurs in line of duty, necessary training expense, necessary operating expense for law enforcement training schools, miscellaneous operating expenses, purchase of equip-

ment, guns, automobiles, aircraft, land, construction costs, and necessary equipment, services, and supplies for enforcement of the laws under the supervision of the department.

(b) Appropriations for the Texas Highway Patrol must be made from the state highway fund. (V.A.C.S. Arts. 4413(4a), 4413(26) (part).)

Sec. 411.014. BUILDINGS AND EQUIPMENT. (a) The state shall provide the necessary buildings, offices, and quarters for the department and its officers and employees in Austin and other places in the state where district headquarters are located. The state shall provide furniture, fixtures, automobiles, motorcycles, horses, firearms, ammunition, uniforms, appliances, and other materials necessary to the proper functioning and operation of the department.

(b) The department's physical plant in Austin is under the department's control and management for the use and benefit of the state in the discharge of the official duties of the department. (V.A.C.S. Arts. 4413(25); 4413(29a), Sec. 1 (part).)

Sec. 411.015. ORGANIZATION. (a) Except as provided by Subsection (b), the designation by this chapter of certain divisions and division chiefs is not mandatory and this chapter does not prevent the commission from reorganization or consolidation within the department in the interest of more efficient and economical management and direction of the department. The director, with the commission's approval, may organize and maintain within the department divisions of service considered necessary for the efficient conduct of the department's work.

(b) The number of divisions may not exceed the number of divisions existing on August 22, 1957. The division relating to the Texas Rangers may not be abolished. (V.A.C.S. Art. 4413(29b).)

Sec. 411.016. SUPPLEMENTAL PAY. (a) This section applies to an officer commissioned by the department who is not employed in a position that the director has declared to be administrative, executive, or professional.

(b) If, during a calendar week, the total number of hours worked by a commissioned officer plus the number of hours of leave taken for which the officer is entitled to compensation, including approved sick leave, vacation, holiday, holiday compensatory time, emergency leave, administrative leave, and jury duty, equal more than 40 hours, the excess is overtime. For each calendar month, the overtime for each week ending during that month shall be totaled. If the total overtime for the month exceeds eight hours, the officer may receive, in addition to the officer's regular monthly salary, a supplement determined as follows:

(1) a commissioned officer who accumulates more than eight hours but less than 16 hours of overtime in a calendar month may receive five percent of the officer's regular monthly salary;

(2) a commissioned officer who accumulated 16 or more hours but less than 32 hours of overtime in a calendar month may receive 10 percent of the officer's regular monthly salary; and

(3) a commissioned officer who accumulated 32 or more hours of overtime in a calendar month may receive 15 percent of the officer's regular monthly salary.

(c) The formula prescribed by Subsection (b) is the exclusive method of computing state compensation for overtime entitlements. This section applies only to the computation of overtime entitlements and does not apply to the method of compensating a commissioned officer for working on regularly scheduled state holidays.

(d) A commissioned officer may receive a supplement paid by the federal government earned while working on a project funded by the federal government, and that supplement may not be considered in determining a commissioned officer's entitlement under this section.

(e) If the funds appropriated to the department to provide supplemental pay are insufficient to pay all earned overtime entitlements, the director may provide for compensatory time to be taken during the biennium in which the entitlements are earned. (V.A.C.S. Art. 4413(17a).)

Sec. 411.017. UNAUTHORIZED ACTS INVOLVING DEPARTMENT NAME, INSIGNIA, OR DIVISION NAME. (a) A person commits an offense if, without the director's authorization, the person:

(1) manufactures, sells, or possesses a badge, identification card, or other item bearing a department insignia or an insignia deceptively similar to the department's;

(2) makes a copy or likeness of a badge, identification card, or department insignia, with intent to use or allow another to use the copy or likeness to produce an item bearing the department insignia or an insignia deceptively similar to the department's; or

(3) uses the term "Texas Department of Public Safety," "Department of Public Safety," "Texas Ranger," or "Texas Highway Patrol" in connection with an object, with the intent to create the appearance that the object belongs to or is being used by the department.

(b) In this section, "department insignia" means an insignia or design prescribed by the director for use by officers and employees of the department in connection with their official activities. An insignia is deceptively similar to the department's if it is not prescribed by the department but a reasonable person would presume that it was prescribed by the department.

(c) A district or county court, on application of the attorney general or of the district attorney or prosecuting attorney performing the duties of district attorney for the district in which the court is located, may enjoin a violation or threatened violation of this section on a showing that a violation has occurred or is likely to occur.

(d) It is an affirmative defense to a prosecution under this section that the object was used or intended for use exclusively for decorative purposes or in an artistic or dramatic presentation.

(e) An offense under this section is a Class B misdemeanor. (V.A.C.S. Art. 4413(12A).)

[Sections 411.018–411.020 reserved for expansion]

#### SUBCHAPTER B. TEXAS RANGERS

Sec. 411.021. COMPOSITION. The Texas Rangers are a division of the department consisting of six captains, one headquarters sergeant, and the number of privates authorized by the legislature, except that in case of an emergency the commission, with the governor's consent, may increase the force to meet extraordinary conditions. Officers are entitled to compensation as provided by the legislature. (V.A.C.S. Art. 4413(11), Subsecs. (1) (part), (2), (3).)

Sec. 411.022. AUTHORITY OF OFFICERS. (a) An officer of the Texas Rangers is governed by the law regulating and defining the powers and duties of sheriffs performing similar duties, except that the officer may make arrests, execute process in a criminal case in any county and, if specially directed by the judge of a court of record, execute process in a civil case.

(b) An officer of the Texas Rangers who arrests a person charged with a criminal offense shall immediately convey the person to the proper officer of the county where the person is charged and shall obtain a receipt. The state shall pay all necessary expenses incurred under this subsection. (V.A.C.S. Art. 4413(11), Subsec. (4) (part).)

Sec. 411.023. SPECIAL RANGERS. (a) The commission may appoint as special rangers honorably retired commissioned officers of the department and not more than 300 other persons.

(b) A special ranger is subject to the orders of the commission and the governor for special duty to the same extent as other law enforcement officers provided for by this chapter, except that a special ranger may not enforce a law except one designed to protect life and property and may not enforce a law regulating the use of a state highway by a motor vehicle. A special ranger is not connected with a ranger company or uniformed unit of the department.

(c) Before issuance of a commission to a special ranger the person shall enter into a good and sufficient bond executed by a surety company authorized to do business in the state in the amount of \$2,500, approved by the director, and indemnifying all persons against damages resulting from an unlawful act of the special ranger.

(d) A special ranger is not entitled to compensation from the state for service as a special ranger.

(e) A special ranger commission expires January 1 of the first odd-numbered year after appointment. The director may revoke a special ranger commission at any time for cause. (V.A.C.S. Art. 4413(11), Subsec. (5).)

[Sections 411.024–411.030 reserved for expansion]

SUBCHAPTER C. TEXAS HIGHWAY PATROL

Sec. 411.031. COMPOSITION. The Texas Highway Patrol is a division of the department consisting of the chief patrol officer, the number of captains, sergeants, and privates authorized by the legislature, and administrative and clerical help as the commission determines. A person's literary attainment does not preclude the person's appointment as a private if the person is otherwise qualified. The chief patrol officer is the executive officer of the patrol. Officers are entitled to compensation as provided by the legislature. (V.A.C.S. Art. 4413(12), Subsecs. (1) (part), (2), (3).)

Sec. 411.032. POWERS AND DUTIES OF OFFICERS. In addition to the powers and duties provided by law for the officers, noncommissioned officers, and enlisted persons of the Texas Highway Patrol, they have the powers and authority provided by law for members of the Texas Rangers force. (V.A.C.S. Art. 4413(12), Subsec. (4).)

[Sections 411.033–411.040 reserved for expansion]

SUBCHAPTER D. ADMINISTRATIVE DIVISION

Sec. 411.041. COMPOSITION. The administrative division of the department consists of the bureaus of identification and records, communications, intelligence, and training. The director, with the advice and consent of the commission, shall employ chiefs, experts, operators, instructors, and assistants as necessary for the operation of this division and its bureaus. (V.A.C.S. Art. 4413(13).)

Sec. 411.042. BUREAU OF IDENTIFICATION AND RECORDS. (a) The director shall appoint, with the advice and consent of the commission, a chief of the bureau of identification and records to be the executive officer of the bureau. The chief and at least one assistant must be recognized identification experts with at least three years' actual experience.

(b) The bureau of identification and records shall:

- (1) procure and file for record photographs, pictures, descriptions, fingerprints, measurements, and other pertinent information of all persons convicted of a felony within the state and of all well-known and habitual criminals;
- (2) collect information concerning the number and nature of offenses known to have been committed in the state and the legal steps taken in connection with the offenses, and other information useful in the study of crime and the administration of justice;
- (3) make ballistic tests of bullets and firearms and chemical analyses of bloodstains, cloth, materials, and other substances for law enforcement officers of the state; and
- (4) cooperate with bureaus in other states and the United States Department of Justice.

(c) The bureau chief shall offer assistance and, if practicable, instruction to sheriffs, chiefs of police, and other peace officers in establishing efficient local bureaus of identification in their districts. (V.A.C.S. Art. 4413(14).)

Sec. 411.043. BUREAU OF COMMUNICATIONS. (a) The director, with the advice and consent of the commission, shall appoint the chief of the bureau of communications.

(b) The bureau of communications shall:

- (1) provide for the rapid exchange between law enforcement agencies of the state, counties, municipalities, other states, and the federal government of information concerning the commission of crimes and the detection of violators of the law; and

(2) establish and operate, in coordination with state, county, and municipal law enforcement agencies, a state roads blockade system.

(c) If funds are provided, the bureau of communications may install and operate a police radio broadcasting system for broadcasting information concerning the activities of violators of the law and for directing the activities and functions of the law enforcement agencies of the state, counties, and municipalities. The bureau shall cooperate with county and municipal police authorities and police radio stations in this state and other states. (V.A.C.S. Art. 4413(15).)

Sec. 411.044. BUREAU OF INTELLIGENCE. (a) The director, with the advice and consent of the commission, shall appoint the chief of the bureau of intelligence.

(b) The bureau of intelligence shall:

(1) accumulate and analyze, with the aid of the other department divisions and bureaus, information of crime activities in the state and make the information available for use of the department and county and municipal law enforcement agencies; and

(2) aid in the detection and apprehension of violators of the law. (V.A.C.S. Art. 4413(16).)

Sec. 411.045. BUREAU OF TRAINING. (a) The director, with the advice and consent of the commission, shall appoint the chief of the bureau of training. The chief must have substantial experience in law enforcement and in instruction of law enforcement officers.

(b) The bureau of training shall:

(1) establish and operate schools for training department personnel in their duties and functions;

(2) establish and operate schools for training county and municipal police officers who are selected to attend the schools by the authorities of the law enforcement agencies that employ them; and

(3) establish and carry out a comprehensive plan for the education of citizens of this state in matters of public safety and crime prevention and detection.

(c) The chief of the bureau of training shall organize schools for department members and other peace officers and give instruction in the schools.

(d) The adjutant general shall provide, for use of the bureau of training in conducting its training schools, suitable buildings, land, and state-owned equipment at Camp Mabry in Austin. (V.A.C.S. Art. 4413(17).)

[Chapter 412 reserved for Texas Department of Corrections]

#### CHAPTER 413. CRIMINAL JUSTICE POLICY AND COORDINATING COUNCILS

- Sec. 413.001. DEFINITIONS
- Sec. 413.002. CRIMINAL JUSTICE POLICY COUNCIL
- Sec. 413.003. CRIMINAL JUSTICE COORDINATING COUNCIL
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- Sec. 413.005. TENURE OF APPOINTED MEMBER
- Sec. 413.006. SERVICE ADDITIONAL DUTY OF OFFICE
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- Sec. 413.008. ADVISORY FUNCTION OF COORDINATING COUNCIL; APPOINTMENT OF OTHER ADVISORY BODIES
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- Sec. 413.010. DUTIES OF POLICY COUNCIL
- Sec. 413.011. DUTIES OF COORDINATING COUNCIL
- Sec. 413.012. PRESIDING OFFICERS
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#### CHAPTER 413. CRIMINAL JUSTICE POLICY AND COORDINATING COUNCILS

Sec. 413.001. DEFINITIONS. In this chapter:



- (1) "Coordinating council" means the Criminal Justice Coordinating Council.
- (2) "Policy council" means the Criminal Justice Policy Council.
- (3) "Council" means the Criminal Justice Coordinating Council or the Criminal Justice Policy Council. (New.)

Sec. 413.002. CRIMINAL JUSTICE POLICY COUNCIL. (a) The Criminal Justice Policy Council is an agency of the state.

- (b) The membership of the policy council consists of:
  - (1) the governor, lieutenant governor, and speaker of the house of representatives;
  - (2) two members of the senate appointed by the lieutenant governor;
  - (3) two members of the house of representatives appointed by the speaker; and
  - (4) four members appointed by the governor. (V.A.C.S. Art. 4413(49), Secs. 1(a), (b).)

Sec. 413.003. CRIMINAL JUSTICE COORDINATING COUNCIL. (a) The Criminal Justice Coordinating Council is an agency of the state.

- (b) The coordinating council consists of:
  - (1) the director of the Texas Department of Corrections;
  - (2) the executive director of the Texas Adult Probation Commission;
  - (3) the executive director of the Board of Pardons and Paroles;
  - (4) the executive director of the Texas Judicial Council;
  - (5) the executive director of the Commission on Jail Standards;
  - (6) the director of the Department of Public Safety;
  - (7) the executive director of the criminal justice division of the governor's office;
  - (8) the executive director of the Texas Youth Commission;
  - (9) the executive director of the Texas Juvenile Probation Commission;
  - (10) the executive director of the Commission on Law Enforcement Officer Standards and Education; and
  - (11) three public members, one each appointed by the governor, lieutenant governor, and speaker of the house of representatives. (V.A.C.S. Art. 4413(49), Secs. 1(c), (d).)

Sec. 413.004. APPLICATION OF SUNSET ACT. (a) The policy council is subject to the Texas Sunset Act (Chapter 325). Unless continued in existence as provided by that Act, the council is abolished September 1, 1993.

(b) The coordinating council is subject to the Texas Sunset Act (Chapter 325). Unless continued in existence as provided by that Act, the council is abolished September 1, 1993. (V.A.C.S. Art. 4413(49), Sec. 6.)

Sec. 413.005. TENURE OF APPOINTED MEMBER. An appointed member of a council serves at the pleasure of the appointing officer. (V.A.C.S. Art. 4413(49), Sec. 4 (part).)

Sec. 413.006. SERVICE ADDITIONAL DUTY OF OFFICE. Service on a council of a public officer or employee is an additional duty of the office or employment. (V.A.C.S. Art. 4413(49), Sec. 4 (part).)

Sec. 413.007. COMPENSATION AND REIMBURSEMENT. A member of a council serves without compensation for service on the council but is entitled to reimbursement for actual and necessary expenses incurred in performing council duties. (V.A.C.S. Art. 4413(49), Sec. 4 (part).)

Sec. 413.008. ADVISORY FUNCTION OF COORDINATING COUNCIL; APPOINTMENT OF OTHER ADVISORY BODIES. (a) The coordinating council acts in an advisory capacity to the policy council.

(b) The policy council may establish other advisory councils, task forces, or commissions it considers necessary to accomplish the purposes of this chapter. (V.A.C.S. Art. 4413(49), Secs. 1(e), (f).)

Sec. 413.009. GENERAL DUTY OF COUNCILS. The councils shall develop means to promote a more effective and cohesive state criminal justice system. (V.A.C.S. Art. 4413(49), Sec. 2 (part).)

Sec. 413.010. DUTIES OF POLICY COUNCIL. To accomplish its duties the policy council shall:

- (1) conduct an in-depth analysis of the criminal justice system;
- (2) determine the long-range needs of the criminal justice system and recommend policy priorities for the system;
- (3) identify critical problems in the criminal justice system and recommend strategies to solve those problems;
- (4) assess the cost-effectiveness of the use of state and local funds in the criminal justice system;
- (5) recommend the goals, priorities, and standards for the allocation of criminal justice planning funds administered by the criminal justice division;
- (6) recommend means to improve the deterrent and rehabilitative capabilities of the criminal justice system;
- (7) advise and assist the legislature in developing plans, programs, and proposed legislation for improving the effectiveness of the criminal justice system;
- (8) guide the coordinating council; and
- (9) engage in other activities consistent with the responsibilities of the policy council. (V.A.C.S. Art. 4413(49), Sec. 2 (part).)

Sec. 413.011. DUTIES OF COORDINATING COUNCIL. To accomplish its duties the coordinating council shall:

- (1) recommend to the policy council means to improve the organization and management of the criminal justice system;
- (2) examine and evaluate information collection systems used by state criminal justice agencies and recommend means to improve the usefulness, comprehensiveness, and accuracy of information collection;
- (3) develop a statistical model of the criminal justice system that:
  - (A) reflects workload demands on and the performance of state and local agency components of the system; and
  - (B) has the capacity to predict the impact of changes in the system on the separate components;
- (4) assist the policy council in the performance of its duties;
- (5) implement those policy recommendations of the policy council that are administrative in nature;
- (6) coordinate those solutions to criminal justice system problems that require interagency cooperation; and
- (7) engage in other activities consistent with the responsibilities of the coordinating council. (V.A.C.S. Art. 4413(49), Sec. 2 (part).)

Sec. 413.012. PRESIDING OFFICERS. The governor is the chairman of the policy council. The lieutenant governor is the vice-chairman and presides at meetings in the governor's absence. The speaker of the house of representatives presides at meetings when both the governor and lieutenant governor are absent. (V.A.C.S. Art. 4413(49), Sec. 3(d) (part).)

Sec. 413.013. MEETINGS. Each council shall meet at least quarterly and at the call of its chairman. (V.A.C.S. Art. 4413(49), Sec. 3(d) (part).)

Sec. 413.014. SUBCOMMITTEES OF COORDINATING COUNCIL. The coordinating council may form subcommittees to accomplish specific tasks. (V.A.C.S. Art. 4413(49), Sec. 3(e).)

Sec. 413.015. CONTRACTUAL AUTHORITY. (a) The policy council may contract with public or private entities in the performance of its responsibilities.

(b) The policy council may contract with the criminal justice center at Sam Houston State University to provide information important to the work of either council. (V.A.C.S. Art. 4413(49), Secs. 3(b) (part), (c).)

Sec. 413.016. GRANTS AND DONATIONS. The policy council may accept grants and donations from public and private entities in addition to legislative appropriations. (V.A.C.S. Art. 4413(49), Sec. 3(b) (part).)

Sec. 413.017. EXECUTIVE DIRECTOR; STAFF. (a) The policy council may employ an executive director to perform duties necessary to the proper functioning of both councils. The executive director is the chairman of the coordinating council.

(b) The executive director is appointed by the governor with the advice and consent of the senate.

(c) The executive director may employ personnel necessary to administer the responsibilities of the councils. (V.A.C.S. Art. 4413(49), Secs. 3(a), (d) (part).)

Sec. 413.018. CRIMINAL JUSTICE PLAN; ANNUAL REPORT. (a) The policy council annually shall submit to the legislature a plan detailing the actions necessary to promote an effective and cohesive criminal justice system.

(b) The policy council shall include in the plan a report of its activities and the recommendations it makes under Section 413.010. (V.A.C.S. Art. 4413(49), Sec. 5.)

CHAPTER 414. CRIME STOPPERS ADVISORY COUNCIL

- Sec. 414.001. DEFINITIONS
- Sec. 414.002. ORGANIZATION OF COUNCIL
- Sec. 414.003. PER DIEM AND EXPENSES
- Sec. 414.004. DIRECTOR
- Sec. 414.005. DUTIES
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CHAPTER 414. CRIME STOPPERS ADVISORY COUNCIL

Sec. 414.001. DEFINITIONS. In this chapter:

- (1) "Council" means the Crime Stoppers Advisory Council.
- (2) "Local crime stoppers program" means the acceptance and spending of donations by a private, nonprofit organization for rewards to persons who report information concerning criminal activity to the organization if the organization:
  - (A) operates less than statewide; and
  - (B) forwards reported information to the appropriate law enforcement agency. (V.A.C.S. Art. 4413(50), Sec. 1.)

Sec. 414.002. ORGANIZATION OF COUNCIL. (a) The Crime Stoppers Advisory Council is within the criminal justice division of the governor's office.

(b) The council consists of five members appointed by the governor with the advice and consent of the senate. At least three members must be persons who have participated in a local crime stoppers program.

(c) The term of office of a member is two years.

(d) At its first meeting after the beginning of each fiscal year the council shall elect from among its members a chairman and other officers that the council considers necessary.

(e) The council is subject to the Texas Sunset Act (Chapter 325). Unless continued in existence as provided by that Act, the council is abolished and this chapter expires September 1, 1993. (V.A.C.S. Art. 4413(50), Secs. 2 (part), 3, 8, 12.)

Sec. 414.003. PER DIEM AND EXPENSES. A member of the council is entitled to:

- (1) a per diem as determined by appropriation; and
- (2) reimbursement for actual and necessary expenses incurred in performing duties as a member. (V.A.C.S. Art. 4413(50), Sec. 9.)

Sec. 414.004. DIRECTOR. The council shall employ a person or designate a state employee as director. The director must be approved by the governor. The council shall define the director's authority and responsibilities. (V.A.C.S. Art. 4413(50), Sec. 4.)

Sec. 414.005. DUTIES. The council shall:

- (1) advise and assist in the creation of local crime stoppers programs;
- (2) foster the detection of crime and encourage persons to report information about criminal acts;
- (3) encourage news and other media to promote local crime stoppers programs and to inform the public of the functions of the council;
- (4) assist local crime stoppers programs in forwarding information about criminal acts to the appropriate law enforcement agencies; and
- (5) help law enforcement agencies detect and combat crime by increasing the flow of information to and between law enforcement agencies. (V.A.C.S. Art. 4413(50), Secs. 2 (part), 5.)

Sec. 414.006. RULES. The council may adopt rules to carry out its functions under this chapter. (V.A.C.S. Art. 4413(50), Sec. 7.)

Sec. 414.007. CONFIDENTIALITY OF COUNCIL RECORDS. Council records relating to reports of criminal acts are confidential. (V.A.C.S. Art. 4413(50), Sec. 6.)

Sec. 414.008. PRIVILEGED INFORMATION. (a) Evidence of a communication between a person submitting a report of a criminal act to the council or a local crime stoppers program and the person who accepted the report on behalf of the council or local crime stoppers program is not admissible in a court or an administrative proceeding.

(b) Records of the council or a local crime stoppers program concerning a report of criminal activity may not be compelled to be produced before a court or other tribunal except on the order of the supreme court. (V.A.C.S. Art. 4413(50), Sec. 11.)

Sec. 414.009. MISUSE OF INFORMATION. (a) A person who is a member or employee of the council or who accepts a report of criminal activity on behalf of a local crime stoppers program commits an offense if the person intentionally or knowingly divulges to a person not employed by a law enforcement agency the content of a report of a criminal act or the identity of the person who made the report without the consent of the person who made the report.

(b) An offense under this section is a Class A misdemeanor.

(c) A person convicted of an offense under this section is not eligible for state employment during the five-year period following the date that the conviction becomes final. (V.A.C.S. Art. 4413(50), Sec. 10.)

CHAPTER 415. COMMISSION ON LAW ENFORCEMENT OFFICER  
STANDARDS AND EDUCATION

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## CHAPTER 415. COMMISSION ON LAW ENFORCEMENT OFFICER

## STANDARDS AND EDUCATION

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 415.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Commission on Law Enforcement Officer Standards and Education.

(2) "County jailer" means a person designated as a jailer or guard of a county jail under Article 6871, Revised Statutes.

(3) "Officer" means a peace officer or reserve law enforcement officer.

(4) "Peace officer" means a person elected, employed, or appointed as a peace officer under Article 2.12, Code of Criminal Procedure, Section 51.212 or 51.214, Education Code, or other law.

(5) "Reserve law enforcement officer" means a person designated as a reserve law enforcement officer under Chapter 829, Acts of the 62nd Legislature, Regular Session, 1971 (Article 998a, Vernon's Texas Civil Statutes), or Chapter 506, Acts of the 62nd Legislature, Regular Session, 1971 (Article 6869.1, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4413(29aa), Secs. 1 (part), 6(h), (l), (m).)

Sec. 415.002. COMMISSION. The Commission on Law Enforcement Officer Standards and Education is an agency of the state. (V.A.C.S. Art. 4413(29aa), Sec. 1 (part).)

Sec. 415.003. APPLICATION OF SUNSET ACT. The Commission on Law Enforcement Officer Standards and Education is subject to the Texas Sunset Act (Chapter 325). Unless continued in existence as provided by that Act, the commission is abolished and this chapter expires September 1, 1993. (V.A.C.S. Art. 4413(29aa), Sec. 1a.)

Sec. 415.004. COMPOSITION OF COMMISSION. (a) The commission is composed of nine members appointed by the governor with the advice and consent of the senate. The governor shall make the appointments without regard to the race, creed, sex, religion, or national origin of the appointees. A member must be a resident of this state.

(b) Three members must be a sheriff, constable, or chief of police. Three members must be persons licensed under this chapter, two of whom must be peace officers who when appointed hold nonsupervisory positions with a law enforcement agency. A licensed member must have been licensed for the five consecutive years preceding the date of the member's appointment. Three members must be members of the general public.

(c) Appointed members serve staggered six-year terms.

(d) A vacancy in an office of a member of the commission shall be filled for the unexpired term.

(e) If a public officer is appointed to the commission, service on the commission is an additional duty of the office.

(f) The following officers shall serve as ex officio members of the commission:

(1) the commissioner of higher education of the Coordinating Board, Texas College and University System;

(2) the commissioner of the Central Education Agency;

(3) the director of the Department of Public Safety;

(4) the executive director of the criminal justice division of the governor's office; and

(5) the attorney general. (V.A.C.S. Art. 4413(29aa), Secs. 3(a), (b) (part), (c), (d) (part), (g).)

Sec. 415.005. CONFLICT OF INTEREST. (a) A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of law enforcement;

(2) is employed by or participates in the management of a business entity or other organization related to the field of law enforcement; or

(3) has, other than as a consumer, a financial interest in a business entity related to the field of law enforcement.

(b) A member or employee of the commission may not be an officer, employee, or paid consultant of a trade association in the law enforcement industry, except an association the purpose and membership of which is solely for the benefit of law enforcement officers.

(c) A person required to register as a lobbyist under Chapter 305 because of activities for compensation in or on behalf of a profession related to the operation of the commission may not be a member of or general counsel to the commission. (V.A.C.S. Art. 4413(29aa), Secs. 3(b) (part), (e), (f).)

Sec. 415.006. REMOVAL OF MEMBER. (a) It is a ground for removal from the commission if a member:

(1) did not have when appointed, or does not maintain during the service on the commission, the qualifications required by Sections 415.004(b) and 415.005(a) for appointment to the commission; or

(2) violates a prohibition under Section 415.005(b) or (c).

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a member exists. (V.A.C.S. Art. 4413(29aa), Secs. 3(h), (i).)

Sec. 415.007. OFFICERS; QUORUM; VOTING. (a) At its first meeting after appointment of members to serve regular terms, the commission shall elect from among its appointed members a chairman, vice-chairman, and secretary.

(b) Five members, excluding ex officio members, constitute a quorum.

(c) An ex officio member may not vote. (V.A.C.S. Art. 4413(29aa), Sec. 4.)

Sec. 415.008. COMPENSATION AND EXPENSES. A member of the commission serves without compensation for service on the commission but is entitled to reimbursement for actual and necessary expenses incurred in performance of functions under this chapter. (V.A.C.S. Art. 4413(29aa), Sec. 5.)

Sec. 415.009. MEETINGS. (a) The commission shall meet at least once during each biennium to receive public comment on training and standards for officers and county jailers. Within a reasonable time after the meeting, the commission shall report to the governor and legislature findings and recommendations resulting from the meeting.

(b) The commission may meet at other times and places in this state that it considers proper. The chairman may call a meeting on the chairman's own motion and shall call a meeting on the written request of five members.

(c) The commission is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4413(29aa), Secs. 2(a) (part), (b), (c), 6A(e).)

Sec. 415.010. GENERAL POWERS. The commission may:

(1) adopt rules for the administration of this chapter and for the commission's internal management and control;

(2) employ an executive director and other personnel necessary in the performance of commission functions;

(3) accept donations, contributions, grants, or gifts from private individuals, foundations, or the federal government;

(4) report to the governor and legislature on its activities, with recommendations on matters under its jurisdiction, and make other reports that it considers desirable;

(5) establish reasonable and necessary fees for the administration of this chapter;

(6) require the submission of reports and information by a state agency or a county, special district, or municipality in this state that employs officers or county jailers;

(7) contract with other persons as the commission considers necessary for services, facilities, studies, and reports required for:

(A) cooperation with municipal, county, special district, state, and federal law enforcement agencies in training programs; and

(B) performance of the commission's other functions;

(8) make or encourage studies of law enforcement, including police administration;

(9) conduct research to improve law enforcement and police administration and stimulate research by public and private agencies for that purpose; and

(10) establish minimum standards relating to competence and reliability, including educational, training, physical, mental, and moral standards, for licensing as an officer or county jailer. (V.A.C.S. Art. 4413(29aa), Sec. 2(a) (part).)

Sec. 415.011. FUNDS REPORT; AUDIT. (a) During January of each year, the commission shall file with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding year.

(b) The state auditor shall audit the financial transactions of the commission during each fiscal year. (V.A.C.S. Art. 4413(29aa), Secs. 2(d), (e).)

Sec. 415.012. REPORTS FROM AGENCIES AND SCHOOLS. (a) The commission shall establish reporting standards and procedures for:

(1) matters of appointment and termination of officers and county jailers by law enforcement agencies;

(2) matters concerning the activities of licensed training schools; and

(3) other matters the commission considers necessary for the administration of this chapter.

(b) The commission shall furnish each agency and licensed training school with the required reporting forms.

(c) The chief administrative officer of a law enforcement agency or licensed training school is the person responsible for compliance with the reporting standards and procedures prescribed by the commission. (V.A.C.S. Art. 4413(29aa), Secs. 2B(a), (b), (c).)

Sec. 415.013. EMPLOYMENT PRACTICES. (a) The executive director of the commission or the executive director's designee shall develop a career ladder program within the agency. The program must require that openings in all positions except entry level positions be posted within the commission for at least 10 days before they are posted for the public.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluation based on measurable job tasks. Merit pay for commission employees must be based on this system.

(c) The executive director shall prepare and maintain a written plan to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The plan must cover an annual period and be updated annually. The plan must include:

(1) a comprehensive analysis of the commission's employees by race, sex, ethnic background, class of position, and salary or wage;

(2) plans for recruitment, evaluation, selection, appointment, training, promotion, and other personnel policies;

(3) steps reasonably designed to overcome identified underuse of minorities and women in the agency's work force; and

(4) objectives, goals, timetables for achievement of the objectives and goals, and assignment of responsibility for their achievement.

(d) Before May 1 and December 1 of each year the commission shall submit a progress report to the governor. The report must include a statement of the steps that the commission has taken during the previous six months to comply with the requirements of Subsection (c). (V.A.C.S. Art. 4413(29aa), Secs. 2(f), (g), (j).)



Sec. 415.014. **INFORMATION OF PUBLIC INTEREST.** The commission shall prepare information of public interest describing the regulatory functions of the commission and the procedures for filing and for resolution by the commission of public complaints. The commission shall make the information available to the general public and appropriate state agencies. (V.A.C.S. Art. 4413(29aa), Sec. 2B(e).)

Sec. 415.015. **OTHER LAWS UNAFFECTED.** (a) Except as expressly provided by this chapter, this chapter does not limit the powers, rights, duties, or responsibilities of a municipality or county and does not affect Chapter 325, Acts of the 50th Legislature, 1947 (Article 1269m, Vernon's Texas Civil Statutes).

(b) This chapter does not prevent an employing agency from establishing qualifications and standards for hiring or training officers and county jailers that exceed the minimum standards of the commission.

(c) This chapter does not affect a constable or other officer or county jailer elected under the Texas Constitution before September 1, 1985, and does not affect a sheriff. (V.A.C.S. Art. 4413(29aa), Secs. 6(f), 8.)

[Sections 415.016–415.030 reserved for expansion]

#### SUBCHAPTER B. EDUCATION

Sec. 415.031. **PROGRAMS AND INSTRUCTORS.** (a) The commission shall establish and maintain training programs for officers and county jailers. The training shall be conducted by the commission staff or through agencies and institutions that the commission considers appropriate. The commission may authorize reimbursement for a political subdivision or state agency for expenses in attending the training programs as authorized by the legislature.

(b) The commission may:

(1) through issuance or revocation of a license, approve or revoke approval of a school operated by or for this state or a political subdivision of the state specifically for training officers, county jailers, or recruits;

(2) operate schools and conduct preparatory, in-service, basic, and advanced courses in the schools, as the commission determines, for officers, county jailers, and recruits;

(3) license persons as qualified instructors under conditions that the commission prescribes; and

(4) visit and inspect a school conducting a training course for officers, county jailers, or recruits and make necessary evaluations to determine if it is complying with this chapter and commission rules.

(c) The commission may not license a school or approve a program or course of instruction for officers or county jailers unless the school has created an advisory board for developing a curriculum. At least one-third of the members of the board must be members of the general public having the same qualifications required of a public member of the commission.

(d) The commission shall include instruction in weapons proficiency in a peace officer training program under Subsection (a) and shall require a person seeking a peace officer license to demonstrate weapons proficiency. (V.A.C.S. Art. 4413(29aa), Secs. 2(a) (part), 2A, 7.)

Sec. 415.032. **CURRICULUM.** (a) The commission may establish minimum curriculum requirements for preparatory, in-service, and advanced courses and programs for schools subject to approval under Section 415.031(b)(1).

(b) In establishing requirements under this section, the commission shall require courses and programs to provide training in the investigation of cases involving child abuse or neglect. In addition to this training, the commission shall direct law enforcement agencies to provide continuing in-house instruction for its officers in the recognition of cases involving child abuse or neglect. (V.A.C.S. Art. 4413(29aa), Secs. 2(a) (part), (k).)

Sec. 415.033. **COOPERATION WITH OTHER ENTITIES.** The commission may consult and cooperate with a municipality, county, special district, state agency, other

governmental agency, university, college, junior college, or another institution concerning the development of training schools and programs for officers and county jailers. (V.A.C.S. Art. 4413(29aa), Sec. 2(a) (part).)

Sec. 415.034. CONTINUING EDUCATION. (a) The commission may recognize, prepare, or administer voluntary continuing education programs for officers and county jailers.

(b) The commission may require a state, county, special district, or municipal agency that employs peace officers to provide each peace officer with a training program during a 24-month period. The course must be approved by the commission and may not exceed 40 hours. (V.A.C.S. Art. 4413(29aa), Secs. 2(h), (i).)

Sec. 415.035. WEAPONS PROFICIENCY. (a) An agency or institution that employs more than two peace officers shall designate a firearms proficiency officer and require each peace officer that it employs to demonstrate to that officer, at least once each year, weapons proficiency based on the minimum basic training standards prescribed by the commission. The agency or institution shall maintain records of this proficiency.

(b) Notwithstanding the definition in Section 415.001, in this section, "peace officer" has the meaning given that term by Article 2.12, Code of Criminal Procedure, and Section 51.212, Education Code. (V.A.C.S. Art. 4413(29aa-2).)

[Sections 415.036–415.050 reserved for expansion]

#### SUBCHAPTER C. LICENSE AND APPOINTMENT

Sec. 415.051. APPOINTMENT; LICENSE REQUIREMENT. (a) Except as provided by Sections 415.054 and 415.055, a person may not appoint an officer or county jailer unless the officer or county jailer is licensed by the commission.

(b) A person who appoints an officer or county jailer licensed by the commission shall notify the commission not later than the 30th day after the date of the appointment. If the person appointed previously served as an officer or county jailer and is appointed after the 180th day after the date that the person last served as an officer or county jailer, the agency must include with its report under this subsection:

- (1) a new criminal history check;
- (2) a new declaration of psychological and emotional health and lack of drug dependency or illegal drug use; and
- (3) two completed fingerprint cards.

(c) A peace officer serving under a permanent appointment before September 1, 1970, is not required to obtain a license as a condition of tenure, continued employment, or promotion unless the officer seeks a new appointment. The officer is eligible to attend peace officer training courses subject to commission rules. (V.A.C.S. Art. 4413(29aa), Secs. 2B(d) (part), 6(a), (c), (d), (g), (k) (part).)

Sec. 415.052. GRANTING OF LICENSE. (a) The commission shall grant an appropriate license to a person who, as required by this chapter, has:

- (1) submitted a proper application;
- (2) completed the required training;
- (3) passed the required examination;
- (4) been declared to be in satisfactory psychological and emotional health and free from drug dependency or illegal drug use; and
- (5) demonstrated weapons proficiency.

(b) The commission may issue a permanent license to be an officer and may issue a temporary or permanent license to be a county jailer.

(c) The commission shall adopt rules relating to requirements for reactivation of a peace officer's license after a break in employment. The commission may consider employment as a peace officer in another state in determining whether a person is required to have additional training or testing. The commission shall adopt rules establishing a list of active licensed peace officers and a list of inactive licensed peace

officers who leave the employment of a law enforcement agency. (V.A.C.S. Art. 4413(29aa), Secs. 2(a) (part), 6(k) (part).)

Sec. 415.053. LICENSING OF CERTAIN LAW ENFORCEMENT OFFICERS ELECTED UNDER TEXAS CONSTITUTION. An officer elected under the Texas Constitution must be licensed by the commission not later than two years after the date that the officer takes office. The commission shall establish requirements for licensing, and procedures for revocation of a license, of such an officer. It is incompetency and a ground for removal from office under Title 100, Revised Statutes, if an officer to whom this section applies does not obtain the license by the required date or does not remain licensed. (V.A.C.S. Art. 4413(29aa), Secs. 2(a) (part), 6(p).)

Sec. 415.054. APPOINTMENT OF COUNTY JAILER. (a) A person may not be appointed as a county jailer, except on a temporary basis, unless the person has satisfactorily completed a preparatory program of training in the operation of a county jail at a school operated or licensed by the commission. If a county jailer appointed on a temporary basis does not satisfactorily complete the program, as prescribed by the commission, before one year after the date that the person is originally appointed, the person shall be removed from the position. A temporary employment may not exceed one year and may not be renewed, except that not earlier than one year after a person is removed under this subsection the sheriff may petition the commission for reinstatement of the person to temporary employment.

(b) A county jailer serving under permanent appointment before September 1, 1979, regardless of whether the person's employment was terminated before that date because of failure to satisfy standards adopted under Section 14, Chapter 480, Acts of the 64th Legislature, 1975 (Article 5115.1, Vernon's Texas Civil Statutes), is not required to meet a requirement of this section as a condition of continued employment or promotion unless:

- (1) in an attempt to meet the standards the person took an examination and failed or was not allowed to finish the examination because the person acted dishonestly in regard to the examination;
- (2) the person forged a document purporting to show that the person met the standards; or
- (3) the person seeks a new appointment as a county jailer on or after September 1, 1984.

(c) A county jailer serving under permanent appointment before September 1, 1979, is eligible to attend training courses in the operation of a county jail subject to the commission rules. (V.A.C.S. Art. 4413(29aa), Sec. 7B.)

Sec. 415.055. MANPOWER SHORTAGE. (a) The commission shall adopt rules to allow a law enforcement agency to petition for a provisional license for an officer if the agency substantiates that it has a manpower shortage.

(b) Except in an emergency, the combined hours that a peace officer having a provisional license is required to work at his employing agency and attend a commission approved basic preparatory school may not exceed 40 hours in a week.

(c) An agency employing a peace officer having a provisional license may contract with the peace officer for reimbursement of the cost of a basic preparatory training course if the peace officer voluntarily resigns from the agency before a date that is specified in the contract and is not later than one year after the date the officer is appointed. The contract must plainly state the cost of the course. (V.A.C.S. Art. 4413(29aa), Sec. 6(b) (part), (o).)

Sec. 415.056. EXAMINATION. (a) The commission shall:

- (1) prescribe the content of an examination for each license it issues;
- (2) include in each examination a written examination that tests the knowledge of the applicant about the appropriate occupation;
- (3) determine the standards for acceptable performance on each examination; and
- (4) conduct an examination of applicants for each type of license at least four times each year at times and places designated by the commission.

(b) Not later than the 30th day after the date that an examination is administered, the commission shall notify each examinee of the results of the examination, except that if an examination is graded or reviewed by a national testing service, the commission shall notify each examinee of the results of the examination not later than the 14th day after the date that the commission receives the results from the testing service. If the notification of the examination results will be delayed for longer than 90 days after the examination date, the commission shall notify the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the licensing examination, the commission shall provide the person an analysis of the person's performance on the examination. (V.A.C.S. Art. 4413(29aa), Sec. 6B.)

Sec. 415.057. **PSYCHOLOGICAL AND PHYSICAL EXAMINATIONS.** (a) The commission may not license a person as an officer or county jailer unless the person has been:

- (1) examined by a licensed psychologist or psychiatrist and declared in writing by the psychologist or psychiatrist to be in satisfactory psychological and emotional health to be the type of officer for which a license is sought; and
- (2) examined by a licensed physician and declared in writing by the physician to show no trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) The agency hiring the person desiring to be licensed as an officer or county jailer shall select the examining physician and the examining psychologist or psychiatrist. The agency shall send a copy of each of the declarations to the commission with the person's licensing application. The commission shall keep the copy on file. A declaration is not public information.

(c) The commission shall adopt rules:

- (1) relating to the appropriate standards and measures to be used by a law enforcement agency in reporting the declarations; and
- (2) allowing for exceptional circumstances in the administration of the declaration of psychological and emotional health, including the use of a qualified licensed physician instead of a psychologist or psychiatrist.

(d) If the commission has cause to believe that a law enforcement agency failed to follow commission rules relating to a declaration or if the commission discovers that an applicant has submitted a false declaration, the commission may order an applicant to submit to an examination described by Subsection (a) by a psychologist, psychiatrist, or physician appointed by the commission. (V.A.C.S. Art. 4413(29aa), Secs. 6(j) (part), 7A.)

Sec. 415.058. **FELONY CONVICTION.** (a) A person who has been convicted of a felony is disqualified to be an officer or county jailer. The commission may not license such a person and shall on conviction of a felony immediately revoke the license of a person previously licensed.

(b) For the purposes of this section, a person is convicted of a felony if a court of competent jurisdiction enters an adjudication of guilt against the person on a felony offense under the laws of this or another state or the United States, regardless of whether:

- (1) the sentence is subsequently probated and the person is discharged from probation;
- (2) the accusation, complaint, information, or indictment against the person is dismissed and the person is released from all penalties and disabilities resulting from the offense; or
- (3) the person is pardoned for the offense, unless the pardon is granted expressly for subsequent proof of innocence. (V.A.C.S. Art. 4413(29aa), Sec. 8A; Art. 4413(29aa-1).)

Sec. 415.059. **AGE REQUIREMENT.** The commission shall adopt rules setting the minimum age for obtaining a license as an officer at 21 years, except that the rules must provide that a person 18 years old or older may be licensed as an officer if the person has:

(1) successfully completed and received credit for at least 60 hours of study at or received an associate degree from an accredited college or university; or

(2) received an honorable discharge from the United States armed forces after at least two years of service. (V.A.C.S. Art. 4413(29aa), Sec. 6(q).)

Sec. 415.060. REVOCATION; PROBATION; SUSPENSION. (a) The commission may establish procedures for the revocation of any license that it grants under this chapter, except a license of an officer elected under the Texas Constitution.

(b) The commission shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of this chapter or a rule of the commission. A person whose license the commission proposes to suspend or revoke is entitled to a hearing before the commission.

(c) The commission shall keep an information file about each complaint filed with the commission relating to a licensee. If a written complaint is filed with the commission relating to a licensee, the commission, at least quarterly until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint, unless the notice would jeopardize an undercover investigation. (V.A.C.S. Art. 4413(29aa), Secs. 2(a) (part), 6A(a), (b), (c), (d).)

Sec. 415.061. APPEAL. (a) A person dissatisfied with an action of the commission may appeal the action by filing a petition in a district court of Travis County not later than the 30th day after the date of the action. The court shall set the matter for hearing not earlier than 10 days after written notice of the appeal is given to the commission and the commission's attorney.

(b) The court may order an action of the commission suspended pending hearing. The order takes effect when it is served on the commission. The commission shall provide its attorney a copy of the petition and order.

(c) The attorney general, the district or county attorney, or an assistant of one of these persons shall represent the commission in the appeal. (V.A.C.S. Art. 4413(29aa), Sec. 9A.)

Sec. 415.062. PROFESSIONAL ACHIEVEMENT AND PROFICIENCY CERTIFICATES. The commission shall issue certificates that recognize professional achievement or proficiency based on law enforcement training, education, and experience. For this purpose the commission shall use the employment records of the employing agency. (V.A.C.S. Art. 4413(29aa), Secs. 2(a) (part), 6(n).)

Sec. 415.063. RECORDS. (a) The commission shall maintain records submitted under Sections 415.051, 415.054, and 415.057, including records that relate to age, education, physical standards, citizenship, good moral character, experience, and other matters relating to competence and reliability, as evidence of qualification for licensing of an officer or county jailer.

(b) Except as provided by Section 415.051(b), if the commission has on record evidence of fulfillment of licensing qualifications of an officer or county jailer, the officer or county jailer may not be required to submit duplicate records on appointment by another law enforcement agency. (V.A.C.S. Art. 4413(29aa), Secs. 2B(d) (part), 6(j) (part).)

Sec. 415.064. HIRING DATE OF PEACE OFFICER. The commission may not adopt or enforce rules that set the date of appointment of a peace officer at a later date than the date that appears on employment records of the hiring law enforcement agency. (V.A.C.S. Art. 4413(29aa), Sec. 6(i).)

Sec. 415.065. VIOLATION. (a) A person who appoints or retains an individual as an officer or county jailer in violation of Section 415.051 or 415.057 commits an offense.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$100 nor more than \$1,000. (V.A.C.S. Art. 4413(29aa), Sec. 6(e).)

[Sections 415.066–415.080 reserved for expansion]

SUBCHAPTER D. LAW ENFORCEMENT OFFICER STANDARDS  
AND EDUCATION FUND

Sec. 415.081. FUND. The law enforcement officer standards and education fund is in the state treasury. The commission shall use the fund in administering this chapter and performing other duties of the commission established by law. (V.A.C.S. Art. 4413(29aa), Sec. 9B(a).)

Sec. 415.082. COURT COSTS. (a) A person convicted of a criminal offense shall pay as court costs \$1 in addition to other taxable court costs. These additional court costs shall be collected in the same manner that other fines or court costs in the case are collected.

(b) This section applies to a conviction for an offense under the state traffic laws only if the offense is defined in:

(1) Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes); or

(2) the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), except Sections 34, 76, 77, 78, 79, 80, 81, 93, 94, 95, 96, and 97 of that Act. (V.A.C.S. Art. 4413(29aa), Secs. 9B(b), (c).)

Sec. 415.083. COLLECTION; DEPOSIT; RECORDS. (a) The officer collecting the costs in a municipal court case shall deposit money collected under this subchapter in the municipal treasury. The officer collecting the costs in a justice, county, or district case shall deposit the money collected under this subchapter in the county treasury. Each collecting officer shall keep separate records of money collected under this subchapter.

(b) The custodian of the municipal or county treasury may deposit money collected under this subchapter in interest-bearing accounts. The custodian shall keep records of the amount of this money on deposit.

(c) Except as provided by Subsection (d), not later than one month after the end of each calendar quarter the custodian of a municipal or county treasury shall deliver to the comptroller the money collected under this subchapter during the preceding quarter. The comptroller shall deposit the money in the law enforcement officer standards and education fund.

(d) A city or county may retain 10 percent of the money it collects under this subchapter as a service fee and may retain all interest earned on the money. (V.A.C.S. Art. 4413(29aa), Secs. 9B(d), (f) (part), (g).)

Sec. 415.084. EXPENDITURE. (a) On requisition of the commission, the comptroller shall draw a warrant on the state treasury for the amount specified in the requisition, except that the warrant may not exceed the amount in the law enforcement officer standards and education fund.

(b) Money expended by the commission in the administration of this chapter and in performing other commission duties prescribed by law shall be specified and determined only by itemized appropriation in the General Appropriations Act for the commission.

(c) Money remaining in the law enforcement officer standards and education fund at the end of the state fiscal year, except funds appropriated to the commission, shall be transferred to the general revenue fund. (V.A.C.S. Art. 4413(29aa), Sec. 9B(h).)

Sec. 415.085. REPORT. An officer collecting money under this subchapter shall file a report under Article 103.005, Code of Criminal Procedure. If no money due under this subchapter during a quarter is collected, the report for the quarter shall be filed in the regular manner and shall state that no money due under this subchapter was collected. (V.A.C.S. Art. 4413(29aa), Sec. 9B(e).)

Sec. 415.086. AUDITS. Money collected under this subchapter is subject to audit by the comptroller. Money expended under this subchapter is subject to audit by the state auditor. Money collected or expended under this subchapter is subject to audit by the governor's division of planning coordination. (V.A.C.S. Art. 4413(29aa), Sec. 9B(f) (part).)

CHAPTER 416. COMMISSION ON FIRE PROTECTION PERSONNEL  
STANDARDS AND EDUCATION

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 416.001. DEFINITION
- Sec. 416.002. COMMISSION
- Sec. 416.003. APPLICATION OF SUNSET ACT
- Sec. 416.004. COMPOSITION OF COMMISSION
- Sec. 416.005. OFFICERS; QUORUM; MEETINGS
- Sec. 416.006. COMPENSATION AND EXPENSES
- Sec. 416.007. GENERAL POWERS
- Sec. 416.008. LOCAL GOVERNMENT POWERS
- Sec. 416.009. MANUAL
- Sec. 416.010. FEES FOR CERTIFICATES
- Sec. 416.011. FIRE FIGHTERS COVERED

[Sections 416.012–416.020 reserved for expansion]

SUBCHAPTER B. EDUCATION

- Sec. 416.021. PROGRAMS AND INSTRUCTORS
- Sec. 416.022. CURRICULUM
- Sec. 416.023. COOPERATION WITH OTHER ENTITIES

[Sections 416.024–416.030 reserved for expansion]

SUBCHAPTER C. STANDARDS FOR APPOINTMENT

- Sec. 416.031. APPOINTMENT OF FIRE PROTECTION PERSONNEL
- Sec. 416.032. APPOINTMENT AS MARINE FIRE FIGHTER
- Sec. 416.033. APPOINTMENT AS AIRCRAFT CRASH AND RESCUE FIRE FIGHTER
- Sec. 416.034. PENALTY
- Sec. 416.035. APPEAL

[Sections 416.036–416.040 reserved for expansion]

SUBCHAPTER D. PROTECTIVE CLOTHING AND EQUIPMENT

- Sec. 416.041. PROTECTIVE CLOTHING
- Sec. 416.042. SELF-CONTAINED BREATHING APPARATUS
- Sec. 416.043. COMMISSION ENFORCEMENT

CHAPTER 416. COMMISSION ON FIRE PROTECTION PERSONNEL  
STANDARDS AND EDUCATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 416.001. DEFINITION. In this chapter "commission" means the Commission on Fire Protection Personnel Standards and Education. (V.A.C.S. Art. 4413(35), Sec. (part).)

Sec. 416.002. COMMISSION. The Commission on Fire Protection Personnel Standards and Education is an agency of the state. (V.A.C.S. Art. 4413(35), Sec. 1 (part).)

Sec. 416.003. APPLICATION OF SUNSET ACT. The Commission on Fire Protection Personnel Standards and Education is subject to the Texas Sunset Act (Chapter 325) Unless continued in existence as provided by that Act, the commission is abolished and this chapter expires September 1, 1991. (V.A.C.S. Art. 4413(35), Sec. 1a.)

Sec. 416.004. COMPOSITION OF COMMISSION. (a) The commission is composed of nine members appointed by the governor with the advice and consent of the senate. A member must be a resident of this state and must be qualified by experience or education in the field of fire protection. Appointed members serve staggered six-year terms. The commissioner of higher education and the commissioner of education shall serve as ex officio members of the commission.

(b) A vacancy in an office of a member of the commission shall be filled for the unexpired term.

(c) If a public officer is appointed to the commission, service on the commission is an additional duty of the office. (V.A.C.S. Art. 4413(35), Sec. 3 (part).)

Sec. 416.005. OFFICERS; QUORUM; MEETINGS. (a) At its first meeting after appointment of members to serve regular terms, the commission shall elect from among its appointed members a chairman, vice-chairman, and secretary.

(b) Five members constitute a quorum.

(c) The commission may meet at times and places in the state that it considers proper. The chairman may call a meeting on the chairman's own motion and shall call a meeting on the written request of five members. (V.A.C.S. Art. 4413(35), Secs. 2 (part), 4.)

Sec. 416.006. COMPENSATION AND EXPENSES. A member of the commission serves without compensation for service on the commission but is entitled to reimbursement for actual and necessary expenses incurred in performance of functions under this chapter. (V.A.C.S. Art. 4413(35), Sec. 5.)

Sec. 416.007. GENERAL POWERS. The commission may:

(1) adopt rules for the administration of this chapter and for the commission's internal management and control;

(2) employ an executive director and other personnel necessary in the performance of commission functions;

(3) accept donations, contributions, grants, or gifts from private individuals or foundations or the federal government;

(4) report to the governor annually, and to the legislature at each regular session, on its activities, with recommendations on matters under its jurisdiction, and make other reports that it considers desirable;

(5) require the submission of reports and information by a state agency, county, or municipality in this state that employs fire protection personnel;

(6) make or encourage studies of fire protection, including fire administration;

(7) conduct research to improve fire protection and fire administration and stimulate research by public and private agencies for that purpose; and

(8) establish minimum educational, training, physical, mental, and moral standards for admission to employment as fire protection personnel in a permanent, temporary, or probationary status. (V.A.C.S. Art. 4413(35), Sec. 2 (part).)

Sec. 416.008. LOCAL GOVERNMENT POWERS. Except as expressly provided by this chapter, this chapter does not limit the powers, rights, duties, or responsibilities of a municipality or county and does not affect Chapter 325, Acts of the 50th Legislature, 1947 (Article 1269m, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4413(35), Sec. 8.)

Sec. 416.009. MANUAL. The commission may set and collect a fee for a manual that the commission distributes to fire fighters and trainees and that states rules and minimum standards for fire protection personnel. (V.A.C.S. Art. 4413(35), Sec. 6A(a).)

Sec. 416.010. FEES FOR CERTIFICATES. (a) The commission shall collect a fee of \$20 for each certificate that the commission issues or renews. The employing agency or entity shall pay this fee as provided by commission rule. The certificate must be renewed annually.

(b) The commission may set and collect a fee for each intermediate, advanced, and master certificate that it issues. (V.A.C.S. Art. 4413(35), Secs. 6A(b)-(d).)

Sec. 416.011. FIRE FIGHTERS COVERED. This chapter applies only to fully paid fire fighters. (V.A.C.S. Art. 4413(35), Sec. 10.)



[Sections 416.012–416.020 reserved for expansion]

#### SUBCHAPTER B. EDUCATION

**Sec. 416.021. PROGRAMS AND INSTRUCTORS.** (a) The commission shall establish and maintain fire protection training programs conducted by the commission staff or through agencies and institutions that the commission considers appropriate. The commission may authorize reimbursement for a political subdivision or state agency for expenses in attending the training programs as authorized by the legislature.

(b) The commission may:

(1) through issuance or revocation of a certificate, approve or revoke the approval of an institution or facility for a school operated by or for this state or a political subdivision of the state specifically for training fire protection personnel or recruits;

(2) operate schools and school facilities and conduct preparatory, in-service, basic, and advanced courses in the schools and facilities, as the commission determines, for fire protection personnel or recruits;

(3) certify persons as qualified fire protection instructors under conditions that the commission prescribes;

(4) visit and inspect an institution or facility conducting courses for training fire protection personnel and recruits and make necessary evaluations to determine if it is complying with this chapter and commission rules; and

(5) contract with persons or public or private agencies, as the commission considers necessary, for services, facilities, studies, and reports that the commission requires to cooperate with municipal, county, state, and federal agencies in training programs and to otherwise perform its functions. (V.A.C.S. Art. 4413(35), Secs. 2 (part), 7.)

**Sec. 416.022. CURRICULUM.** The commission may establish minimum curriculum requirements for preparatory, in-service, and advanced courses and programs for a school operated by or for this state or a political subdivision of the state specifically for training fire protection personnel or recruits. (V.A.C.S. Art. 4413(35), Sec. 2 (part).)

**Sec. 416.023. COOPERATION WITH OTHER ENTITIES.** The commission may consult and cooperate with a municipality, county, state agency, other governmental agency, university, college, junior college, or another institution concerning the development of training schools and programs of courses of instruction for fire protection personnel. (V.A.C.S. Art. 4413(35), Sec. 2 (part).)

[Sections 416.024–416.030 reserved for expansion]

#### SUBCHAPTER C. STANDARDS FOR APPOINTMENT

**Sec. 416.031. APPOINTMENT OF FIRE PROTECTION PERSONNEL.** (a) A municipal fire department may not appoint a person to the fire department, except on a temporary or probationary basis, unless the person:

(1) has satisfactorily completed a preparatory program of training in fire protection at a school approved or operated by the commission; and

(2) meets the qualifications established by the commission under Subsection (b).

(b) The commission by rule may establish qualifications relating to minimum age, education, physical and mental condition, citizenship, good moral character, experience, and other matters that relate to the competence and reliability of persons to assume and discharge the responsibilities of fire protection personnel. The commission shall prescribe the means of presenting evidence of fulfillment of these qualifications. This chapter does not preclude an employing agency from establishing qualifications and standards for hiring fire protection personnel that exceed the minimum qualifications set by the commission.

(c) Fire protection personnel who receive temporary or probationary appointment and who fail to satisfactorily complete a basic course in fire protection, as prescribed by the commission, before one year after the date of the original appointment forfeit, and shall be removed from, the position. A temporary or probationary appointment may not be extended beyond one year by renewal of appointment or otherwise, except that on petition of a municipal fire department one year or more after the date of the forfeiture and removal, the commission may reinstate the person's temporary or probationary employment.

(d) The commission may certify persons who are qualified under this chapter to be fire protection personnel. The commission shall adopt rules relating to presentation of evidence of satisfactory completion of a program or course of instruction in another jurisdiction equivalent in content and quality to that required by the commission for approved fire protection education and training programs in this state and shall issue to a person meeting the rules a certificate evidencing satisfaction of Subsections (a) and (b).

(e) Fire protection personnel serving under permanent appointment before September 1, 1972, are not required to meet a requirement of Subsection (a) or (b) as a condition of tenure or continued employment or for eligibility for a promotional examination for which they are otherwise eligible. The fire protection personnel are eligible to attend training courses subject to commission rules. (V.A.C.S. Art. 4413(35), Secs. 2 (part); 6(a)-(d), (f), (g).)

Sec. 416.032. APPOINTMENT AS MARINE FIRE FIGHTER. (a) In this section "marine fire fighter" means a fire fighter who works for a fire department aboard a fireboat and fights fires that occur on or adjacent to a waterway, waterfront, channel, or turning basin.

(b) The commission shall adopt requirements for certification as a marine fire fighter. A person may not be appointed as a marine fire fighter, except on a probationary basis, unless the person has completed the training prescribed by the commission.

(c) A person appointed as a marine fire fighter on a probationary basis must complete the prescribed training before two years after the date of the person's appointment.

(d) A marine fire fighter who was serving under a permanent appointment with five or more years' service before September 1, 1978, has satisfied the training requirements by this experience. (V.A.C.S. Art. 4413(35), Sec. 6(h) (part).)

Sec. 416.033. APPOINTMENT AS AIRCRAFT CRASH AND RESCUE FIRE FIGHTER. (a) In this section "aircraft crash and rescue fire fighter" means a fire fighter who works for a municipality and who, as a permanent duty assignment, fights aircraft fires at airports, stands by for possible crash landings, and performs aircraft crash rescue.

(b) The commission shall adopt requirements for certification as an aircraft crash and rescue fire fighter. A person may not be appointed as an aircraft crash and rescue fire fighter, except on a probationary basis, unless the person has completed the training prescribed by the commission.

(c) A person appointed as an aircraft crash and rescue fire fighter on a probationary basis must complete the prescribed training before two years after the date of the person's appointment.

(d) An aircraft crash and rescue fire fighter who was serving under a permanent appointment with two or more years' service before September 1, 1984, has satisfied the training requirements. (V.A.C.S. Art. 4413(35), Sec. 6(j) (part).)

Sec. 416.034. PENALTY. (a) A person commits an offense if the person:

- (1) accepts an appointment in violation of Section 416.031 or 416.032;
- (2) knowingly accepts an appointment in violation of Section 416.033;

(3) appoints or retains a person in violation of Section 416.031; or

(4) appoints a person in violation of Section 416.032 or 416.033.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$100 nor more than \$1,000. (V.A.C.S. Art. 4413(35), Secs. 6(e), (i), (k).)

Sec. 416.035. APPEAL. (a) A person dissatisfied with an action of the commission may appeal the action by filing a petition in a district court of Travis County or of the county in which the person resides not later than the 30th day after the date of the action. The court shall set the matter for hearing not earlier than 10 days after written notice of the appeal is given to the commission and the commission's attorney.

(b) The court may order an action of the commission suspended pending hearing. The order takes effect when it is served on the commission. The commission shall provide its attorney a copy of the petition and order.

(c) The attorney general, the district or county attorney, or an assistant of one of these persons shall represent the commission in the appeal. (V.A.C.S. Art. 4413(35), Sec. 9A.)

[Sections 416.036–416.040 reserved for expansion]

#### SUBCHAPTER D. PROTECTIVE CLOTHING AND EQUIPMENT

Sec. 416.041. PROTECTIVE CLOTHING. (a) In this section "protective clothing" means turnout coats, bunker coats, boots, gloves, trousers, helmets, and other garments worn by a fire fighter while performing fire-fighting operations.

(b) A state, county, or municipal agency shall provide and maintain protective clothing for all of its full-time, paid fire fighters or provide an allowance to these fire fighters to cover the purchase and maintenance of protective clothing and require the fire fighters to maintain the clothing to meet minimum standards. The protective clothing must comply with minimum standards of the National Fire Protection Association or its successor, except that if the commission determines that protective clothing containing cotton provides substantially equal protection, the commission shall permit the use of cotton protective clothing that the commission has determined to be acceptable instead of the clothing prescribed by the National Fire Protection Association.

(c) The National Fire Protection Association standard applicable to an item of clothing is the standard in effect when the agency contracts for the item. An agency may continue to use clothing in use or contracted for before a change in a standard unless the commission determines that the continued use constitutes an undue risk to the wearer, in which case the commission shall order that the use be discontinued and shall set an appropriate date for compliance with the revised standard. (V.A.C.S. Art. 4413(35), Secs. 8A(a), (d), (f), (g).)

Sec. 416.042. SELF-CONTAINED BREATHING APPARATUS. (a) A self-contained breathing apparatus purchased by a state, county, or municipal agency must comply with the minimum approval and certification requirements of the National Institute For Occupational Safety and Health or its successor with respect to self-contained breathing apparatus for use by fire fighters.

(b) At least once in each 30-day period the agency shall test each self-contained breathing apparatus used in the agency according to the testing procedures recommended by the National Institute For Occupational Safety and Health or the American National Standards Institute, Inc. (V.A.C.S. Art. 4413(35), Secs. 8A(b), (c).)

Sec. 416.043. COMMISSION ENFORCEMENT. The commission shall enforce this subchapter and may adopt minimum standards consistent with this subchapter for protective clothing and self-contained breathing apparatus for full-time fire protection personnel. (V.A.C.S. Art. 4413(35), Secs. 2 (part), 8A(e).)

## CHAPTER 417. STATE FIRE MARSHAL

- Sec. 417.001. DEFINITION
- Sec. 417.002. APPOINTMENT AND TENURE
- Sec. 417.003. STATUS AS STATE-COMMISSIONED OFFICER
- Sec. 417.004. GENERAL POWERS AND DUTIES
- Sec. 417.005. ADOPTION OF RULES
- Sec. 417.006. ARSON INVESTIGATORS
- Sec. 417.007. INVESTIGATION OF FIRE
- Sec. 417.008. RIGHT OF ENTRY; EXAMINATION AND CORRECTION OF DANGEROUS CONDITIONS
- Sec. 417.009. DELEGATION OF AUTHORITY

## CHAPTER 417. STATE FIRE MARSHAL

Sec. 417.001. DEFINITION. In this chapter, "board" means the State Board of Insurance. (New.)

Sec. 417.002. APPOINTMENT AND TENURE. The state fire marshal is appointed by the chairman of the board. The state fire marshal serves at the pleasure of the board and may be discharged at any time. (Art. 1.09A (part), Insurance Code.)

Sec. 417.003. STATUS AS STATE-COMMISSIONED OFFICER. The state fire marshal is a state-commissioned officer and functions in that capacity subject to rules of the board. (Art. 1.09A (part), Insurance Code.)

Sec. 417.004. GENERAL POWERS AND DUTIES. (a) The state fire marshal, under the supervision of the board, shall administer and enforce applicable provisions of the insurance Code relating to the state fire marshal.

(b) The state fire marshal is the chief investigator in charge of the investigation of arson and suspected arson in the state. (Art. 1.09A (part), Insurance Code.)

Sec. 417.005. ADOPTION OF RULES. The board, after consulting with the state fire marshal, shall adopt necessary rules to guide the state fire marshal and investigators commissioned by the state fire marshal in the investigation of arson and suspected arson. (Art. 1.09A (part), Insurance Code.)

Sec. 417.006. ARSON INVESTIGATORS. The state fire marshal may commission arson investigators to act under his supervision and may revoke an investigator's commission for just cause. (Art. 1.09A (part), Insurance Code.)

Sec. 417.007. INVESTIGATION OF FIRE. (a) The state fire marshal shall immediately investigate a fire occurring in this state in which property is destroyed if the board directs the investigation or, in the discretion of the board, if the investigation is requested by:

- (1) the mayor or fire marshal of an incorporated municipality in which a fire occurs;
- (2) a county or district judge, sheriff, or county attorney of a county in which a fire occurs;
- (3) a fire insurance company interested in a loss or the company's general, state, or special agent; or
- (4) an insurance policyholder sustaining a loss.

(b) The state fire marshal shall conduct the investigation at the place of the fire and before an insured loss may be paid. The state fire marshal shall ascertain, if possible, whether the fire was caused intentionally, carelessly, or accidentally. The state fire marshal shall make a written report of the investigation to the board.

(c) If the state fire marshal believes that further investigation is necessary, the state fire marshal shall take sworn statements from persons who in his opinion can supply relevant information and shall have the statements put in writing. The state fire marshal

may administer oaths and compel the attendance of witnesses and the production of documents.

(d) If the state fire marshal believes that there is sufficient evidence to charge a person with arson, attempted arson, conspiracy to commit fraud, or another offense related to the matter under investigation, the state fire marshal shall give to the appropriate prosecuting attorney all evidence and relevant information that has been obtained, including the names of witnesses. The state fire marshal shall arrest the person if the person has not been arrested by some other authority. The state fire marshal shall assist in the prosecution of any complaint he files.

(e) The state fire marshal may, in his discretion, conduct or direct the conduct of an investigation in private and may exclude from the place of the investigation persons not needed for the investigation. Witnesses may be separated from each other and not be allowed to communicate with other witnesses until after they have testified.

(f) The state fire marshal may elect to withhold from the public any testimony taken in an investigation under this section. (Art. 5.43, Insurance Code.)

Sec. 417.008. RIGHT OF ENTRY; EXAMINATION AND CORRECTION OF DANGEROUS CONDITIONS. (a) The state fire marshal at any time may enter any building or premises where fire has occurred or is in progress to investigate the cause, origin, and circumstances of the fire.

(b) On the complaint of any person the state fire marshal, at any reasonable time, is entitled to enter any building or premises in the state.

(c) The state fire marshal shall enter and is entitled, at any time, to enter any mercantile, manufacturing, or public building, place of amusement, or place where public gatherings are held, or any premises belonging to such a building or place, and make a thorough examination.

(d) The state fire marshal shall order the removal of a building or structure or other remedial action if he finds that:

(1) the building or other structure, because of lack of repair, age, dilapidated condition, or other reason, is susceptible to fire and is so located or occupied that fire would endanger persons or property in the building or structure;

(2) a dangerous condition is created by:

(A) an improper arrangement of stoves, ranges, furnaces, or other heating appliances, including chimneys, flues, and pipes with which they are connected, or by their lighting systems or devices; or

(B) the manner of storage of explosives, compounds, petroleum, gasoline, kerosene, dangerous chemicals, vegetable products, ashes, or combustible, flammable, or refuse materials; or

(3) any other condition exists that is dangerous or is liable to cause or promote fire or create danger for fire fighters or occupants.

(e) The occupant or owner of the building or premises shall immediately comply with an order made by the state fire marshal under this section. The state fire marshal may, if necessary, apply to a court of competent jurisdiction for writs or orders necessary to enforce this section, and the court may grant appropriate relief. The state fire marshal may not be required to give a bond. (Art. 5.44, Insurance Code.)

Sec. 417.009. DELEGATION OF AUTHORITY. (a) If for any reason the state fire marshal is unable to make a required investigation in person, the marshal may designate the fire marshal of the city or town where the investigation is to be made or another suitable person to act for the state fire marshal.

(b) The designated person has the same authority with respect to the investigation as is provided by this chapter for the state fire marshal. The designated person is entitled to compensation as provided by action of the board. (Art. 5.45, Insurance Code.)

CHAPTER 418. EMERGENCY MANAGEMENT

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 418.001. SHORT TITLE
- Sec. 418.002. PURPOSES
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CHAPTER 418. EMERGENCY MANAGEMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 418.001. SHORT TITLE. This chapter may be cited as the Texas Disaster Act of 1975. (V.A.C.S. Art. 6889–7, Sec. 1.)

Sec. 418.002. PURPOSES. The purposes of this chapter are to:

- (1) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or man-made catastrophes, riots, or hostile military or paramilitary action;
- (2) prepare for prompt and efficient rescue, care, and treatment of persons victimized or threatened by disaster;
- (3) provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons and property affected by disasters;
- (4) clarify and strengthen the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to, and recovery from disasters;
- (5) authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;
- (6) authorize and provide for coordination of activities relating to disaster prevention, preparedness, response, and recovery by agencies and officers of this state, and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;
- (7) provide an emergency management system embodying all aspects of predisaster preparedness and postdisaster response;
- (8) assist in prevention of disasters caused or aggravated by inadequate planning for and regulation of public and private facilities and land use; and
- (9) provide the authority and mechanism to respond to an energy emergency. (V.A.C.S. Art. 6889–7, Sec. 2.)

Sec. 418.003. LIMITATIONS. This chapter does not:

- (1) limit the governor’s authority to apply for, administer, or expend any grant, gift, or payment in aid of disaster prevention, preparedness, response, or recovery;

(2) interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by this chapter or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;

(3) interfere with dissemination of news or comment on public affairs, but any communications facility or organization, including radio and television stations, wire services, and newspapers, may be required to transmit or print public service messages furnishing information or instructions in connection with a disaster or potential disaster;

(4) affect the jurisdiction or responsibilities of police forces, fire-fighting forces, units of the armed forces of the United States, or of any of their personnel when on active duty, but state, local, and interjurisdictional emergency management plans shall place reliance on the forces available for performance of functions related to disasters; or

(5) limit, modify, or abridge the authority of the governor to proclaim martial law or exercise any other powers vested in the governor under the constitution or laws of this state independent of or in conjunction with any provisions of this chapter. (V.A.C.S. Art. 6889-7, Secs. 3, 5(i).)

Sec. 418.004. DEFINITIONS. In this chapter:

(1) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, other public calamity requiring emergency action, or energy emergency.

(2) "Division" means the division of emergency management in the office of the governor.

(3) "Energy emergency" means a temporary statewide, regional, or local shortage of petroleum or liquid fuels energy supplies that makes emergency measures necessary to reduce demand or allocate supply.

(4) "Interjurisdictional agency" means a disaster agency maintained by and serving more than one political subdivision.

(5) "Organized volunteer group" means an organization such as the American National Red Cross, the Salvation Army, the Civil Air Patrol, the Radio Amateur Civil Emergency Services, or other similar organization recognized by federal or state statute, regulation, or memorandum.

(6) "Political subdivision" means a county or incorporated city.

(7) "Temporary housing" has the meaning assigned by the Federal Disaster Relief Act of 1974 (42 U.S.C. 5121 et seq.). (V.A.C.S. Art. 6889-7, Sec. 4; New.)

[Sections 418.005-418.010 reserved for expansion]

#### SUBCHAPTER B. POWERS AND DUTIES OF GOVERNOR

Sec. 418.011. RESPONSIBILITY OF GOVERNOR. The governor is responsible for meeting:

(1) the dangers to the state and people presented by disasters; and

(2) disruptions to the state and people caused by energy emergencies. (V.A.C.S. Art. 6889-7, Sec. 5(a).)

Sec. 418.012. EXECUTIVE ORDERS. Under this chapter, the governor may issue executive orders, proclamations, and regulations and amend or rescind them. Executive orders, proclamations, and regulations have the force and effect of law. (V.A.C.S. Art. 6889-7, Sec. 5(b).)

Sec. 418.013. EMERGENCY MANAGEMENT COUNCIL. (a) The governor by executive order may establish an emergency management council to advise and assist the governor in all matters relating to disaster preparedness, emergency services, energy emergencies, and disaster recovery.



(b) The emergency management council is composed of the heads of state agencies, boards, and commissions and representatives of organized volunteer groups. (V.A.C.S. Art. 6889-7, Sec. 5(c).)

**Sec. 418.014. DECLARATION OF STATE OF DISASTER.** (a) The governor by executive order or proclamation may declare a state of disaster if the governor finds a disaster has occurred or that the occurrence or threat of disaster is imminent.

(b) Except as provided by Subsection (c), the state of disaster continues until the governor:

(1) finds that:

(A) the threat or danger has passed; or

(B) the disaster has been dealt with to the extent that emergency conditions no longer exist; and

(2) terminates the state of disaster by executive order.

(c) A state of disaster may not continue for more than 30 days unless renewed by the governor. The legislature by law may terminate a state of disaster at any time. On termination by the legislature, the governor shall issue an executive order ending the state of disaster.

(d) An executive order or proclamation issued under this section must include:

(1) a description of the nature of the disaster;

(2) a designation of the area threatened; and

(3) a description of the conditions that have brought the state of disaster about or made possible the termination of the state of disaster.

(e) An executive order or proclamation shall be disseminated promptly by means intended to bring its contents to the attention of the general public. An order or proclamation shall be filed promptly with the division of emergency management, the secretary of state, and the county clerk or city secretary in each area to which it applies unless the circumstances attendant on the disaster prevent or impede the filing. (V.A.C.S. Art. 6889-7, Sec. 5(d).)

**Sec. 418.015. EFFECT OF DISASTER DECLARATION.** (a) An executive order or proclamation declaring a state of disaster:

(1) activates the disaster recovery and rehabilitation aspects of the state emergency management plan applicable to the area subject to the declaration; and

(2) authorizes the deployment and use of any forces to which the plan applies and the use or distribution of any supplies, equipment, and materials or facilities assembled, stockpiled, or arranged to be made available under this chapter or other law relating to disasters.

(b) The preparedness and response aspects of the state emergency management plan are activated as provided by that plan.

(c) During a state of disaster and the following recovery period, the governor is the commander in chief of state agencies, boards, and commissions having emergency responsibilities. To the greatest extent possible, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or plans, but this chapter does not restrict the governor's authority to do so by orders issued at the time of the disaster. (V.A.C.S. Art. 6889-7, Secs. 5(e), (f).)

**Sec. 418.016. SUSPENSION OF PROCEDURAL LAWS AND RULES.** The governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster. (V.A.C.S. Art. 6889-7, Sec. 5(g)(1).)

**Sec. 418.017. USE OF PUBLIC AND PRIVATE RESOURCES.** (a) The governor may use all available resources of state government and of political subdivisions that are reasonably necessary to cope with a disaster.

(b) The governor may temporarily reassign resources, personnel, or functions of state executive departments and agencies or their units for the purpose of performing or facilitating emergency services.

(c) The governor may commandeer or use any private property if the governor finds it necessary to cope with a disaster, subject to the compensation requirements of this chapter. (V.A.C.S. Art. 6889-7, Secs. 5(g)(2), (3), (4).)

Sec. 418.018. **MOVEMENT OF PEOPLE.** (a) The governor may recommend the evacuation of all or part of the population from a stricken or threatened area in the state if the governor considers the action necessary for the preservation of life or other disaster mitigation, response, or recovery.

(b) The governor may prescribe routes, modes of transportation, and destinations in connection with an evacuation.

(c) The governor may control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area. (V.A.C.S. Art. 6889-7, Secs. 5(g)(5), (6), (7).)

Sec. 418.019. **RESTRICTED SALE AND TRANSPORTATION OF MATERIALS.** The governor may suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles. (V.A.C.S. Art. 6889-7, Sec. 5(g)(8).)

Sec. 418.020. **TEMPORARY HOUSING.** (a) The governor may enter into purchase, lease, or other arrangements with an agency of the United States for temporary housing units to be occupied by disaster victims and may make units available to any political subdivision.

(b) The governor may assist a political subdivision that is the locus of temporary housing for disaster victims to acquire sites necessary for temporary housing and to do all things required to prepare the sites to receive and use temporary housing units by:

- (1) advancing or lending funds available to the governor from any appropriation made by the legislature or from any other source;
- (2) allocating funds made available by a public or private agency; or
- (3) becoming a copartner with the political subdivision for the execution and performance of any temporary housing project for disaster victims.

(c) Under regulations prescribed by the governor, the governor may temporarily suspend or modify for a period of not more than 60 days any public health, safety, zoning, intrastate transportation, or other law or regulation if by proclamation the governor considers the suspension or modification essential to provide temporary housing for disaster victims.

(d) Any political subdivision may temporarily or permanently acquire by lease, purchase, or other means sites required for installation of temporary housing units for disaster victims and may enter into arrangements necessary to prepare or equip the sites to use the housing units, including arrangements for the purchase of temporary housing units and the payment of transportation charges. (V.A.C.S. Art. 6889-7, Secs. 5(g)(9), (10), (11); 5(k).)

Sec. 418.021. **FEDERAL AID FOR LOCAL GOVERNMENT.** (a) On the governor's determination that a local government of the state has suffered or will suffer a substantial loss of tax and other revenue from a major disaster and has demonstrated a need for financial assistance to perform its governmental functions, the governor may apply to the federal government on behalf of the local government for a loan and may receive and disburse the proceeds of an approved loan to the local government.

(b) The governor may determine the amount needed by a local government to restore or resume its governmental functions and certify that amount to the federal government. The amount sought for the local government may not exceed 25 percent of the annual operating budget of the local government for the fiscal year in which the major disaster occurs.

(c) The governor may recommend to the federal government, based on the governor's review, the cancellation of all or part of repayment if in the first three full fiscal years following the major disaster the revenues of the local government are insufficient to meet

its operating expenses, including additional disaster-related expenses of a municipal operation character. (V.A.C.S. Art. 6889-7, Sec. 5(g)(12).)

Sec. 418.022. AID FOR INDIVIDUALS. (a) On the governor's determination that financial assistance is essential to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster that cannot be otherwise adequately met from other means of assistance, the governor may accept a grant by the federal government to fund the financial assistance, subject to the terms and conditions imposed on the grant. The governor may agree with the federal government or any officer or agency of the United States pledging the state to participate in funding not more than 25 percent of the financial assistance.

(b) The governor may make financial grants to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster that cannot otherwise adequately be met from other means of assistance. The grants may not exceed an aggregate amount in excess of that established by federal statute for an individual or family in any single major disaster declared by the president of the United States.

(c) The governor may designate in the state emergency management plan the Department of Human Services or another state agency to carry out the functions of providing financial aid to individuals or families qualified for disaster relief. The designated agency may employ temporary personnel for those functions to be paid from funds appropriated to the agency, from federal funds, or from the disaster contingency fund. The merit system does not apply to the temporary positions. The governor may allocate funds appropriated under this chapter to implement the purposes of this chapter. (V.A.C.S. Art. 6889-7, Secs. 5(g)(15), (16); 5(h).)

Sec. 418.023. CLEARANCE OF DEBRIS. (a) Through the use of any state agency or instrumentality, the governor may clear or remove debris or wreckage from public or private land or water if it threatens public health or safety or public or private property in a state of disaster declared by the governor or major disaster declared by the president of the United States.

(b) The governor may accept funds from the federal government and use the funds to make grants to a local government for the purpose of removing debris or wreckage from public or private land or water.

(c) Debris or wreckage may not be removed from public or private property until the affected local government, corporation, organization, or individual presents to the governor an unconditional authorization for removal. Debris or wreckage may not be removed from private property until the state is indemnified against any claim arising from removal.

(d) If the governor provides for clearance of debris or wreckage under this chapter, state employees or other individuals acting by authority of the governor may enter on private land or water to perform tasks necessary to the removal or clearance operation. Except in cases of wilful misconduct, gross negligence, or bad faith, a state employee or agent performing his duties while complying with orders of the governor issued under this chapter is not liable for the death of or injury to a person or for damage to property. (V.A.C.S. Art. 6889-7, Secs. 5(g)(13), (14); 5(j).)

Sec. 418.024. RULES. The governor may adopt rules necessary for carrying out the purposes of this chapter, including rules on:

- (1) standards of eligibility for persons applying for benefits;
- (2) procedures for applying for benefits;
- (3) procedures for the administration, investigation, filing, and approval of applications for benefits;
- (4) procedures for the formation of local or statewide boards to pass on applications for benefits; and
- (5) procedures for appeals of decisions relating to applications for benefits. (V.A.C.S. Art. 6889-7, Sec. 5(g)(17).)

[Sections 418.025–418.040 reserved for expansion]

SUBCHAPTER C. DIVISION OF EMERGENCY MANAGEMENT

Sec. 418.041. ORGANIZATION. (a) The division of emergency management is a division of the office of the governor.

(b) The division is managed by a director appointed by the governor. The director serves at the pleasure of the governor.

(c) The director shall appoint a state coordinator.

(d) The division shall employ other coordinating and planning officers and other professional, technical, secretarial, and clerical personnel necessary to the performance of its functions. (V.A.C.S. Art. 6889–7, Sec. 6(a).)

Sec. 418.042. STATE EMERGENCY MANAGEMENT PLAN. (a) The division shall prepare and keep current a comprehensive state emergency management plan. The plan may include:

(1) provisions for prevention and minimization of injury and damage caused by disaster;

(2) provisions for prompt and effective response to disaster;

(3) provisions for emergency relief;

(4) provisions for energy emergencies;

(5) identification of areas particularly vulnerable to disasters;

(6) recommendations for zoning, building restrictions, and other land-use controls, safety measures for securing mobile homes or other nonpermanent or semipermanent structures, and other preventive and preparedness measures designed to eliminate or reduce disasters or their impact;

(7) provisions for assistance to local officials in designing local emergency management plans;

(8) authorization and procedures for the erection or other construction of temporary works designed to protect against or mitigate danger, damage, or loss from flood, fire, or other disaster;

(9) preparation and distribution to the appropriate state and local officials of state catalogs of federal, state, and private assistance programs;

(10) organization of manpower and channels of assistance;

(11) coordination of federal, state, and local emergency management activities;

(12) coordination of the state emergency management plan with the emergency management plans of the federal government;

(13) coordination of federal and state energy emergency plans; and

(14) other necessary matters relating to disasters.

(b) In preparing and revising the state emergency management plan, the division shall seek the advice and assistance of local government, business, labor, industry, agriculture, civic organizations, volunteer organizations, and community leaders.

(c) All or part of the state emergency management plan may be incorporated into regulations of the division or executive orders that have the force and effect of law. (V.A.C.S. Art. 6889–7, Secs. 6(b), (d) (part), (e).)

Sec. 418.043. OTHER POWERS AND DUTIES. The division shall:

(1) determine requirements of the state and its political subdivisions for food, clothing, and other necessities in event of a disaster;

(2) procure and position supplies, medicines, materials, and equipment;

(3) adopt standards and requirements for local and interjurisdictional emergency management plans;

(4) periodically review local and interjurisdictional emergency management plans;

(5) provide for mobile support units;

(6) establish and operate training programs and programs of public information or assist political subdivisions and disaster agencies to establish and operate the programs;

(7) make surveys of public and private industries, resources, and facilities in the state that are necessary to carry out the purposes of this chapter;

(8) plan and make arrangements for the availability and use of any private facilities, services, and property and provide for payment for use under terms and conditions agreed on if the facilities are used and payment is necessary;

(9) establish a register of persons with types of training and skills important in disaster prevention, preparedness, response, and recovery;

(10) establish a register of mobile and construction equipment and temporary housing available for use in a disaster;

(11) prepare, for issuance by the governor, executive orders and regulations necessary or appropriate in coping with disasters;

(12) cooperate with the federal government and any public or private agency or entity in achieving any purpose of this chapter and in implementing programs for disaster prevention, preparation, response, and recovery; and

(13) do other things necessary, incidental, or appropriate for the implementation of this chapter. (V.A.C.S. Art. 6889-7, Sec. 6(f).)

Sec. 418.044. ASSISTANCE IN DEVELOPMENT OF LOCAL PLANS. (a) The division shall take an integral part in the development and revision of local and interjurisdictional emergency management plans. For that purpose, the division shall employ or otherwise secure the services of professional and technical personnel capable of providing expert assistance to political subdivisions and disaster agencies. Those personnel shall consult with the subdivisions and agencies on a regularly scheduled basis and shall make field reviews of the areas, circumstances, and conditions to which particular local and interjurisdictional emergency management plans apply and may suggest revisions.

(b) The division shall encourage local and interjurisdictional agencies to seek advice from local government, business, labor, industry, agriculture, civic organizations, volunteer organizations, and community leaders. (V.A.C.S. Art. 6889-7, Secs. 6(c), (d) (part).)

Sec. 418.045. TEMPORARY PERSONNEL. The division may employ temporary personnel from funds appropriated to the division, from federal funds, or from the disaster contingency fund. The merit system does not apply to the temporary positions. (V.A.C.S. Art. 6889-7, Sec. 6(g).)

Sec. 418.046. ASSISTANCE TO AVIATORS. (a) The division may provide assistance to private aviators, including partial reimbursement for funds expended, to meet the actual costs of aircraft operation in performing search, rescue, or disaster-related functions requested by the governor or the governor's designee.

(b) Any reimbursement must be limited to the actual cost of aircraft operation not reimbursable from other sources. (V.A.C.S. Art. 6889-7, Sec. 6(h).)

Sec. 418.047. COMMUNICATIONS. (a) In cooperation with other state agencies, the division shall ascertain what means exist for rapid and efficient communication in times of disaster.

(b) The division shall consider the desirability of supplementing the communication resources or integrating them into a state or state-federal telecommunication or other communication system or network.

(c) In studying the character and feasibility of any system or its parts, the division shall evaluate the possibility of its multipurpose use for general state and local governmental purposes.

(d) The division shall make recommendations to the governor as appropriate. (V.A.C.S. Art. 6889-7, Sec. 13.)

Sec. 418.048. MONITORING WEATHER; SUSPENSION OF WEATHER MODIFICATION. (a) The division shall keep continuously apprised of weather conditions that present danger of climatic activity, such as precipitation, severe enough to constitute a disaster.

(b) If the division determines that precipitation that may result from weather modification operations, either by itself or in conjunction with other precipitation or climatic conditions or activity, would create or contribute to the severity of a disaster, it shall request in the name of the governor that the officer or agency empowered to issue permits for weather modification operations suspend the issuance of permits. On the governor's request, no permits may be issued until the division informs the officer or agency that the danger has passed. (V.A.C.S. Art. 6889-7, Sec. 15.)

[Sections 418.049–418.070 reserved for expansion]

#### SUBCHAPTER D. FINANCE

Sec. 418.071. STATE POLICY. It is the intent of the legislature and the policy of the state that funds to meet disaster emergencies always be available. (V.A.C.S. Art. 6889-7, Sec. 7(a).)

Sec. 418.072. DISASTER EMERGENCY FUNDING BOARD. The disaster emergency funding board is composed of:

- (1) the governor;
- (2) the lieutenant governor;
- (3) the chairman of the State Board of Insurance;
- (4) the commissioner of the Department of Human Services; and
- (5) the director of the division. (V.A.C.S. Art. 6889-7, Sec. 7(b).)

Sec. 418.073. DISASTER CONTINGENCY FUND. (a) The disaster contingency fund consists of money appropriated to the fund.

(b) If the governor finds that the demands placed on funds regularly appropriated to state and local agencies are unreasonably great for coping with a particular disaster, the governor with the concurrence of the disaster emergency funding board may make funds available from the disaster contingency fund. It is the intent of the legislature that first recourse be to the funds regularly appropriated to state and local agencies. (V.A.C.S. Art. 6889-7, Secs. 7(c), (d).)

Sec. 418.074. ACCEPTANCE AND ALLOCATION OF GIFTS AND GRANTS. (a) If the federal government, another public or private agency, or an individual offers to the state or through the state to a political subdivision services, equipment, supplies, materials, or funds as a gift, grant, or loan for purposes of emergency services or disaster recovery, the governor (if required by the donor) or the presiding officer of the governing body of the political subdivision may accept the offer on behalf of the state or political subdivision, as applicable.

(b) If a gift, grant, or loan is accepted by the state, the governor, or the emergency management council or state coordinator if designated by the governor, may dispense the gift, grant, or loan directly to accomplish the purpose for which it was made or may allocate and transfer to a political subdivision services, equipment, supplies, materials, or funds in the amount the governor or the governor's designee may determine.

(c) Funds received by the state shall be placed in one or more special funds and shall be disbursed by warrants issued by the comptroller on order of the governor or the governor's designee. The governor shall name the designee in a written agreement accepting the funds or in a written authorization filed with the secretary of state. On receipt of an order for disbursement, the comptroller shall issue a warrant without delay.

(d) If the funds are to be used for purchase of equipment, supplies, or commodities of any kind, it is not necessary that bids be obtained or that the purchases be approved by any other agency.

(e) A political subdivision may accept and use all services, equipment, supplies, materials, and funds to the full extent authorized by the agreement under which they are received by the state or political subdivision. (V.A.C.S. Art. 6889-7, Sec. 7(e).)

[Sections 418.075–418.100 reserved for expansion]

SUBCHAPTER E. LOCAL AND INTERJURISDICTIONAL  
EMERGENCY MANAGEMENT

Sec. 418.101. **ALL POLITICAL SUBDIVISIONS SERVED.** (a) Each political subdivision is within the jurisdiction of and served by the division and by a local or interjurisdictional agency responsible for disaster preparedness and coordination of response.

(b) The presiding officer of the governing body of each political subdivision shall notify the division of the manner in which the political subdivision is providing or securing an emergency management program, identify the person who heads the agency responsible for the program, and furnish additional pertinent information that the division requires. (V.A.C.S. Art. 6889–7, Secs. 8(a), (f).)

Sec. 418.102. **COUNTY PROGRAMS.** Each county shall maintain an emergency management program or participate in a local or interjurisdictional emergency management program that, except as otherwise provided by this chapter, has jurisdiction over and serves the entire county or interjurisdictional area. (V.A.C.S. Art. 6889–7, Sec. 8(b).)

Sec. 418.103. **MUNICIPAL PROGRAMS.** (a) The governor shall determine which municipal corporations need emergency management programs of their own and shall recommend that they be established and maintained. The governor shall make the determinations on the basis of the municipality's disaster vulnerability and capability of response related to population size and concentration.

(b) The emergency management program of a county must be coordinated with the emergency management programs of municipalities situated in the county but does not apply in a municipality having its own emergency management program. (V.A.C.S. Art. 6889–7, Sec. 8(c).)

Sec. 418.104. **INTERJURISDICTIONAL PROGRAMS.** The governor may recommend that a political subdivision establish and maintain a program and form an interjurisdictional agency jointly with one or more other political subdivisions if the governor finds that the establishment and maintenance of a joint program or participation in it is made necessary by circumstances or conditions that make it unusually difficult to provide disaster prevention, preparedness, response, or recovery services under other provisions of this chapter. (V.A.C.S. Art. 6889–7, Sec. 8(d).)

Sec. 418.105. **LIAISON OFFICERS.** (a) Each city that does not have a program and has not made arrangements to secure or participate in the services of an existing program shall designate a liaison officer to facilitate the cooperation and protection of the city in the work of disaster prevention, preparedness, response, and recovery.

(b) Each county shall provide an office and a liaison officer to coordinate with state and federal emergency management personnel concerning disaster preparedness, response, or recovery services under other provisions of this chapter. (V.A.C.S. Art. 6889–7, Sec. 8(e).)

Sec. 418.106. **LOCAL AND INTERJURISDICTIONAL EMERGENCY MANAGEMENT PLANS.** (a) Each local and interjurisdictional agency shall prepare and keep current an emergency management plan for its area providing for disaster preparedness, response, recovery, and rehabilitation.

(b) The plan must provide for:

(1) wage, price, and rent controls and other economic stabilization methods in the event of a disaster; and

(2) curfews, blockades, and limitations on utility use in an area affected by a disaster, rules governing entrance to and exit from the affected area, and other security measures.

(c) The local or interjurisdictional disaster agency shall prepare in written form and distribute to all appropriate officials a clear and complete statement of the disaster responsibilities of all local agencies and officials and of the disaster channels of assistance. (V.A.C.S. Art. 6889–7, Secs. 8(g), (h).)

Sec. 418.107. LOCAL FINANCE. (a) A political subdivision may make appropriations for emergency management services as provided by law for making appropriations for ordinary expenses.

(b) Political subdivisions may make agreements for the purpose of organizing emergency management service divisions and provide for a mutual method of financing the organization of units on a basis satisfactory to the subdivisions. The functioning of the units shall be coordinated by the emergency management council.

(c) A political subdivision may render aid to other subdivisions under mutual aid agreements.

(d) A political subdivision may issue time warrants for the payment of the cost of any equipment, construction, acquisition, or any improvements for carrying out this chapter. The warrants shall be issued in accordance with the Bond and Warrant Law of 1931 (Article 2368a, Vernon's Texas Civil Statutes). Time warrants issued for financing permanent construction or improvement for emergency management purposes are subject to the right of the voters to require a referendum vote under Section 4 of that law. (V.A.C.S. Art. 6889-7, Sec. 8(i).)

Sec. 418.108. DECLARATION OF LOCAL DISASTER. (a) The presiding officer of the governing body of a political subdivision may declare a local state of disaster.

(b) A declaration of local disaster may not be continued or renewed for a period of more than seven days except with the consent of the governing body of the political subdivision.

(c) An order or proclamation declaring, continuing, or terminating a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the city secretary or county clerk, as applicable.

(d) A declaration of local disaster activates the recovery and rehabilitation aspects of all applicable local or interjurisdictional emergency management plans and authorizes the furnishing of aid and assistance under the declaration. The preparedness and response aspects of the plans are activated as provided in the plans. (V.A.C.S. Art. 6889-7, Sec. 10.)

Sec. 418.109. MUTUAL AID. (a) The division shall encourage and assist political subdivisions not participating in interjurisdictional arrangements under this chapter to make suitable arrangements for furnishing mutual aid in coping with disasters. The arrangements must include provision of aid by public employees and agencies.

(b) In reviewing local emergency management plans, the division shall consider whether a plan contains adequate provisions for the rendering and receipt of mutual aid.

(c) In reviewing local and interjurisdictional emergency management plans, the division may require mutual aid agreements between political subdivisions if it determines that the political subdivisions have available equipment, supplies, and forces necessary to provide mutual aid on a regional basis and that the political subdivisions have not already made adequate provisions for mutual aid. (V.A.C.S. Art. 6889-7, Sec. 14.)

[Sections 418.110–418.120 reserved for expansion]

#### SUBCHAPTER F. DISASTER PREVENTION

Sec. 418.121. DUTY OF GOVERNOR. (a) In addition to disaster prevention measures included in the state, local, and interjurisdictional emergency management plans, the governor shall as a continuing duty consider steps that could be taken to mitigate the harmful consequences of disasters.

(b) At the direction of the governor and pursuant to any other authority and competence a state agency may have, a state agency shall study matters related to disaster prevention. This includes agencies charged with responsibility in connection with floodplain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land use planning, and construction standards.



(c) The governor shall from time to time make recommendations to the legislature, local governments, and other appropriate public and private entities as may facilitate measures for prevention or reduction of the harmful consequences of disasters. (V.A.C.S. Art. 6889-7, Sec. 11(a).)

Sec. 418.122. STATE STUDY OF LAND USE AND CONSTRUCTION STANDARDS. (a) The Texas Water Commission and other state agencies, in conjunction with the division, shall keep land uses and construction of structures and other facilities under continuing study and shall identify areas that are particularly susceptible to severe land shifting, subsidence, flooding, or other catastrophes.

(b) The studies shall concentrate on means of reducing or avoiding the dangers and consequences of a catastrophe. (V.A.C.S. Art. 6889-7, Sec. 11(b).)

Sec. 418.123. RECOMMENDATIONS FOR CHANGES IN LAND USE OR CONSTRUCTION STANDARDS. (a) The division shall recommend to the governor the changes it considers essential if the division believes, on the basis of the studies under Section 418.122 or other competent evidence that:

- (1) an area is susceptible to a disaster of catastrophic proportions without adequate warning;
- (2) existing building standards and land-use controls in that area are inadequate and could add substantially to the magnitude of the disaster; and
- (3) changes in zoning regulations, other land-use regulations, or building requirements are essential to further the purposes of this subchapter.

(b) The governor shall review the recommendations. If after public hearing the governor finds the changes are essential, the governor shall make appropriate recommendations to the agencies or local governments with jurisdiction over the area and subject matter.

(c) If no action or insufficient action pursuant to the governor's recommendations is taken within the time specified by the governor, the governor shall inform the legislature and request legislative action appropriate to mitigate the impact of the disaster. (V.A.C.S. Art. 6889-7, Sec. 11(c).)

Sec. 418.124. SUSPENSION OF LAND USE OR CONSTRUCTION STANDARDS. (a) When the governor makes recommendations under Section 418.123, the governor may suspend the standard or control found to be inadequate to protect the public safety and by rule may place a new standard or control in effect.

(b) The new standard or control remains in effect until rejected by concurrent resolution of both houses of the legislature or amended by the governor.

(c) During the time the new standard or control is in effect, it shall be administered and given effect by all appropriate regulatory agencies of the state and of the local governments to which it applies.

(d) The governor's action under this section is subject to judicial review but is not subject to temporary stay pending litigation. (V.A.C.S. Art. 6889-7, Sec. 11(d).)

[Sections 418.125–418.150 reserved for expansion]

#### SUBCHAPTER G. CITIZEN DUTIES AND CLAIMS FOR COMPENSATION

Sec. 418.151. CITIZEN DUTIES. (a) Each person in this state shall conduct himself and keep and manage his affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the state and the public successfully to manage emergencies. This obligation includes appropriate personal service and use or restriction on the use of property in time of disaster.

(b) This chapter neither increases nor decreases these obligations but recognizes their existence under the constitution and statutes of this state and the common law. (V.A.C.S. Art. 6889-7, Sec. 12(a) (part).)

Sec. 418.152. **COMPENSATION FOR SERVICES AND PROPERTY.** (a) Services or the taking or use of property shall be compensated only to the extent that:

- (1) the obligations recognized in this chapter are exceeded in a particular case; and
- (2) the claimant may not be considered to have volunteered services or property without compensation.

(b) Personal services may not be compensated by the state or a subdivision or agency of the state except under statute or ordinance.

(c) Compensation for property may be made only if the property was commandeered or otherwise used in coping with a disaster and its use or destruction was ordered by the governor or a member of the disaster forces of this state. (V.A.C.S. Art. 6889-7, Secs. 12(a) (part), (b), (c).)

Sec. 418.153. **COMPENSATION CLAIMS.** (a) A person claiming compensation for the use, damage, loss, or destruction of property under this chapter shall file a claim for compensation with the division in the form and manner required by the division.

(b) Unless the amount of compensation on account of property damage, loss, or destruction is agreed on between the claimant and the division, the amount of compensation is computed in the same manner as compensation due for taking of property under the condemnation laws of this state. (V.A.C.S. Art. 6889-7, Secs. 12(d), (e).)

Sec. 418.154. **CERTAIN CLAIMS EXCLUDED.** This subchapter does not apply to or authorize compensation for:

- (1) the destruction or damaging of standing timber or other property in order to provide a firebreak;
- (2) the release of water or breach of impoundments in order to reduce pressure or other danger from actual or threatened flood; or
- (3) contravention of Article I, Section 17, of the Texas Constitution or statutes pertaining to that section. (V.A.C.S. Art. 6889-7, Sec. 12(f).)

[Sections 418.155–418.170 reserved for expansion]

#### SUBCHAPTER H. MISCELLANEOUS PROVISIONS

Sec. 418.171. **QUALIFICATIONS FOR RENDERING AID.** A person who holds a license, certificate, or other permit issued by a state or political subdivision of any state evidencing the meeting of qualifications for professional, mechanical, or other skills may render aid involving the skill in this state to meet an emergency or disaster. This state shall give due consideration to the license, certificate, or other permit. (V.A.C.S. Art. 6889-7, Sec. 9.)

Sec. 418.172. **INSURANCE COVERAGE.** (a) Property damage insurance covering state facilities may be purchased by agencies of the state if necessary to qualify for federal disaster assistance funds.

(b) If sufficient funds are not available for the required insurance, an agency may petition the disaster emergency funding board to purchase the insurance on the agency's behalf. The board may spend money from that fund for that purpose. (V.A.C.S. Art. 6889-7, Sec. 16.)

Sec. 418.173. **PENALTY FOR VIOLATION OF EMERGENCY MANAGEMENT PLAN.** (a) A state, local, or interjurisdictional emergency management plan may provide that failure to comply with the plan or with a rule, order, or ordinance adopted under the plan is an offense.

(b) The plan may prescribe a punishment for the offense but may not prescribe a fine that exceeds \$1,000 or confinement in jail for a term that exceeds 180 days. (V.A.C.S. Art. 6889-7, Sec. 17.)

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## CHAPTER 431. STATE MILITIA

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 431.001. DEFINITIONS. In this chapter:

- (1) "Reserve militia" means the persons liable to serve, but not serving, in the state military forces.
- (2) "State militia" means the state military forces and the reserve militia.
- (3) "State military forces" means the Texas National Guard, the Texas State Guard, and any other active militia or military force organized under state law.
- (4) "Texas National Guard" means the Texas Army National Guard and the Texas Air National Guard. (V.A.C.S. Art. 5765, Sec. 1.)

Sec. 431.002. COMMANDER-IN-CHIEF. (a) The governor is the commander-in-chief of the state military forces, except any portion of those forces in the service of the United States, and has full control and authority over all matters relating to the state military forces, including their organization, equipment, and discipline.

(b) If the governor is unable to perform the duties of commander-in-chief, the adjutant general shall command the state military forces, unless other state law requires the lieutenant governor or the president of the senate to perform the duties of governor. (V.A.C.S. Art. 5765, Sec. 4; Art. 5780, Sec. 2 (part).)

Sec. 431.003. GOVERNOR'S MILITARY STAFF. (a) The governor's military staff consists of:

- (1) the adjutant general;
- (2) the assistant adjutants general;
- (3) one aide-de-camp appointed by the governor from the Texas Army National Guard; and
- (4) one aide-de-camp appointed by the governor from the Texas Air National Guard.

(b) An aide-de-camp may be removed from the position by the governor. While serving, an aide-de-camp may not have a rank above the grade of lieutenant colonel. Service as an aide-de-camp does not make a person ineligible to hold an office of emolument, trust, or honor within the state or to serve as chairman or member of a committee of a political party or organization. (V.A.C.S. Art. 5780, Sec. 4.)

Sec. 431.004. REGULATING STATE MILITARY FORCES. (a) The governor shall make and publish regulations, according to existing military law, to govern the state military forces. The regulations must cover all general orders and forms for the performance of duties of persons in the military service, including the rules governing courts-martial.

(b) The governor, for cause the governor considers good and sufficient, may muster out of the service or reorganize any portion of the Texas National Guard or reserve militia. (V.A.C.S. Art. 5780, Secs. 2 (part), 3 (part).)

Sec. 431.005. LEAVE OF ABSENCE FOR PUBLIC OFFICERS AND EMPLOYEES. (a) A person who is an officer or employee of the state, a municipality, a county, or another political subdivision of the state and who is a member of the state military forces or a reserve component of the armed forces is entitled to leave of absence from the person's duties on a day on which the person is engaged in authorized training or duty ordered or authorized by proper authority. During a leave of absence the person may not be subjected to loss of time, efficiency rating, vacation time, or salary.

(b) Leaves of absence under Subsection (a) may not exceed 15 days in a calendar year, except that a member of the legislature is entitled to pay for all days that the member is absent from a session of the legislature and engaged in training and duty as provided by Subsection (a).

(c) A state employee who is a member of the state military forces or a reserve component of the armed forces and who is ordered to duty by proper authority is entitled, when relieved from duty, to be restored to the position that the employee held when ordered to duty. (V.A.C.S. Art. 5765, Sec. 7.)

Sec. 431.006. REEMPLOYMENT OF PERSON CALLED TO ACTIVE DUTY. (a) A private employer may not terminate the employment of a permanent employee who is a member of the state military forces because the employee is ordered to active duty by proper authority during an emergency within the state. The employee is entitled to return to the same employment held when ordered to active duty. The employee, as soon as practicable after release from duty, must give written or actual notice of intent to return to employment.

(b) A person injured by a violation of this section is entitled to:

- (1) damages in an amount not exceeding six months' compensation at the rate at which the person was compensated when ordered to active duty; and
- (2) reasonable attorney's fees approved by the court.

(c) It is a defense to an action under this section that the employer's circumstances changed while the employee was on active duty to an extent that makes reemployment impossible or unreasonable. (V.A.C.S. Art. 5765, Sec. 7A.)

Sec. 431.007. OATH. (a) A commissioned officer of the state military forces may administer oaths for purposes of military administration. The officer's signature, without seal, and the title of the officer's assignment is prima facie evidence of the officer's authority.

(b) A person appointed, enlisted, or drafted in the state military forces shall take and subscribe an oath in the following form:

"I, \_\_\_\_\_, do solemnly swear that I will bear true faith and allegiance to the State of Texas and to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever, and that I will obey the orders of the governor of Texas, and the orders of the officers appointed over me, according to the laws, rules, and articles for the government of the military forces of the State of Texas." (V.A.C.S. Art. 5766, Sec. 6; Art. 5785.)

Sec. 431.008. COMMISSIONS. (a) A commission in the state military service must be:

- (1) in the name and by authority of the state;
- (2) sealed with the state seal;
- (3) signed by the governor and attested by the secretary of state;
- (4) recorded by the adjutant general in a record book kept in the adjutant general's office for that purpose; and
- (5) conferred without fee.

(b) On the recommendation of the commanding officer of an officer of the state military forces, the governor may confer on the officer a brevet of a grade higher than the ordinary commission or brevet held by the officer, for gallant conduct or meritorious state military service of not less than 25 years.

(c) The governor may confer on an officer in active service in the state military forces who has previously served in the forces of the United States during a war a brevet of a grade equal to the highest grade in which the officer previously served.

(d) A commission under Subsection (b) or (c) carries only the privileges or rights allowed for similar commissions in the military service of the United States.

(e) The governor, without examination, may appoint and confer a brevet of second lieutenant on an enlisted person who has served well and faithfully in the state military forces for 25 years or more. The person shall immediately be placed on the retired list. (V.A.C.S. Art. 5782, Secs. 2, 3, 7.)

Sec. 431.009. MILITARY UNIT AS CORPORATE BODY. (a) A military unit mustered into the state military forces by authority of the governor is, from the time of its muster, a body corporate and politic, and may:

- (1) take, purchase, own in fee simple, hold, transfer, mortgage, pledge, and convey, under its corporate name, real or personal property of a value, when acquired, of not more than \$200,000;

(2) sue and be sued, plead and be impleaded, and prosecute and defend in court under its corporate name;

(3) have and use a common seal in a form it adopts;

(4) adopt bylaws to govern and regulate its affairs, consistent with state law and United States law and the orders and regulations of the governor; and

(5) otherwise act as necessary and proper to carry out its purpose.

(b) The officers of the unit, and in the case of a military band the noncommissioned officers, are its directors. The senior officer is its president.

(c) The power of a unit to hold or handle property is not affected by a natural increase in the property's value after it is acquired. (V.A.C.S. Art. 5780, Sec. 5.)

Sec. 431.010. ORGANIZATION PROHIBITED. (a) Except as provided by Subsection (b), a body of persons other than the regularly organized state military forces or the troops of the United States may not associate as a military company or organization or parade in public with firearms in a municipality of the state.

(b) With the consent of the governor, students in an educational institution at which military science is a prescribed part of the course of instruction and soldiers honorably discharged from the service of the United States may drill and parade with firearms in public.

(c) This section does not prevent a parade by the active militia of another state as provided by law. (V.A.C.S. Art. 5780, Sec. 6.)

Sec. 431.011. FOREIGN TROOPS. A military force from another state, territory, or district, except a force that is part of the United States armed forces, may not enter the state without the permission of the governor. (V.A.C.S. Art. 5786, Sec. 6.)

Sec. 431.012. INTERFERENCE WITH STATE MILITARY FORCES. (a) A person who intentionally hinders, delays, or obstructs or who intentionally attempts to hinder, delay, or obstruct a portion of the state military forces on active duty in the service of the state in performance of a military duty commits an offense. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$100 nor more than \$1,000, by imprisonment for not less than one month nor more than one year, or by both.

(b) The commanding officer of a portion of the state military forces parading or performing a military duty in a street or highway may require a person in the street or highway to yield right-of-way to the forces, except that the commanding officer may not interfere with the carrying of the United States mail, a legitimate function of the police, or the progress or operation of a hospital ambulance or fire department.

(c) During an occasion of duty, a commanding officer may arrest a person who:

(1) trespasses on the campground, parade ground, armory, or other place devoted to the duty;

(2) interrupts or molests the orderly discharge of duty by those under arms; or

(3) disturbs or prevents the passage of troops going to or coming from duty.

(d) The commanding officer may prohibit and abate as a common nuisance a huckster or auction sale or gambling on the post, campground, or place of encampment, parade, or drill under the officer's command. (V.A.C.S. Art. 5766, Sec. 7; Art. 5786, Secs. 3, 4.)

Sec. 431.013. EXPENDITURES. The comptroller may not issue a warrant on the state treasury for money expended under this chapter unless an itemized account for the expenditure is filed in the comptroller's office. The account must:

(1) be sworn to by the person expending the money;

(2) show the time and purpose of the expenditure and for what and by whom the money is expended; and

(3) be approved by the adjutant general and governor before payment. (V.A.C.S. Art. 5765, Sec. 5.)

Sec. 431.014. COMPANY FUND. The commanding officer of each company is the custodian of the company fund. The commanding officer shall:

(1) receive, safely keep, and properly disburse, as the governor may require, the money trusted to the commanding officer's care; and

(2) submit to the adjutant general, on June 30 and December 31 of each year, an itemized statement of money received and disbursed during the preceding six months. (V.A.C.S. Art. 5782, Sec. 4.)

Sec. 431.015. ASSIGNMENT OF PAY. An assignment of pay by an officer or enlisted person is not valid, except as otherwise provided by the governor. (V.A.C.S. Art. 5782, Sec. 8.)

Sec. 431.016. PAY AND OTHER BENEFITS. (a) The state, according to adjutant general regulations, shall make suitable provision for the pay, transportation, subsistence, and quarters of state troops on active state duty.

(b) Pay and benefits received by members of the state military forces under this chapter are not a gratuity, but are compensation for services for which the member bargained as a condition of enlistment and employment. (V.A.C.S. Art. 5783, Secs. 11, 12.)

[Sections 431.017–431.020 reserved for expansion]

#### SUBCHAPTER B. ADJUTANT GENERAL'S DEPARTMENT

Sec. 431.021. DEFINITION. In this subchapter, "department" means the adjutant general's department. (New.)

Sec. 431.022. ADJUTANT GENERAL. (a) The adjutant general is the head of the adjutant general's department and controls the military department of the state. The adjutant general is subordinate only to the governor in matters pertaining to the military department of the state and the state military forces. The adjutant general has the rank of major general.

(b) The adjutant general is appointed by the governor, with the advice and consent of the senate if in session, to a term expiring February 1 of each odd-numbered year. To be qualified for appointment as adjutant general a person must:

(1) when appointed be serving as a federally recognized officer of not less than field grade in the Texas National Guard;

(2) have previously served on active duty or active duty for training with the army or air force; and

(3) have completed at least 10 years' service as a federally recognized commissioned officer with an active unit of the Texas National Guard. (V.A.C.S. Art. 5781, Secs. 1(a), (b); 4 (part).)

Sec. 431.023. APPLICATION OF SUNSET ACT. The adjutant general's department is subject to the Texas Sunset Act (Chapter 325). Unless continued in existence as provided by that Act, the department is abolished and this subchapter expires September 1, 1993. (V.A.C.S. Art. 5781, Sec. 1(c).)

Sec. 431.024. BOND. Before taking office, a person appointed as adjutant general shall enter into a bond that is:

(1) with two or more good and sufficient sureties;

(2) payable to and approved by the governor;

(3) in the amount of \$10,000; and

(4) conditioned on the faithful performance of the duties of the office. (V.A.C.S. Art. 5781, Sec. 2.)

Sec. 431.025. SEAL. The seal of the adjutant general consists of a five-pointed star with "Office of Adjutant General, State of Texas" around the margin. (V.A.C.S. Art. 5781, Sec. 3.)

Sec. 431.026. ASSISTANT ADJUTANTS GENERAL. (a) On recommendation of the adjutant general, the governor shall appoint an assistant adjutant general for army, a deputy assistant adjutant general for army, and an assistant adjutant general for air. To



be qualified for appointment a person must have the qualifications required for appointment as adjutant general under Section 431.022(b).

(b) Before taking office an appointee shall take and subscribe to the oath of office prescribed for officers of the Texas National Guard. This oath shall be filed in the adjutant general's office.

(c) An assistant or deputy assistant adjutant general has the rank of brigadier general and is entitled to the rights, privileges, and immunities granted officers of that rank in the Texas National Guard. The assistant or deputy assistant adjutant general may be removed from office by the governor.

(d) An assistant or deputy assistant adjutant general shall aid the adjutant general by performing assigned duties. If the adjutant general is dead, absent, or unable to act, the assistant adjutant general who is senior in rank shall perform the duties of the adjutant general. (V.A.C.S. Art. 5781, Sec. 11.)

Sec. 431.027. SALARIES. The adjutant general and each assistant adjutant general are entitled to salaries in the amounts designated in a line item in the General Appropriations Act. (V.A.C.S. Art. 5781, Sec. 12.)

Sec. 431.028. EMPLOYEES. The adjutant general may employ clerks, employees, and laborers as necessary to carry on the operations of the department. (V.A.C.S. Art. 5781, Sec. 10.)

Sec. 431.029. GENERAL DUTIES. The adjutant general shall:

(1) perform duties that the governor assigns relating to the military affairs of the state and conduct the business of the department as the governor directs;

(2) perform for the state as near as practicable the duties that pertain to the chiefs of staff of the army and air force and the secretaries of the military services, under regulations and customs of the United States armed forces;

(3) control and supervise the transportation of troops, munitions of war, military equipment and property, and stores in the state;

(4) take custody and charge of books, records, papers, furniture, fixtures, and other property relating to the department;

(5) superintend the preparation of returns and reports required of this state by the United States;

(6) keep a register of all officers of the state militia;

(7) keep in the adjutant general's office records and papers required to be kept and filed in that office;

(8) have printed at state expense, when necessary, state military law and regulations and distribute one copy to each commissioned officer, sheriff, county clerk, and county tax assessor-collector in the state;

(9) issue to each commissioned officer and each headquarters one copy of the necessary textbooks and, as the governor directs, annual reports concerning the militia;

(10) have prepared and issued all necessary blank books, blank forms, and notices required to carry out this chapter; and

(11) establish reasonable and necessary fees for the administration of this subchapter. (V.A.C.S. Art. 5781, Secs. 4 (part), 6 (part), 8 (part).)

Sec. 431.030. PROPERTY. (a) Except as provided by Subsection (b), the adjutant general, for and on behalf of the state, may lease from the Texas National Guard Armory Board a building, its site, and the equipment in it, as provided by Section 435.023, for use as an armory or for another proper purpose. The adjutant general may renew the lease.

(b) If adequate facilities for armory purposes are available for rental from the Texas National Guard Armory Board in or about a municipality, the adjutant general may not lease property in or about the municipality for those purposes from a person other than the board.

(c) If all or part of a state-owned Texas National Guard camp and the land, improvements, buildings, facilities, installations, and personal property connected with the camp

are designated by the adjutant general as surplus or are in excess of the needs of the Texas National Guard or its successors or components, the adjutant general, for and on behalf of the state, may transfer the property to the Texas National Guard Armory Board for administration, sale, or other proper disposal. Before declaring property as surplus and transferring it to the board, the adjutant general may remove, sever, dismantle, or exchange all or part of the property for the use and benefit of the Texas National Guard or its successors.

(d) For the purposes of this section, "lease" includes "sublease." (V.A.C.S. Art. 5781, Secs. 4 (part), 5.)

Sec. 431.031. SUPPLIES. (a) The adjutant general shall:

(1) define and prescribe the kind and amount of supplies to be purchased for state military forces and the duties and powers respecting their purchase;

(2) prescribe general regulations for:

(A) transportation of supplies from the place of purchase to camps, stations, companies, or other necessary places of safekeeping; and

(B) distribution of an adequate and timely supply to commanders of units and to officers entrusted by the regulations with the supplies; and

(3) fix and make reasonable allowance for store rent and storage for safekeeping of the supplies.

(b) The adjutant general may purchase from money appropriated for this purpose and, as the best interests of the service require, keep ready for use or issue to the state military forces a necessary amount of quartermasters', ordnance, subsistence, medical, signal, engineers', and other military supplies. The adjutant general shall have the supplies, whether the property of the United States or the state, properly cared for and kept in good order and ready for use. The adjutant general shall certify and approve accounts that accrue against the state under this chapter, if correct. The claims shall be paid from the state treasury as other claims are paid.

(c) The adjutant general may sell, destroy, or exchange for other military supplies for use of the state military forces, as the adjutant general determines in the best interests of the service, military supplies owned by the state that become unserviceable, obsolete, or unfit for further use, or the supplies may be disposed of in the manner that the governor or adjutant general by regulation or order prescribes. (V.A.C.S. Art. 5781, Secs. 6 (part), 14 (part).)

Sec. 431.032. BIDS. (a) The adjutant general may adopt rules governing the preparation, submission, and opening of bids for contracts under the department.

(b) The adjutant general may require a bid to be accompanied by a good bond in a penal amount that the adjutant general considers appropriate. The bond must be conditioned that the bidder, if awarded the contract, will enter into a contract consistent with the bid not later than the 60th day after the day the bids are opened. The bidder may not withdraw a bid before the 61st day after the day the bids are opened. (V.A.C.S. Art. 5781, Sec. 7.)

Sec. 431.033. REGULATIONS. The adjutant general shall adopt regulations to govern the department and the custody, use, and preservation of records and property relating to the department, whether owned by the United States or the state. The regulations take effect when adopted in the form of routine orders or letters of instruction. (V.A.C.S. Art. 5781, Sec. 8 (part).)

Sec. 431.034. REPORT. The adjutant general annually shall report to the governor. The report shall be delivered to the legislature. The report must include:

(1) a statement of money that the adjutant general has received and the money that the adjutant general has disbursed since the most recent annual report;

(2) an account, to the extent of the adjutant general's knowledge, of all arms, ammunition, and other military property owned by or in possession of the state, the source from which it was received, to whom it is issued, and its present condition;

(3) a statement of the number, condition, and organization of the Texas National Guard and reserve militia; and

(4) suggestions that the adjutant general considers important to the military interests and conditions of the state and the perfection of its military organization. (V.A.C.S. Art. 5781, Sec. 9.)

Sec. 431.035. FUNDS. (a) Except as provided by Subsection (c), funds paid to the department under this subchapter, other than military unit funds authorized by adjutant general rule, shall be deposited in the state treasury to the credit of the general revenue fund.

(b) The department may accept a donation of funds from a private source. The funds may be used only for the purposes specified by the donor.

(c) The adjutant general may accept a donation or transfer of funds from the federal government directly or through another agency or from an agency or political subdivision of the state. The funds shall be deposited with the state treasurer. The funds may be used for the legal purpose of the department set out in the donation or transfer. The state treasurer shall pay out the funds on a properly drawn warrant issued by the comptroller on request of the adjutant general and approval of the governor under regulations adopted by the comptroller. An employee whose salary is paid from these funds is entitled to not less than the federal hourly minimum wage as provided by Section 206, Fair Labor Standards Act of 1938 (29 U.S.C. Section 206). The adjutant general may adopt regulations necessary to control the receipt and disbursement of these funds. (V.A.C.S. Art. 5781, Secs. 14 (part), 15.)

Sec. 431.036. CERTIFICATION OF MILITARY UNITS. On muster of a military unit into the state military forces, the adjutant general shall issue the unit a certificate, in a form prescribed by the adjutant general, stating that the unit has been duly organized according to the laws and regulations of the state military forces and is entitled to the rights, powers, privileges, and immunities conferred by those laws and regulations. The certificate is evidence in a state court that the unit is duly incorporated. (V.A.C.S. Art. 5781, Sec. 13.)

[Sections 431.037–431.040 reserved for expansion]

#### SUBCHAPTER C. TEXAS NATIONAL GUARD

Sec. 431.041. COMPOSITION. (a) The Texas National Guard is composed of:

- (1) the state military forces organized as the Texas National Guard;
- (2) persons held to military duty under state law;
- (3) persons who accept appointment or voluntarily enlist in the Texas National Guard; and
- (4) members of the reserve militia mustered into the Texas National Guard.

(b) The Texas National Guard may not exceed 37,000 officers and enlisted persons except in case of war, insurrection, invasion or the prevention of invasion, the suppression of riot, or the aiding of civil authorities to execute state law. (V.A.C.S. Art. 5780, Sec. 1.)

Sec. 431.042. OFFICERS. (a) An officer of the Texas National Guard is appointed and commissioned by the governor. To be qualified for appointment a person must be a United States and Texas citizen and must be qualified under United States law and regulations. The officer shall take and subscribe the official oath.

(b) An officer is entitled to hold the position until the officer reaches 64 years of age, unless earlier discharged or retired because of:

- (1) resignation;
- (2) administrative regulation;
- (3) individual application;
- (4) disability; or
- (5) cause determined by a court-martial or efficiency board legally convened for that purpose. (V.A.C.S. Art. 5782, Sec. 1.)

Sec. 431.043. **ENLISTMENT AND APPOINTMENT.** Federal law prescribes the terms and conditions of, and the qualifications and requirements for, enlistment and appointment in the Texas State Guard. The governor and legislature may prescribe additional terms, conditions, qualifications, and requirements. (V.A.C.S. Art. 5782, Sec. 5.)

Sec. 431.044. **GOVERNOR'S REGULATIONS.** The governor shall adopt regulations that the governor considers appropriate for the organization of the Texas National Guard in accordance with this chapter. The organization as near as practicable must conform to the organization of the United States armed forces. (V.A.C.S. Art. 5780, Sec. 2 (part).)

Sec. 431.045. **LOCAL GOVERNMENT ASSISTANCE.** (a) In this section, "unit" means a company, squadron-size organization, or separately administered or located platoon or flight of the Texas National Guard.

(b) The governing body of a county or municipality may appropriate a sufficient amount not otherwise appropriated to pay the expenses of a unit located in the county or in or near the municipality. The appropriation may not exceed \$100 a month from each governing body to each unit.

(c) The governing body of a county or municipality, on behalf of the county or municipality, may donate to the Texas National Guard Armory Board, or to a unit for transfer to that board, land for use as a site for an armory or other building suitable for use by a unit. The donation may be in fee simple or otherwise. (V.A.C.S. Art. 5786, Sec. 2.)

[Sections 431.046–431.050 reserved for expansion]

#### SUBCHAPTER D. TEXAS STATE GUARD

Sec. 431.051. **SUPPLEMENTAL MILITIA.** To provide militia strength for use by the state as a supplement to the Texas National Guard, the Texas State Guard exists as part of the state militia under the Second Amendment to the United States Constitution and a defense force under 32 U.S.C. Section 109. (V.A.C.S. Art. 5768, Sec. 1.)

Sec. 431.052. **COMPOSITION.** (a) The Texas State Guard is composed of units the governor considers advisable.

(b) To volunteer for service in the Texas State Guard a person must:

- (1) be a state citizen;
- (2) be at least 17 years of age;
- (3) meet qualifications that the governor prescribes; and

(4) be acceptable to and approved by the governor or adjutant general under the governor's direction. (V.A.C.S. Art. 5768, Sec. 2 (part).)

Sec. 431.053. **ACTIVE DUTY.** (a) The governor may activate and call to active duty all or part of the Texas State Guard. The Texas State Guard, or part of the Texas State Guard, called to active duty has the rights, privileges, duties, functions, and authorities conferred or imposed by law on the state military forces.

(b) A member of the Texas State Guard is subject to serve on active duty at the call and by order of the governor. (V.A.C.S. Art. 5768, Secs. 2 (part), 5.)

Sec. 431.054. **GOVERNOR'S AUTHORITY.** (a) The governor has full control and authority over the Texas State Guard.

(b) The governor may adopt rules and regulations governing enlistment, organization, administration, uniforms, equipment, maintenance, command, training, and discipline of the Texas State Guard. The rules and regulations to the extent practicable and desirable must conform to law, rules, and regulations governing the Texas National Guard. (V.A.C.S. Art. 5768, Sec. 4.)

Sec. 431.055. **OFFICERS.** (a) Officers of the Texas State Guard are appointed, commissioned, and assigned by the governor or under the governor's authority. The governor may remove or reassign an officer.

(b) To be eligible for appointment as a general officer a person must have:

(1) been a federally recognized officer of not less than field grade of the Texas National Guard or a regular or reserve component of the United States Army or Air Force; or

(2) served at least 15 years as a commissioned officer in the state military forces or a regular or reserve component of the United States Army or Air Force. (V.A.C.S. Art. 5768, Secs. 2 (part), 13.)

Sec. 431.056. ASSISTANCE. (a) The governing body of a county or municipality may appropriate a sufficient amount to assist in paying necessary expenses for the administration of a unit of the Texas State Guard located in the county or in or near the municipality. The appropriation may not exceed \$100 a month. A commissioners court, city authority, community, or civic or patriotic organization may provide funds, armories, equipment, material, transportation, or other appropriate services or facilities to the Texas State Guard.

(b) A school authority may permit the Texas State Guard to use a school building.

(c) An appropriation of state funds to the Texas State Guard must be in an amount designated in a line item in the General Appropriations Act. (V.A.C.S. Art. 5768, Secs. 7, 9 (part).)

Sec. 431.057. USE OUTSIDE THE STATE; FRESH PURSUIT FROM OR INTO STATE. (a) Except as provided by Subsections (b) and (c), the Texas State Guard may not be required to serve outside the state.

(b) The governor, on request of the governor of another state, may order all or part of the Texas State Guard to assist the military or police forces of that state that are defending that state. The governor may recall these forces.

(c) If authorized by law of another state, an organization, unit, or detachment of the Texas State Guard, on order of the officer in immediate command, may continue in fresh pursuit of an insurrectionist, a saboteur, an enemy, or enemy forces into that state until the apprehension or capture of the person or forces pursued or until military or police forces of that state or the United States have had a reasonable opportunity to apprehend, capture, or take up the pursuit of the person or forces. The Texas State Guard without unnecessary delay shall surrender a person apprehended or captured in another state to the military or police forces of that state or the United States. This surrender is not a waiver by this state of a right to extradite or prosecute the person for a crime committed in this state.

(d) Military forces of another state may continue a fresh pursuit into this state in the same manner permitted the Texas State Guard for a pursuit into another state under Subsection (c). The military forces of the other state shall without unnecessary delay surrender a person captured or arrested in this state to the military or police forces of this state to be dealt with according to law. This subsection does not prohibit an arrest in this state permitted by other law. (V.A.C.S. Art. 5768, Secs. 10, 11.)

Sec. 431.058. FEDERAL SERVICE. This chapter does not authorize the calling, ordering, or drafting of all or part of the Texas State Guard into military service of the United States, but a person is not exempted by enlistment or commission in the Texas State Guard from military service under United States law. (V.A.C.S. Art. 5768, Sec. 12.)

Sec. 431.059. RECORDS; ARMS; EQUIPMENT. (a) The adjutant general shall maintain and preserve the individual, unit, and organization records of the Texas State Guard and the Texas State Guard Honorary Reserve.

(b) The governor may requisition for use of the Texas State Guard arms and equipment that the United States government possesses and can spare. The governor may make available to the Texas State Guard state armories and their equipment and other available state property. (V.A.C.S. Art. 5768, Secs. 8, 9 (part).)

Sec. 431.060. TEXAS STATE GUARD HONORARY RESERVE. (a) The governor, or another person under the governor's authority and direction, may transfer to the Texas State Guard Honorary Reserve an officer or enlisted person of the Texas State Guard who:

(1) is physically disabled;

- (2) is at least 60 years of age; or
- (3) has served satisfactorily for at least 25 years.

(b) The governor may advance the person one grade or rank at the time of the transfer. (V.A.C.S. Art. 5768, Sec. 6.)

[Sections 431.061–431.070 reserved for expansion]

#### SUBCHAPTER E. RESERVE MILITIA

Sec. 431.071. **MILITARY DUTY.** (a) The reserve militia is not subject to active military duty, except that the governor may call into service the portion of the reserve militia needed for the period required in case of war, insurrection, invasion or prevention of invasion, suppression of riot, tumult, or breach of peace or to aid civil officers to execute law or serve process.

(b) The governor may assign members of the reserve militia who are called into service to existing organizations of the state military forces or organize them as circumstances require. (V.A.C.S. Art. 5766, Sec. 1.)

Sec. 431.072. **COUNTY EMERGENCY BOARD.** The county emergency board of each county consists of the county judge, sheriff, and tax assessor-collector. If one of those officers is unable to act, the governor shall designate another public official to serve on the board. (V.A.C.S. Art. 5766, Sec. 2 (part).)

Sec. 431.073. **DRAFT.** (a) The governor, by order to the county emergency board, shall apportion the number of members of the reserve militia called into service among the counties by draft according to each county's population or by other means the governor directs. The county emergency board shall establish fair and equitable procedures for selection of persons to fill the draft according to regulations adopted by the governor. On completion of the selection, the board shall deliver a list of the persons selected to the governor and notify each person selected of the time and place to appear and report.

(b) A member of the reserve militia while in active service is a member of the state military forces under Section 432.001(16), and is subject to the punitive provisions of Chapter 432. A member who does not appear at the time and place designated by the county emergency board shall be punished as a court-martial directs. (V.A.C.S. Art. 5766, Secs. 2 (part), 3.)

Sec. 431.074. **PENALTY.** (a) A member of a county emergency board who neglects or refuses to perform a duty required by this subchapter commits an offense.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than \$1,000 and confinement in jail for not less than six nor more than 12 months. (V.A.C.S. Art. 5766, Sec. 4.)

[Sections 431.075–431.080 reserved for expansion]

#### SUBCHAPTER F. SERVICE AND DUTIES

Sec. 431.081. **PERSONS SUBJECT TO MILITARY DUTY; PERSONS NOT ELIGIBLE TO ENLIST.** (a) A person is subject to military duty if the person is:

- (1) able-bodied;
- (2) a citizen or a person of foreign birth who has declared an intent to become a citizen;
- (3) a resident of the state;
- (4) at least 18 and not more than 60 years of age; and
- (5) not exempt under Subsection (b) or (c) or United States law.

(b) A person is exempt from military duty, except in case of war, insurrection, invasion, or imminent danger of war, insurrection, or invasion if the person is:

- (1) the lieutenant governor;
- (2) a member or officer of the legislature;

- (3) a judge or clerk of a court of record;
- (4) a head of a state agency;
- (5) a sheriff, district attorney, county attorney, county tax assessor-collector, or county commissioner;
- (6) a mayor, council member, alderman, or assessor and collector of a municipality;
- (7) an officer or employee of the Texas Department of Corrections, a state hospital or special school, a public or private hospital, or a nursing home;
- (8) a member of a regularly organized and paid fire or police department in a municipality, except that a person is not relieved of military duty by joining such a department;
- (9) a minister of the gospel exclusively engaged in that calling; or
- (10) a person who conscientiously scruples against bearing arms.

(c) A mentally disabled person, vagabond, confirmed alcoholic, narcotics addict, or a person convicted of an infamous crime is exempt from military duty regardless of circumstances.

(d) A minor may not enlist without the written consent of the minor's parents or guardian.

(e) A person expelled or dishonorably discharged from state or United States military service is not eligible for enlistment or reenlistment unless the person submits written consent to enlistment from the commanding officer of the organization from which the person was expelled or dishonorably discharged and from the commanding officer who approved the expulsion or issued the dishonorable discharge. (V.A.C.S. Art. 5765, Secs. 2, 3; Art. 5768, Sec. 3; Art. 5782, Sec. 6.)

Sec. 431.082. COMPENSATION. A member of the state military forces called into active service of the state under state statutory or constitutional authority is entitled, during the period of service, to receive pay as established by law for the United States armed forces, except that the pay may not be less than the state per diem authorized in the General Appropriations Act. This pay is an emolument for services and is salary or base pay and may not be reduced because of food, shelter, or transportation that the state furnishes in connection with active service. (V.A.C.S. Art. 5783, Sec. 8.)

Sec. 431.083. TAX EXEMPTION. (a) An officer or enlisted person in the state military forces who complies with the person's military duties as prescribed by this chapter is exempt from payment of a road or street tax.

(b) To obtain the exemption, a person must file in the county tax assessor-collector's office an affidavit, sworn to before a notary public or other person authorized to administer oaths in the state, in the following form:

"I, \_\_\_\_\_, do hereby solemnly swear or affirm that I am a member in good standing of the state military forces of the State of Texas.

Subscribed to and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
SEAL

\_\_\_\_\_  
Notary Public in and for  
\_\_\_\_\_ County, Texas"

(V.A.C.S. Art. 5783, Sec. 9.)

Sec. 431.084. TRAINING. (a) Officers and enlisted persons in the state military forces shall assemble for and undergo drill, instruction, parades, marches, and other training authorized by Title 32, United States Code.

(b) The governor may limit or extend the nature or type of training and provide for other training. (V.A.C.S. Art. 5783, Sec. 7.)

Sec. 431.085. LIABILITY OF MEMBER. (a) A member of the state military forces ordered into active service of the state by proper authority is not civilly liable for an act performed in the discharge of duty.

(b) If a suit is instituted against an officer of the state military forces for an act of the officer in the officer's official capacity in the discharge of duty or against a person acting under the authority, order, or lawfully issued warrant of such an officer, the court shall require the plaintiff to file security for the payment of court costs that may be awarded to the defendant. The defendant in the case may make a general denial and give the special matter in evidence. If the plaintiff is nonsuited or the verdict or judgment is against the plaintiff, the defendant is entitled to recover three times the court costs.

(c) If an officer or member of the state military forces is sued for injury to a person or property occurring in the performance of or attempt to perform a duty required by law, the court shall remove the venue of the case to a court of competent jurisdiction in another county not subject to disqualification if:

(1) the defendant applies for the removal; and

(2) the application is supported by affidavit of two credible persons stating that they have good reason to believe the defendant cannot have a fair and impartial trial before the court. (V.A.C.S. Art. 5765, Sec. 8; Art. 5786, Sec. 1.)

Sec. 431.086. EXEMPTION FROM ARREST. (a) A member of the state military forces may not be arrested, except for treason, felony, or breach of the peace, while the person is going to or coming from a place that the person was required to be for military duty.

(b) This section does not prevent a peace officer from issuing a traffic summons or citation to appear in court at a later date that does not conflict with the member's duty hours. (V.A.C.S. Art. 5783, Sec. 13.)

Sec. 431.087. DUTY TRAVEL. (a) A member of the state military forces going to or coming from a parade, encampment, drill, or other meeting that the member may be required by law to attend, and the member's conveyance and military property, shall be allowed to travel free of charge on a toll road, bridge, or ferry if the member is in uniform and presents an order for duty or the identification that the adjutant general prescribes.

(b) A member of the state military forces who claims a privilege under this section to which the member is not entitled commits an offense. An offense under this section is a misdemeanor punishable by a fine of not less than \$50 nor more than \$200. (V.A.C.S. Art. 5766, Sec. 5.)

Sec. 431.088. VOTING. (a) A unit, force, division, or command of the state military forces that is engaged in regular training on a day on which a primary, general, or special election for a state or federal office is held shall provide time off or arrange duty hours to permit all personnel to vote in the election.

(b) This section does not apply during war, invasion, insurrection, riot, tumult, or imminent danger of one of these situations, or during annual active duty for training not exceeding 15 days. (V.A.C.S. Art. 5766, Sec. 8.)

Sec. 431.089. DISCHARGE. (a) A person may be discharged from the state military forces according to regulations adopted by the adjutant general or to federal law or regulations.

(b) On termination of the appointment of an officer or enlistment of an enlisted person in the state military forces, the officer or enlisted person shall be given a certificate of discharge stating the character of the person's service. (V.A.C.S. Art. 5765, Sec. 6.)

[Sections 431.090–431.100 reserved for expansion]

#### SUBCHAPTER G. DISABILITY OR DEATH IN THE LINE OF MILITARY DUTY

Sec. 431.101. DEFINITIONS. In this subchapter:

(1) "Disability" means injury or illness.

(2) "Military duty" means military service to the state performed:

(A) in case of riot, tumult, breach of the peace, resistance to process, invasion, insurrection, or imminent danger of one of these situations;

(B) on call to aid civil authorities;



(C) while participating in training formation or an activity under order of the commanding officer of the unit; or

(D) while traveling to or from a place of duty for service under Paragraphs (A)-(C). (V.A.C.S. Art. 5783, Sec. 10(a) (part).)

Sec. 431.102. **MEDICAL CARE.** A member of the state military forces who incurs a disability in the line of military duty is entitled, while the disability exists, to receive or be reimbursed for:

(1) hospitalization, and medical and surgical care received in a hospital or at the member's home, appropriate for treatment of the disability; and

(2) necessary transportation related to the treatment. (V.A.C.S. Art. 5783, Secs. 10(a) (part), (b) (part).)

Sec. 431.103. **PAY AND ALLOWANCE.** A member of the state military forces who incurs a disability in the line of military duty is entitled to the same pay and allowance, whether in money or in kind, to which the member was entitled when the disability occurred. This pay and allowance continues until the member recovers from the disability, but not more than one year after the date of the end of the member's tour of duty. (V.A.C.S. Art. 5783, Sec. 10(a) (part).)

Sec. 431.104. **COMPENSATION FOR PERMANENT DISABILITY.** (a) A member of the state military forces whose disability incurred in the line of military duty is permanent is entitled, after payment under Section 431.102 has ceased and in addition to payment and allowance under Section 431.103, to receive compensation based on the person's percentage of total disability. The compensation may not exceed \$440 a month plus 12-<sup>1</sup>/<sub>2</sub> percent of the basic pay of the grade or rank that the person held when the disability was incurred.

(b) The adjutant general shall appoint at least five persons, including at least one officer of the medical corps, as members of a board of officers. The board of officers shall:

(1) determine a person's percentage of disability and award compensation for the disability under this section; and

(2) review each compensation award annually on a date set by the adjutant general to determine whether the award should be continued, increased, reduced, or eliminated. (V.A.C.S. Art. 5783, Sec. 10(b) (part).)

Sec. 431.105. **COMPENSATION FOR DEATH.** (a) The estate of a member of the state military forces who dies as a result of a disability incurred in the line of military duty is entitled to reimbursement for which the person would have been entitled, to the person's accrued pay, allowances, and compensation, and to reimbursement for actual funeral expenses not to exceed \$1,830. The person's surviving spouse is entitled to compensation of \$440 a month plus 12 1/2 percent of the person's basic pay until the surviving spouse dies or remarries.

(b) The person's surviving children are entitled to compensation as provided by Subsection (c) if the person is not survived by a spouse, the person's surviving spouse remarries, or the person's surviving spouse dies, in which case the compensation is payable to the children or their guardian.

(c) Compensation of a surviving child continues until the child becomes 18 years of age or when married, or if the child is still in school, until the child becomes 21 years of age. The amount of the compensation is as follows:

(1) if one eligible child survives, \$280 a month;

(2) if two eligible children survive, \$405 a month divided equally;

(3) if three eligible children survive, \$524 a month divided equally; and

(4) if more than three eligible children survive, \$524 a month plus \$105 a month for each child in excess of three, divided equally.

(d) Compensation and reimbursement under this section and the cost of administering this section shall be paid from funds in the state treasury appropriated to the state military forces in the same manner provided for other expenditure of state funds.

Compensation or reimbursement may not be paid if the claim results from activity related to duty or training under federal law or regulations and federal law or regulations provide for the payment of compensation or reimbursement. (V.A.C.S. Art. 5783, Sec. 10(c).)

Sec. 431.106. **ADMINISTRATION BY ADJUTANT GENERAL.** The adjutant general shall administer this subchapter and adopt rules and regulations necessary to carry it out. The adjutant general, after proper investigation and hearing according to the adjutant general's regulations, shall determine whether a disability or death is in the line of or a result of duty. The adjutant general may make an agreement or contract with another state agency to carry out this subchapter. (V.A.C.S. Art. 5783, Sec. 10(d).)

[Sections 431.107–431.110 reserved for expansion]

#### SUBCHAPTER H. CALLING OF FORCES

Sec. 431.111. **CALLING OF FORCES BY GOVERNOR.** (a) The governor may call all or part of the state military forces to repel or suppress an invasion of or insurrection in or threatened invasion of or insurrection in the state or if the governor considers it necessary to enforce state law. If the number of state military forces is insufficient, the governor shall call the part of the reserve militia that the governor considers necessary.

(b) The governor may call all or part of the state military forces to assist civil authorities in guarding prisoners, conveying prisoners within the state, or executing law as the public interest or safety requires.

(c) The governor may order a commander of a unit of the state military forces to appear at a time and place directed to suppress or prevent tumult, riot, or the actions of a group of persons acting together by force with intent to commit a breach of the peace or violence to a person or property or to otherwise violate state law. (V.A.C.S. Art. 5783, Secs. 1, 2 (part), 5.)

Sec. 431.112. **CALLING OF FORCES BY OTHER OFFICIAL.** If military aid is immediately and urgently necessary to prevent or suppress violence under Section 431.111(c) and it is impracticable to secure the aid in time by order of the governor, the district judge of the judicial district, the sheriff of the county, or the mayor of the municipality in which the disturbance occurs may call for aid on the commanding officer of the state military forces stationed in the judicial district, county, or municipality or an adjacent judicial district, county, or municipality. The officer must make the call in writing and shall immediately notify the governor of the action. (V.A.C.S. Art. 5783, Sec. 2 (part).)

Sec. 431.113. **DUTY OF COMMANDING OFFICER.** (a) On receipt of a call under this subchapter, a commanding officer immediately shall order the called forces under the officer's command to parade at the time and place appointed and shall notify the governor of the action.

(b) After the forces have appeared at the appointed place, the commanding officer shall obey and execute the general instructions of the civil authorities charged by law with the suppression of riot or tumult or the preservation of public peace. The instructions must be in writing, except that if written instructions are impracticable the instructions must be given verbally in the presence of two or more credible witnesses. The commanding officer is solely responsible for determining the kind and extent of force to be used and the method of implementing the instructions. (V.A.C.S. Art. 5783, Secs. 3, 4.)

Sec. 431.114. **SALE OF ARMS.** The commanding officer of forces called to enforce law may order the closing of any place where arms, ammunition, or explosives are sold and forbid the sale, barter, loan, or gift of arms, ammunition, or explosives while forces are on duty in or near that place. (V.A.C.S. Art. 5783, Sec. 6.)

Sec. 431.115. **STATE OF INSURRECTION.** The governor by proclamation may declare any portion of the state where state military forces are serving in aid of the civil authority to be in a state of insurrection, if the governor determines that law and order will be promoted by the declaration. (V.A.C.S. Art. 5786, Sec. 5.)

[Sections 431.116–431.120 reserved for expansion]

#### SUBCHAPTER I. ARMS AND EQUIPMENT

Sec. 431.121. **PROVISION AND STORAGE.** (a) The state shall provide each state military organization with the arms, equipment, instruction and record books, and other supplies necessary for performance of the duties required of the organization by this chapter. The organization shall keep the property in proper repair and good condition.

(b) The governor may draw from the United States government the arms, equipment, munitions, or other military supplies to which the state is entitled for use of the state military forces. The governor may execute bonds in the name of the state as necessary to obtain this property.

(c) The governor shall have arms, equipment, munitions, or other military property owned by or under control of the state stored at places the governor considers in the state's best interests. (V.A.C.S. Art. 5784, Secs. 2, 6, 7.)

Sec. 431.122. **ISSUANCE AND USE.** (a) A person to whom the state issues a uniform or other military property shall give a receipt for the uniform or property. The adjutant general shall prescribe the manner in which the uniform and equipment shall be accounted for and kept.

(b) The uniform or other property may be used only for military purposes. An officer or enlisted person of the state military forces who is responsible to the governor for public property may not lend the property for private use or permit it to be used for a purpose for which it was not intended. (V.A.C.S. Art. 5784, Secs. 1, 8 (part).)

Sec. 431.123. **UNIFORM.** The uniform of the officers and enlisted persons of the state military forces is the uniform prescribed for the United States armed forces with modifications that the governor considers necessary. (V.A.C.S. Art. 5784, Sec. 8 (part).)

Sec. 431.124. **EXEMPTION FROM EXECUTION.** Arms, equipment, clothing, or other military supplies issued by the state to organizations or members of the state military forces for military purposes are exempt from levy and sale because of execution for debt or other legal proceedings. (V.A.C.S. Art. 5784, Sec. 5.)

Sec. 431.125. **SEIZURE.** (a) On affidavit of a credible witness stating that a person unlawfully possesses, and refuses or fails to deliver up, arms, equipment, or other military property issued by the state for use of the state military forces, the governor by warrant shall command the sheriff of the county in which the person resides or is located to seize the arms, equipment, or other military property and keep the property subject to the governor's further order. The sheriff shall immediately execute the warrant and in doing so may invoke the power of the county and summon any convenient command of the state military forces.

(b) Each sheriff from time to time shall collect military arms or property issued by the state that is liable to loss or in the hands of unauthorized persons and safely keep the arms and property subject to order of the governor. The sheriff shall make a report of the collection to the governor. The sheriff's official bond covers faithful performance of duties under this subchapter. (V.A.C.S. Art. 5784, Secs. 3, 4.)

[Sections 431.126–431.130 reserved for expansion]

#### SUBCHAPTER J. AWARDS

Sec. 431.131. **TEXAS LEGISLATIVE MEDAL OF HONOR.** The Texas Legislative Medal of Honor shall be awarded to a member of the state military forces who voluntarily performs a deed of personal bravery or self-sacrifice involving risk of life that is so conspicuous as to clearly distinguish the person for gallantry and intrepidity above the person's comrades. Awarding of the medal shall be considered on the standard of extraordinary merit. The medal may be awarded only on incontestable proof of performance of the deed. (V.A.C.S. Art. 5789, Sec. 2.)

Sec. 431.132. **LONE STAR MEDAL OF VALOR.** The Lone Star Medal of Valor shall be awarded to a member of the military forces of this state, another state, or the United States who performs specific acts of bravery or outstanding courage, or who performs

within an exceptionally short period a closely related series of heroic acts, if the acts involve personal hazard or danger and the voluntary risk of life and result in an accomplishment so exceptional and outstanding as to clearly set the person apart from the person's comrades or from other persons in similar circumstances. Awarding of the medal requires a lesser degree of gallantry than awarding of the Texas Legislative Medal of Honor, but requires that the acts be performed with marked distinction. (V.A.C.S. Art. 5789, Sec. 3.)

Sec. 431.133. **LONE STAR DISTINGUISHED SERVICE MEDAL.** The Lone Star Distinguished Service Medal shall be awarded to a member of the military forces of this state, another state, or the United States for exceptionally outstanding achievement or service to the state in performance of a duty of great responsibility while serving with the state military forces. (V.A.C.S. Art. 5789, Sec. 3A.)

Sec. 431.134. **OTHER AWARDS.** The adjutant general may adopt rules and regulations relating to the:

(1) Texas Faithful Service Medal, which shall be awarded to a member of the state military forces who has completed five years of honorable service during which the person has shown fidelity to duty, efficient service, and great loyalty to the state;

(2) Federal Service Medal, which shall be awarded to a person who was inducted into federal service from the state military forces between June 15, 1940, and January 1, 1946, or after June 1, 1950, if the service was for more than nine months;

(3) Texas Medal of Merit, which may be presented to a member of the military forces of this state, another state, or the United States who performs outstanding service or attains extraordinary achievement in behalf of the state or United States;

(4) Texas Outstanding Service Medal, which may be presented to a member of the military forces of this state, another state, or the United States who has performed service in a superior and clearly outstanding manner; and

(5) Texas State Guard Service Medal, which shall be awarded to a person who completes three consecutive years of honorable service in the Texas State Guard during which the person has shown fidelity to duty, efficient service, and great loyalty to the state. (V.A.C.S. Art. 5789, Sec. 7.)

Sec. 431.135. **RECOMMENDATIONS.** (a) A recommendation for award of the Texas Legislative Medal of Honor, Lone Star Medal of Valor, or Lone Star Distinguished Service Medal shall be forwarded through military channels to the adjutant general. An individual having personal knowledge of an act or achievement or exceptional service believed to warrant the award of one of these medals may submit a letter of recommendation to the adjutant general.

(b) A letter of recommendation for award of the Texas Legislative Medal of Honor or Lone Star Medal of Valor must give an account of the occurrence and statements of eyewitnesses, extracts from official records, sketches, maps, diagrams, or photographs to support and amplify the stated facts.

(c) A letter of recommendation for award of the Lone Star Distinguished Service Medal must give an account of the exceptional service or achievement, facts, and extracts from official documents and photographs to support and amplify the facts.

(d) If the adjutant general determines that a case meets the criteria established by this subchapter for the awarding of one of these medals, the adjutant general shall by endorsement recommend to the governor the awarding of the appropriate medal. (V.A.C.S. Art. 5789, Secs. 5, 5A.)

Sec. 431.136. **AWARDING.** The governor awards the Texas Legislative Medal of Honor only on approval by the legislature by concurrent resolution. The governor awards the Lone Star Medal of Valor and Lone Star Distinguished Service Medal on recommendation of the adjutant general. (V.A.C.S. Art. 5789, Sec. 4.)

Sec. 431.137. **POSTHUMOUS AWARDS.** An award may be made to a person who has died in the same manner as an award to a living person, except the orders and citation must indicate that the award is made posthumously. (V.A.C.S. Art. 5789, Sec. 8.)

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Sec. 431.138. DESIGN; RIBBONS. (a) The adjutant general shall design and have manufactured the medals, awards, decorations, and ribbons awarded under this subchapter.

(b) The adjutant general shall adopt rules and regulations prescribing when a ribbon may be appropriately worn instead of the medal it symbolizes. (V.A.C.S. Art. 5789, Sec. 6.)

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## CHAPTER 432. TEXAS CODE OF MILITARY JUSTICE

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 432.001. DEFINITIONS. In this chapter:

- (1) "Accuser" means a person who signs and swears to charges, who directs that charges nominally be signed and sworn to by another, or who has an interest other than an official interest in the prosecution of the accused.
- (2) "Active state duty" means duty authorized under the constitution and laws of the state and all training authorized under Title 32, United States Code.
- (3) "Commanding officer" includes commissioned officers and warrant officers, as applicable.
- (4) "Convening authority" includes, in addition to the person who convened the court, a commissioned officer commanding temporarily, or a successor in command.
- (5) "Enlisted member" means a person in an enlisted grade.
- (6) "Grade" means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation.
- (7) "Judge advocate" means a commissioned officer who is certified by the state judge advocate general.
- (8) "Legal officer" means a commissioned officer of the state military forces designated to perform legal duties for a command.
- (9) "Military" refers to all or part of the state military forces.
- (10) "Military court" means a court-martial, court of inquiry, military commission, or provost court.
- (11) "Military judge" means an official of a court-martial detailed in accordance with Section 432.045.
- (12) "Officer" means a commissioned or warrant officer.
- (13) "Officer candidate" means a cadet of the state officer candidate school.
- (14) "Rank" means the order of precedence among members of the state military forces.
- (15) "State judge advocate general" means the judge advocate general of the state military forces, commissioned in those forces, and responsible for supervising the administration of military justice in the state military forces, and performing other legal duties required by the adjutant general.
- (16) "State military forces" means the National Guard of this state, as defined in 32 U.S.C. Sections 101(3), (4) and (6), and other militia or military forces organized under the laws of this state.
- (17) "Superior commissioned officer" means a commissioned officer superior in rank or command. (V.A.C.S. Art. 5788, Sec. 1 (part).)

Sec. 432.002. PERSONS SUBJECT TO CHAPTER. This chapter applies to all members of the state military forces who are not in federal service. (V.A.C.S. Art. 5788, Sec. 2.)

Sec. 432.003. JURISDICTION TO TRY CERTAIN PERSONNEL. (a) A person discharged from the state military forces who is later charged with having fraudulently obtained the discharge is, except as provided by Section 432.068, subject to trial by court-martial on that charge and is, after apprehension, subject to this chapter while in custody of the military for that trial. On conviction of that charge the person is subject to trial by court-martial for all offenses under this chapter committed before the fraudulent discharge.

(b) A person who has deserted from the state military forces may not be relieved from amenability to the jurisdiction of this chapter by virtue of a separation from any later period of service. (V.A.C.S. Art. 5788, Sec. 3.)

Sec. 432.004. TERRITORIAL APPLICABILITY OF CHAPTER. (a) This chapter applies in all places and to all persons otherwise subject to this chapter while they are serving outside the state and while they are going to and returning from service outside

the state, in the same manner and to the same extent as if they were serving inside the state.

(b) Courts-martial and courts of inquiry may be convened and held in units of the state military forces while those units are serving outside the state, with the same jurisdiction and power as to persons subject to this chapter as if the proceedings were held inside the state, and offenses committed outside the state may be tried and punished either inside or outside the state. (V.A.C.S. Art. 5788, Sec. 5.)

Sec. 432.005. JUDGE ADVOCATES AND LEGAL OFFICERS. (a) The adjutant general shall appoint an officer of the state military forces as state judge advocate general. To be eligible for appointment, an officer must be a member of the bar of a federal court and of the highest court of this state for at least five years.

(b) The adjutant general shall appoint judge advocates and legal officers on recommendation of the state judge advocate general. To be eligible for appointment, a judge advocate or legal officer must be an officer of the state military forces and a member of the bar of a federal court and of the highest court of this state.

(c) The state judge advocate general or his assistants shall make frequent inspections in the field in supervision of the administration of military justice.

(d) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice. The staff judge advocates or legal officers of a command are entitled to communicate directly with the staff judge advocates or legal officers of a superior or subordinate command or with the state judge advocate general.

(e) A person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer, or who has been a witness for either the prosecution or defense in a case, may not later act as staff judge advocate or legal officer to a reviewing authority on the same case. (V.A.C.S. Art. 5788, Sec. 6.)

[Sections 432.006–432.010 reserved for expansion]

#### SUBCHAPTER B. APPREHENSION AND RESTRAINT

Sec. 432.011. APPREHENSION. (a) In this subchapter, “apprehend” means to take a person into custody.

(b) A person authorized by this chapter or by regulations issued under it to apprehend a person subject to this chapter, a marshal of a court-martial appointed under this chapter, and a peace officer having authority to apprehend offenders under the laws of the United States or of a state, may do so on reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) Commissioned officers, warrant officers, and noncommissioned officers may quell quarrels, frays, and disorders among persons subject to this chapter and apprehend persons subject to this chapter who take part in those activities. (V.A.C.S. Art. 5788, Sec. 7.)

Sec. 432.012. APPREHENSION OF DESERTERS. A civil officer or peace officer having authority to apprehend offenders under the laws of the United States or a state, territory, commonwealth, or possession, or the District of Columbia, may summarily apprehend a deserter from the state military forces and deliver the deserter into the custody of the state military forces. (V.A.C.S. Art. 5788, Sec. 8.)

Sec. 432.013. IMPOSITION OF RESTRAINT. (a) In this subchapter:

(1) “Arrest” means the restraint of a person by an order, not imposed as a punishment for an offense, directing the person to remain within certain specified limits.

(2) “Confinement” means the physical restraint of a person.

(b) An enlisted member may be ordered into arrest or confinement by a commissioned officer by an oral or written order delivered in person, through other persons subject to this chapter, or through a person authorized by this chapter to apprehend persons. A

commanding officer may authorize warrant officers or noncommissioned officers to order enlisted members of his company or subject to his authority into arrest or confinement.

(c) A commissioned officer or warrant officer may be ordered apprehended or into arrest or confinement only by a commanding officer to whose authority he is subject, by an oral or written order delivered in person or by another commissioned officer. The authority to order such persons apprehended or into arrest or confinement may not be delegated.

(d) A person may not be ordered apprehended or into arrest or confinement except for probable cause.

(e) This section does not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until the proper authority may be notified. (V.A.C.S. Art. 5788, Sec. 9.)

Sec. 432.014. **RESTRAINT OF PERSONS CHARGED WITH OFFENSES.** A person subject to this chapter charged with an offense under this chapter shall be ordered into arrest or confinement, as circumstances may require, but if charged with only an offense normally tried by a summary court-martial, the person may not ordinarily be placed in confinement. If a person subject to this chapter is placed in arrest or confinement before trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him. A person confined other than in a guardhouse, whether before, during, or after trial by a military court, shall be confined in a civil jail. (V.A.C.S. Art. 5788, Sec. 10.)

Sec. 432.015. **REPORTS AND RECEIVING OF PRISONERS.** (a) A provost marshal, commander of a guard, master at arms, warden, keeper, or officer of a city or county jail or any other jail designated under Section 432.014 may not refuse to receive or keep a prisoner committed to his charge, when the committing person furnishes a statement, signed by him, of the offense charged against the prisoner.

(b) A commander of a guard, master at arms, warden, keeper, or officer of a city or county jail or of any other jail designated under Section 432.014 to whose charge a prisoner is committed shall, within 24 hours after that commitment or as soon as he is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment. (V.A.C.S. Art. 5788, Sec. 11.)

Sec. 432.016. **PUNISHMENT PROHIBITED BEFORE TRIAL.** Subject to Section 432.093, a person, while being held for trial or the result of trial, may not be subjected to punishment or penalty other than arrest or confinement on the charges pending against the person, nor may the arrest or confinement imposed on the person be more rigorous than the circumstances require to ensure the person's presence, but the person may be subjected to minor punishment during that period for infractions of discipline. (V.A.C.S. Art. 5788, Sec. 13.)

Sec. 432.017. **DELIVERY OF OFFENDERS TO CIVIL AUTHORITIES.** (a) Under regulations prescribed under this chapter a person subject to this chapter who is on active state duty and who is accused of an offense against civil authority may be delivered, on request, to the civil authority for trial.

(b) If delivery under this section is made to a civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender, after having answered to the civil authorities for the offense, on the request of competent military authority, shall be returned to military custody for the completion of the sentence. (V.A.C.S. Art. 5788, Sec. 14.)

[Sections 432.018–432.020 reserved for expansion]

#### SUBCHAPTER C. NONJUDICIAL PUNISHMENT

Sec. 432.021. **COMMANDING OFFICER'S NONJUDICIAL PUNISHMENT.** (a) Under regulations that the governor may prescribe, limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized, the

categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this section to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred on such a demand. However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed on a member of the state military forces under this section if the member, before the imposition of the punishment, has demanded trial by court-martial in lieu of the punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized by this section. If authorized by regulations of the governor, the governor or an officer of general rank in command may delegate the governor's or officer's powers under this section to a principal assistant. If disciplinary punishment other than admonition or reprimand is to be imposed, the accused shall be afforded the opportunity to be represented by defense counsel having the qualifications prescribed under Section 432.046(b), if such a counsel is available. Otherwise, the accused shall be afforded the opportunity to be represented by any available commissioned officer of his choice. The accused may also employ civilian counsel of his own choosing at his own expense. In all proceedings, the accused is allowed three duty days, or longer on written justification, to reply to the notification of intent to impose punishment under this section.

(b) Subject to Subsection (a), a commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

(1) on officers of his command:

(A) restriction to certain specified limits with or without suspension from duty, for not more than 30 days; or

(B) if imposed by the governor, or an officer of general rank in command:

(i) arrest in quarters for not more than 30 days;

(ii) forfeiture of not more than half of one month's pay a month for two months or a fine of not more than \$75;

(iii) restriction to certain specified limits, with or without suspension from duty, for not more than 60 days; or

(iv) detention of not more than half of one month's pay a month for three months; and

(2) on other personnel of his command:

(A) if imposed on a person attached to or embarked in a vessel, confinement for not more than three days;

(B) correctional custody for not more than seven days;

(C) forfeiture of not more than seven days' pay or a fine of not more than \$50;

(D) reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or an officer subordinate to the one who imposes the reduction;

(E) extra duties including fatigue or other duties, for not more than 30 days, which need not be consecutive, and for not more than two hours a day, holidays included;

(F) restriction to certain specified limits, with or without suspension from duty for not more than 14 days;

(G) detention of not more than 14 days' pay; or

(H) if imposed by an officer of the grade of major or above:

(i) the punishment authorized under Subsection (b)(2)(A);

(ii) correctional custody for not more than 30 days;

(iii) forfeiture of not more than half of one month's pay a month for two months or a fine of not more than \$100;

(iv) reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the

reduction or an officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades;

(v) extra duties, including fatigue or other duties, for not more than 45 days which need not be consecutive and for not more than two hours a day, holidays included;

(vi) restriction to certain specified limits with or without suspension from duty, for not more than 60 days; or

(vii) detention of not more than half of one month's pay a month for three months.

(c) Detention of pay shall be for a stated period of not more than one year, but if the offender's term of service expires earlier, the detention shall terminate on that expiration. No two or more of the punishments of arrest in quarters, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount impossible for each. If any of those punishments are combined to run consecutively, there must be an apportionment. In addition, fine or forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this section "correctional custody" means the physical restraint of a person during duty or nonduty hours and may include extra duties, fatigue duties, or hard labor. If practicable, correctional custody may not be required to be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by courts-martial.

(d) An officer in charge may impose on enlisted members assigned to the unit of which he is in charge those of the punishments authorized under Subsections (b)(2)(A)-(G) that the governor specifically prescribes by regulation.

(e) The officer who imposes the punishment authorized in Subsection (b) or his successor in command may at any time suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or fine or forfeiture imposed under Subsection (b), whether or not executed. In addition, the officer may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. The officer may also mitigate reduction in grade to fine or forfeiture or detention of pay. If mitigating arrest in quarters to restriction or extra duties to restriction, the mitigated punishment may not be for a greater period than the punishment mitigated. If mitigating forfeiture of pay to detention of pay, the amount of the detention may not be greater than the amount of the forfeiture. If mitigating reduction in grade to fine, forfeiture, or detention of pay, the amount of the fine, forfeiture, or detention may not be greater than the amount that could have been imposed initially under this section by the officer who imposed the punishment mitigated.

(f) A person punished under this section who considers the punishment unjust or disproportionate to the offense may appeal to the next superior authority through the proper channel. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under Subsection (e) by the officer who imposed the punishment. Before acting on an appeal from a punishment of arrest in quarters for more than seven days, correctional custody for more than seven days, forfeiture of more than seven days' pay, reduction of one or more pay grades from the fourth or a higher pay grade, extra duties for more than 14 days, restriction of more than 14 days' pay, or detention of more than 14 days' pay, the authority who is to act on the appeal shall refer the case to a judge advocate or legal officer of the state military forces for consideration and advice, and may similarly refer the case on appeal from a punishment imposed under Subsection (b).

(g) The imposition and enforcement of disciplinary punishment under this section for an act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission and not properly punishable under this section, but the fact that a disciplinary punishment has been enforced may be shown by the

accused on trial and, when shown, shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(h) The governor by regulation may prescribe the form of records to be kept of proceedings under this section and may require that certain categories of those proceedings be in writing. (V.A.C.S. Art. 5788, Sec. 15.)

[Sections 432.022–432.030 reserved for expansion]

#### SUBCHAPTER D. COURTS-MARTIAL

Sec. 432.031. COURTS-MARTIAL CLASSIFIED. The three kinds of courts-martial in each of the state military forces are:

(1) general court-martial, consisting of:

(A) a military judge and not fewer than five members; or

(B) only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests in writing a court composed only of a military judge and the military judge approves;

(2) special court-martial, consisting of:

(A) not fewer than three members; or

(B) a military judge and not fewer than three members; or

(C) only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in Subdivision (1)(B) requests; and

(3) summary court-martial, consisting of one officer, who must be a military judge or an attorney licensed to practice law in this state. (V.A.C.S. Art. 5788, Sec. 16.)

Sec. 432.032. JURISDICTION OF COURT-MARTIAL IN GENERAL. Each force of the state military forces has court-martial jurisdiction over all persons subject to this chapter. The exercise of jurisdiction by one force over personnel of another force shall be in accordance with regulations prescribed by the governor. (V.A.C.S. Art. 5788, Sec. 17.)

Sec. 432.033. JURISDICTION OF GENERAL COURT-MARTIAL. (a) Subject to Section 432.032, a general court-martial has jurisdiction to try a person subject to this chapter for any offense made punishable by this chapter and may, under limitations the governor prescribes, adjudge any of the following punishments:

(1) a fine of not more than \$200 or confinement for not more than 200 days;

(2) forfeiture of pay and allowances;

(3) reprimand;

(4) dismissal or dishonorable discharge;

(5) reduction of a noncommissioned officer to the ranks; or

(6) any combination of those punishments.

(b) A dismissal or dishonorable discharge may not be adjudged unless a complete record of the proceedings and testimony is made, counsel having the qualifications prescribed under Section 432.046(b) is detailed to represent the accused, and a military judge is detailed to the trial. (V.A.C.S. Art. 5788, Sec. 18.)

Sec. 432.034. JURISDICTION OF SPECIAL COURT-MARTIAL. (a) Subject to Section 432.032, a special court-martial has jurisdiction to try a person subject to this chapter, except a commissioned officer, for any offense for which he may be punished under this chapter. A special court-martial has the same powers of punishment as a general court-martial, except that a special court-martial may not impose more than a \$100 fine or confinement of more than 100 days for a single offense.

(b) A dismissal or dishonorable discharge may not be adjudged unless a complete record of the proceedings and testimony is made, counsel having the qualifications prescribed under Section 432.046(b) is detailed to represent the accused, and a military judge is detailed to the trial, except in a case in which a military judge cannot be detailed to the trial because of physical conditions or military exigencies. In a case in which a

military judge is not detailed to the trial, the convening authority shall make a detailed written statement, to be appended to the record, stating the reason a military judge could not be detailed. (V.A.C.S. Art. 5788, Sec. 19.)

Sec. 432.035. JURISDICTION OF SUMMARY COURT-MARTIAL. (a) Subject to Section 432.032, a summary court-martial has jurisdiction to try persons subject to this chapter, except officers, for any offense made punishable by this chapter.

(b) A person of whom a summary court-martial has jurisdiction may not be brought to trial before a summary court-martial if the person objects. If an accused objects to trial by summary court-martial, trial may be ordered by special or general court-martial, as appropriate.

(c) A summary court-martial may sentence a person to pay a fine of not more than \$25 or confinement for not more than 25 days for a single offense, to forfeiture of pay and allowances, and to reduction of a noncommissioned officer to the ranks. (V.A.C.S. Art. 5788, Sec. 20.)

Sec. 432.036. JURISDICTION OF COURT-MARTIAL NOT EXCLUSIVE. The provisions of this chapter conferring jurisdiction on courts-martial do not deprive military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by military commissions, provost courts, or other military tribunals. (V.A.C.S. Art. 5788, Sec. 21.)

[Sections 432.037–432.040 reserved for expansion]

#### SUBCHAPTER E. COMPOSITION OF COURTS-MARTIAL

Sec. 432.041. WHO MAY CONVENE GENERAL COURT-MARTIAL. In the militia or state military forces not in federal service a general court-martial may be convened by:

(1) the governor; or

(2) the adjutant general or any other general officer under regulations the governor may adopt. (V.A.C.S. Art. 5788, Sec. 22.)

Sec. 432.042. WHO MAY CONVENE SPECIAL COURT-MARTIAL. In the state military forces not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a division, brigade, regiment, wing, group, detached battalion, separate squadron, or other detached command, may convene a special court-martial. Special courts-martial may also be convened by superior authority. If such an officer is an accuser, the court may be convened by superior competent authority if considered advisable by him. (V.A.C.S. Art. 5788, Sec. 23.)

Sec. 432.043. WHO MAY CONVENE SUMMARY COURT-MARTIAL. In the state military forces not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a regiment, wing, group, detached battalion, detached squadron, detached company, or other detachment, may convene a summary court-martial. (V.A.C.S. Art. 5788, Sec. 24.)

Sec. 432.044. WHO MAY SERVE ON COURT-MARTIAL. (a) A state commissioned officer in a duty status is eligible to serve on a court-martial for the trial of a person who may lawfully be brought before the court for trial.

(b) A warrant officer in a state duty status is eligible to serve on general and special courts-martial for the trial of a person, other than a commissioned officer, who may lawfully be brought before the courts for trial.

(c) An enlisted member of the state military forces in a state duty status who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of an enlisted member of the state military forces who may lawfully be brought before the court for trial if, before the conclusion of a session called by the military judge under Section 432.064(a) before trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which

does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible members cannot be obtained because of physical conditions or military exigencies. If a sufficient number of enlisted members cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained. In this subsection, "unit" means a regularly organized body of the state military forces.

(d) If it can be avoided, a person subject to this chapter may not be tried by a court-martial, a member of which is junior to him in rank or grade. On convening a court-martial, the convening authority shall detail as members of the court-martial members of the state military forces that, in his opinion, are best qualified for the duty because of age, education, training, experience, length of service, and judicial temperament. A member of the state military forces is not eligible to serve as a member of a general or special court-martial if the member is the accuser or a witness for the prosecution or has acted as investigating officer or counsel in the same case. (V.A.C.S. Art. 5788, Sec. 25.)

Sec. 432.045. MILITARY JUDGE OF COURT-MARTIAL. (a) The authority convening a general court-martial shall, and, subject to regulations issued by the governor, the authority convening a special or summary court-martial may, detail a military judge to the court-martial. A military judge shall preside over open sessions of the court-martial to which the judge has been detailed.

(b) A military judge must be a commissioned officer of the state military forces, a member of the bar of a federal court, a member of the bar of the highest court of this state, and certified to be qualified for duty as a military judge by the state judge advocate general of the state military forces.

(c) The military judge of a general court-martial shall be designated by the state judge advocate general or his designee for detail by the convening authority, and unless the court-martial was convened by the governor or the adjutant general, neither the convening authority nor a member of his staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge's performance of duty as a military judge.

(d) A person who is the accuser or a witness for the prosecution or has acted as investigating officer or counsel in a case is not eligible to act as military judge in the case.

(e) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court.

(f) A military judge detailed to preside over a court-martial is not subject to any report by the convening authority concerning the effectiveness, fitness, or efficiency of that military judge that relates to performance of duty as a military judge, nor any member of his staff.

(g) A trial counsel, defense counsel, military judge, legal officer, summary court officer, or any other person certified by the state judge advocate general to perform legal functions under this chapter shall be used interchangeably, as needed, among all of the state military forces. (V.A.C.S. Art. 5788, Sec. 26.)

Sec. 432.046. DETAIL OF TRIAL COUNSEL AND DEFENSE COUNSEL. (a) The authority convening each general, special, or summary court-martial shall detail trial counsel, defense counsel, and assistants that the authority considers appropriate. A person who has acted as investigating officer, military judge, or court member in a case may not act later as trial counsel or assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. A person who has acted for the prosecution may not act later in the same case for the defense, nor may a person who has acted for the defense act later in the same case for the prosecution.

(b) Trial counsel or defense counsel detailed for a general court-martial must be:

- (1) a graduate of an accredited law school;
- (2) a member of the bar of a federal court or of the highest court of a state; and



(3) certified as competent to perform those duties by the state judge advocate general.

(c) In the case of a special or summary court-martial the accused shall be afforded the opportunity to be represented at the trial by counsel having the qualifications prescribed under Subsection (b) unless counsel having those qualifications cannot be obtained because of physical conditions or military exigencies. If counsel having those qualifications cannot be obtained, the court may be convened and the trial held, but the convening authority shall make a detailed written statement, to be appended to the record, stating why counsel with those qualifications could not be obtained. If the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified. If the trial counsel is a judge advocate or a member of the bar of a federal court or the highest court of a state, the defense counsel detailed by the convening authority must be a judge advocate or a member of the bar of a federal court or the highest court of a state. (V.A.C.S. Art. 5788, Sec. 27.)

Sec. 432.047. **DETAIL OR EMPLOYMENT OF REPORTERS AND INTERPRETERS.** Under regulations that the governor prescribes, the convening authority of a general or special court-martial, military commission, court of inquiry, or a military tribunal:

(1) shall detail or employ qualified court reporters who shall record the proceedings of and testimony taken before that court, commission, or tribunal; and

(2) may detail or employ interpreters who shall interpret for the court, commission, or tribunal. (V.A.C.S. Art. 5788, Sec. 28.)

Sec. 432.048. **ABSENT AND ADDITIONAL MEMBERS.** (a) A member of a general or special court-martial may not be absent or excused after the court has been assembled for the trial of the accused except for physical disability or as the result of a challenge or by order of the convening authority for good cause.

(b) If a general court-martial, other than a general court-martial composed of a military judge only, is reduced below five members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not fewer than five members. The trial may proceed with the new members present after the recorded evidence previously introduced has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(c) If a special court-martial, other than a special court-martial composed of a military judge only, is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not fewer than three members. The trial shall proceed with the new members present as if no evidence had previously been introduced at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a stipulation of that evidence is read to the court in the presence of the military judge, if any, the accused, and counsel for both sides.

(d) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of Section 432.031(1)(B) or (2)(C), after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or stipulation of that evidence is read in court in the presence of the new military judge, the accused, and counsel for both sides. (V.A.C.S. Art. 5788, Sec. 29.)

[Sections 432.049–432.050 reserved for expansion]

#### SUBCHAPTER F. PRETRIAL PROCEDURE

Sec. 432.051. **CHARGES AND SPECIFICATIONS.** (a) Charges and specifications must be signed by a person subject to this chapter, under oath, and before a commissioned officer of the state military force authorized to administer oaths, and must state that:

(1) the signer has personal knowledge of, or has investigated, the matters set forth; and

(2) the matters set forth are true in fact to the best of the signer's knowledge and belief.

(b) On the preferring of charges, the proper authority shall take immediate steps to determine the disposition that should be made in the interest of justice and discipline, and the person accused shall be informed of the charges as soon as practicable. (V.A.C.S. Art. 5788, Sec. 30.)

Sec. 432.052. **COMPULSORY SELF-INCRIMINATION PROHIBITED.** (a) A person subject to this chapter may not compel any person to incriminate himself or to answer a question the answer to which may tend to incriminate him.

(b) A person subject to this chapter may not interrogate or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) A person subject to this chapter may not compel any person to make a statement or produce evidence before a military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) A statement obtained from a person in violation of this section, or through the use of coercion, unlawful influence, or unlawful inducement, may not be received in evidence against the person in a trial by court-martial. (V.A.C.S. Art. 5788, Sec. 31.)

Sec. 432.053. **INVESTIGATION.** (a) A charge or specification may not be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth has been made. This investigation must include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition that should be made of the case in the interest of justice and discipline.

(b) The accused is entitled to be advised of the charges against him and of his right to be represented at that investigation by counsel. On the accused's own request, he is entitled to be represented by civilian counsel if provided by him, or by military counsel of his own selection if that counsel is reasonably available, or by counsel detailed by the officer exercising general court-martial jurisdiction over the command. At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides, and a copy shall be given to the accused.

(c) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in Subsection (b), further investigation of that charge is not necessary under this section unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

(d) The requirements of this section are binding on all persons administering this chapter but failure to follow them does not constitute jurisdictional error. (V.A.C.S. Art. 5788, Sec. 32.)

Sec. 432.054. **FORWARDING OF CHARGES.** (a) If a person is held for trial by general court-martial, the commanding officer shall, not later than the eighth day after the date the accused is ordered into arrest or confinement, forward the charges, together with the investigation and allied papers, to the officer exercising general court-martial jurisdiction.

(b) If compliance with Subsection (a) is not practicable, the commanding officer shall instead report in writing to that officer the reasons for delay. (V.A.C.S. Art. 5788, Sec. 33.)

Sec. 432.055. **ADVICE OF STAFF JUDGE ADVOCATE AND REFERENCE FOR TRIAL.** (a) Before directing the trial of a charge by general court-martial, the convening authority shall refer it to the authority's staff judge advocate or legal officer for consideration and advice. The convening authority may not refer a charge to a general court-martial for trial unless the authority has found that the charge alleges an offense under this chapter and is warranted by evidence indicated in the report of investigation.

(b) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections and changes in the charges and specifications that are needed to make them conform to the evidence may be made. (V.A.C.S. Art. 5788, Sec. 34.)

Sec. 432.056. **SERVICE OF CHARGES.** (a) The trial counsel to whom court-martial charges are referred for trial shall cause to be served on the accused a copy of the charges on which trial is to be had.

(b) In time of peace a person may not be brought to trial against his objections or be required to participate by himself or counsel in a session called by the military judge under Section 432.064(a) in a general court-martial case within five days after the date of service of charges on him, or in a special court-martial case within three days after the date of service of charges on him. (V.A.C.S. Art. 5788, Sec. 35.)

[Sections 432.057–432.060 reserved for expansion]

#### SUBCHAPTER G. TRIAL PROCEDURE

Sec. 432.061. **PROCEDURE.** The procedure, including modes of proof, in cases before military courts and other military tribunals may by regulations be prescribed by the governor. The regulations, so far as the governor considers practicable, must conform to the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the courts of the state but may not be contrary to or inconsistent with this chapter. (V.A.C.S. Art. 5788, Sec. 36.)

Sec. 432.062. **UNLAWFULLY INFLUENCING ACTION OF COURT.** (a) An authority convening a general, special, or summary court-martial, another commanding officer, or officer serving one of their staffs may not censure, reprimand, or admonish the court, a court member, military judge, or counsel of the court with respect to the findings or sentence adjudged by the court or with respect to another exercise of its or his functions in the conduct of the proceeding.

(b) A person subject to this chapter may not attempt to coerce or by unauthorized means influence the action of the court-martial or another military tribunal or a member of the tribunal in reaching the findings or sentence in a case or the action of a convening, approving, or reviewing authority with respect to his judicial acts.

(c) Subsections (a) and (b) do not apply to:

(1) general instructional or informational courses in military justice if the courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of court-martial; or

(2) statements and instructions given in open court by the military judge, president of a special court-martial, or counsel.

(d) In the preparation of an effectiveness, fitness, or efficiency report, or another report or document used in whole or part for determining whether a member of the state military forces is qualified to be advanced in grade, in determining the assignment or transfer of a member of the state military forces, or in determining whether a member of the state military forces should be retained on duty, a person subject to this chapter may not:

(1) consider or evaluate the performance of duty of the member as a member of a court-martial; or

(2) give a less favorable rating or evaluation of a member of the state military forces because of the zeal with which the member, as counsel, represented an accused before a court-martial. (V.A.C.S. Art. 5788, Sec. 37.)

Sec. 432.063. DUTIES OF TRIAL COUNSEL AND DEFENSE COUNSEL. (a) The trial counsel of a general or special court-martial shall prosecute in the name of the state and shall, under the direction of the court, prepare the record of the proceedings.

(b) The accused has the right to be represented in his defense before a general, special, or summary court-martial by civilian counsel if provided by him, or by military counsel of his own selection if reasonably available, or by the defense counsel detailed under Section 432.046. If the accused has counsel of his own selection, the defense counsel, and assistant defense counsel, if any, who were detailed, shall, if the accused so desires, act as his associate counsel; otherwise they shall be excused by the military judge or by the president of a court-martial without a military judge.

(c) In every court-martial proceeding, the defense counsel, in the event of conviction, may forward for attachment to the record of proceedings, a brief of the matters the counsel feels should be considered in behalf of the accused on review, including any objection to the contents of the record that the counsel considers appropriate.

(d) An assistant trial counsel of a general court-martial, under the direction of the trial counsel or if he is qualified to be a trial counsel as required by Section 432.046, may perform any duty imposed on the trial counsel of the court by law, regulation, or the custom of the service. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by Section 432.046, may perform any duty imposed on counsel for the accused by law, regulation, or the custom of the service. (V.A.C.S. Art. 5788, Sec. 38.)

Sec. 432.064. SESSIONS. (a) At any time after the service of charges that have been referred for trial to a court-martial composed of a military judge and members, the military judge, subject to Section 432.056, may call the court into session without the presence of the members for the purpose of:

(1) hearing and determining motions raising defenses or objections that are capable of determination without trial of the issues raised by a plea of not guilty;

(2) hearing and ruling on matters that may be ruled on by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(3) holding the arraignment and receiving the pleas of the accused if permitted by regulations of the governor; and

(4) performing any other procedural function that may be performed by the military judge under this chapter or under rules prescribed pursuant to Section 432.061 and that does not require the presence of the members of the court.

(b) Proceedings under this section shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record.

(c) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and in cases in which a military judge has been detailed to the court, the military judge. (V.A.C.S. Art. 5788, Sec. 39.)

Sec. 432.065. CONTINUANCES. The military judge or a court-martial without a military judge may, for reasonable cause, grant a continuance to a party for the period, and as often, as may appear to be just. (V.A.C.S. Art. 5788, Sec. 40.)

Sec. 432.066. CHALLENGES. (a) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge, or, if none, the court, shall determine the relevancy and validity of challenges for cause and may not receive a challenge to more

than one person at a time. Challenges by trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(b) Each accused and the trial counsel are entitled to one preemptory challenge, but the military judge may not be challenged except for cause. (V.A.C.S. Art. 5788, Sec. 41.)

Sec. 432.067. OATHS. Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The oath or affirmation shall be taken in the presence of the accused, and shall read as follows:

(1) for court members: "You, \_\_\_\_\_, do swear (or affirm) that you will faithfully perform all the duties incumbent upon you as a member of this court; that you will faithfully and impartially try, according to the evidence, your conscience, and the laws and regulations provided for trials by courts-martial, the case of (the) (each) accused now before this court; and that if any doubt should arise not explained by the laws and regulations, then according to the best of your understanding and the customs of the service in like cases; that you will not divulge the findings and sentence in any case until they shall have been duly announced by the court; and that you will not disclose or discover the vote or opinion of any particular member of the court upon a challenge or upon the findings or sentence unless required to do so before a court of justice in due course of law. So help you God."

(2) for a military judge: "You, \_\_\_\_\_, do swear (or affirm) that you will faithfully and impartially perform, according to your conscience and the laws and regulations provided for trials by courts-martial, all the duties incumbent upon you as military judge of this court; that if any doubt should arise not explained by the laws and regulations, then according to the best of your understanding and the customs of the service in like cases; and that you will not divulge the findings or sentence in any case until they shall have been duly announced by the court. So help you God."

(3) for a trial counsel and assistant trial counsel: "You, \_\_\_\_\_ (and) \_\_\_\_\_, do swear (or affirm) that you will faithfully perform the duties of trial counsel and will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed. So help you God."

(4) for defense counsel and assistant defense counsel: "You, \_\_\_\_\_ (and) \_\_\_\_\_, do swear (or affirm) that you will faithfully perform the duties of defense (and individual) counsel and will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed. So help you God."

(5) for a court of inquiry:

(A) the recorder of a court of inquiry shall administer to the members the following oath: "You shall well and truly examine and inquire, according to the evidence, into the matter now before you without partiality, favor, affection, prejudice, or hope of reward. So help you God."

(B) then the president of the court shall administer to the recorder the following oath: "You do swear that you will according to your best abilities accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you God."

(6) all persons who give evidence before a court-martial or court of inquiry shall be examined on oath administered by the presiding officer in the following form: "You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God."

(7) for a reporter or interpreter: "You swear (or affirm) that you will faithfully perform the duties of reporter (or interpreter) to this court. So help you God." (V.A.C.S. Art. 5788, Sec. 42.)

Sec. 432.068. LIMITATIONS. (a) A person charged with desertion or absence without leave in time of war, aiding the enemy, or mutiny may be tried and punished at any time without limitation.

(b) A person charged with desertion in time of peace or with an offense punishable under Sections 432.157, 432.158, or 432.159 is not liable to be tried by court-martial if the offense was committed more than three years before the date of receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(c) A person charged with any offense is not liable to be tried by court-martial or punished under Section 432.021 if the offense was committed more than two years before the date of receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command, or before the imposition of punishment under Section 432.021.

(d) A period in which the accused is absent from territory in which the state has the authority to apprehend him, is in the custody of civil authorities, or is in the hands of the enemy is excluded in computing the period of limitation prescribed by this section. (V.A.C.S. Art. 5788, Sec. 43.)

Sec. 432.069. FORMER JEOPARDY. (a) A person may not be tried a second time in a military court of the state for the same offense.

(b) A proceeding in which an accused has been found guilty by a court-martial on a charge or specification is not a trial for the purposes of this section until the finding of guilty has become final after review of the case has been fully completed.

(c) A proceeding that, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without fault of the accused is a trial for the purposes of this section. (V.A.C.S. Art. 5788, Sec. 44.)

Sec. 432.070. PLEAS OF ACCUSED. (a) If an accused after arraignment makes an irregular pleading or after a plea of guilty sets up matter inconsistent with the plea, if it appears that the accused has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though the accused had pleaded not guilty.

(b) With respect to a charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge, or by a court-martial without a military judge, a finding of guilty on the charge or specification may, if permitted by regulations of the governor, be entered immediately without vote. This finding constitutes the finding of the court unless the plea of guilty is withdrawn before the announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty. (V.A.C.S. Art. 5788, Sec. 45.)

Sec. 432.071. OPPORTUNITY TO OBTAIN WITNESSES AND OTHER EVIDENCE. (a) The trial counsel, defense counsel, accused, and court-martial have equal opportunity to obtain witnesses and other evidence. Each has the right of compulsory process for obtaining witnesses.

(b) The presiding officer of a court-martial may:

(1) issue a warrant for the arrest of an accused person who, having been served with a warrant and a copy of the charges, disobeys a written order by the convening authority to appear before the court;

(2) issue subpoenas duces tecum and other subpoenas;

(3) enforce by attachment the attendance of witnesses and the production of books and papers; and

(4) sentence for refusal to be sworn or to answer as provided in actions before civil courts of the state.

(c) Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence runs to any part of the state and shall be executed by civil officers or peace officers as described by the laws of the state. (V.A.C.S. Art. 5788, Sec. 46.)

Sec. 432.072. REFUSAL TO APPEAR OR TESTIFY. (a) A person not subject to this chapter commits an offense if the person:

(1) has been duly subpoenaed to appear as a witness or to produce books and records before a military court or before a military or civil officer or peace officer designated to take a deposition to be read in evidence before a court;

(2) has been duly paid or tendered by the adjutant general's department the fees and mileage of a witness at the rates allowed to witnesses under Section 432.192; and

(3) wilfully neglects or refuses to appear, qualify as a witness, testify, or produce evidence that the person may have been legally subpoenaed to produce.

(b) An offense under this section is punishable by fine not to exceed \$1,000 or confinement not to exceed 60 days in jail, or by both. The witness may be prosecuted in the appropriate county court.

(c) The appropriate prosecuting official for the state in a county court having jurisdiction where the military proceeding was convened, on submission of a complaint to the official by the presiding officer of a military court, commission, court of inquiry, or board, shall file an information against and prosecute a person violating this section. (V.A.C.S. Art. 5788, Sec. 47.)

Sec. 432.073. CONTEMPT. A military court may punish for contempt a person who uses a menacing word, sign, or gesture in its presence, or who disturbs its proceedings by riot or disorder. Punishment may not exceed confinement for 30 days and a fine of \$100. (V.A.C.S. Art. 5788, Sec. 48.)

Sec. 432.074. DEPOSITIONS. (a) At any time after charges have been signed, as provided in Section 432.051, a party may take oral or written depositions unless the military judge, a court-martial without a military judge hearing the case, or, if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, the authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

(b) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(c) Depositions may be taken before and authenticated by any military or civil officer authorized to administer oaths by laws of the state or by the laws of the place where the deposition is taken.

(d) A duly authenticated deposition taken on reasonable notice to the other parties, to the extent otherwise admissible under the rules of evidence, may be read in evidence before a military court or commission, or in a proceeding before a court of inquiry or military board, if it appears that:

(1) the witness resides or is beyond the state in which the court-martial or court of inquiry is ordered to sit, or more than 100 miles from the place of trial or hearing;

(2) the witness because of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(3) the present location of the witness is unknown. (V.A.C.S. Art. 5788, Sec. 49.)

Sec. 432.075. ADMISSIBILITY OF RECORDS OF COURTS OF INQUIRY. (a) In a case not extending to the dismissal of a commissioned officer, the sworn testimony contained in the duly authenticated record of proceedings of a court of inquiry of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by a party before a court-martial if the accused was a party before the court of inquiry and the same issue was involved or if the accused consents to the introduction of the evidence.

(b) The testimony may be read in evidence only by the defense in cases extending to the dismissal of a commissioned officer.

(c) The testimony may also be read in evidence before a court of inquiry or a military board.

(d) In all courts of inquiry both enlisted men and officers have the right to counsel and the right to cross examination of all witnesses. (V.A.C.S. Art. 5788, Sec. 50.)

Sec. 432.076. VOTING AND RULINGS. (a) Voting by members of a general or special court-martial on the findings or sentence, and by members of a court-martial without a military judge upon questions of challenge, must be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall immediately announce the result of the ballot to the members of the court.

(b) The military judge and, except for questions of challenge, the president of a court-martial without a military judge shall rule on all questions of law and interlocutory questions arising during the proceedings. A ruling made by the military judge on a question of law or interlocutory question other than the factual issue of mental responsibility of the accused, or by the president of a court-martial without a military judge on a question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court. However, the military judge or the president of a court-martial without a military judge may change the ruling at any time during the trial. Unless the ruling is final, if a member objects to it the court shall be cleared and closed and the question decided by a voice vote as provided by Section 432.077 beginning with the junior in rank.

(c) Before a vote is taken on the findings, the military judge or the president of a court-martial without a military judge, in the presence of the accused and counsel, shall instruct the members of the court as to the elements of the offense and charge them that:

(1) the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

(3) if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is not a reasonable doubt; and

(4) the burden of proof of establishing the guilt of the accused beyond reasonable doubt is on the state.

(d) Subsections (a), (b), and (c) do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall on request find the facts specially. If an opinion or memorandum of decision is filed, it is sufficient if the findings of fact appear in that document. (V.A.C.S. Art. 5788, Sec. 51.)

Sec. 432.077. NUMBER OF VOTES REQUIRED. (a) A person may be convicted of an offense only by the concurrence of two-thirds of the members present when the vote is taken.

(b) All sentences shall be determined by the concurrence of two-thirds of the members present at the time the vote is taken.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote. A tie vote on a challenge disqualifies the member challenged, but a determination to reconsider a finding of guilty or to reconsider a sentence for the purpose of reducing it may be made by a lesser vote that indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused. (V.A.C.S. Art. 5788, Sec. 52.)

Sec. 432.078. COURT-MARTIAL TO ANNOUNCE ACTION. A court-martial shall announce its findings and sentence to the parties as soon as determined. (V.A.C.S. Art. 5788, Sec. 53.)

Sec. 432.079. RECORD OF TRIAL. (a) Each general court-martial shall keep a separate record of the proceedings of the trial of each case brought before it. The record



must be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge because of the judge's death, disability, or absence, it must be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it because of the counsel's death, disability, or absence. In a court-martial consisting of only a military judge, the record must be authenticated by the court reporter under the same conditions that would impose that duty on a member under this subsection. If the proceedings have resulted in an acquittal of all charges and specifications or, if not affecting a general or flag officer, in a sentence not including discharge and not in excess of that which may otherwise be adjudged by a special court-martial, the record must contain the matters prescribed by regulations of the governor.

(b) Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record must contain the matter and be authenticated in the manner prescribed by regulations of the governor.

(c) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated. (V.A.C.S. Art. 5788, Sec. 54.)

[Sections 432.080–432.090 reserved for expansion]

#### SUBCHAPTER H. SENTENCES

Sec. 432.091. **CRUEL AND UNUSUAL PUNISHMENTS PROHIBITED.** Punishment by flogging, branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted on any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited. (V.A.C.S. Art. 5788, Sec. 55.)

Sec. 432.092. **LIMITS.** The punishment that a court-martial may direct for an offense may not exceed the limits prescribed by this chapter nor limits prescribed by the governor. (V.A.C.S. Art. 5788, Sec. 56.)

Sec. 432.093. **EFFECTIVE DATE OF SENTENCES.** (a) If a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended or deferred, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. A forfeiture may not extend to pay or allowances accrued before that date.

(b) A period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred are excluded in computing the service of the term of confinement.

(c) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under the convening authority's jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may in his sole discretion defer service of the sentence. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under that officer's jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

(d) In the militia or state military forces not in federal service, a sentence of dismissal or dishonorable discharge may not be executed until it is approved by the governor.

(e) All other sentences of courts-martial are effective on the date ordered executed. (V.A.C.S. Art. 5788, Sec. 57.)

Sec. 432.094. **EXECUTION OF CONFINEMENT.** (a) A sentence of confinement adjudged by a military court, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be executed by confinement in any place of confinement under the control of any of the forces of the state military forces or in any jail, penitentiary, or prison designated for that purpose. Persons confined in a jail, penitentiary, or prison are subject to the same discipline and

treatment as persons confined or committed to the jail, penitentiary, or prison by the courts of the state or of a political subdivision of the state.

(b) The omission of the words "hard labor" from a sentence or punishment of a court-martial adjudging confinement does not deprive the authority executing that sentence or punishment of the power to require hard labor as a part of the punishment.

(c) The keepers, officers, and wardens of city or county jails and other jails, penitentiaries, or prisons designated by the governor or by a person authorized by the governor to act under Section 432.014, shall receive persons ordered into confinement before trial and persons committed to confinement by a military court and shall confine them according to law. The keeper, officer, or warden may not require payment of a fee or charge for receiving or confining a person. (V.A.C.S. Art. 5788, Sec. 58.)

[Sections 432.095–432.100 reserved for expansion]

#### SUBCHAPTER I. REVIEW OF COURTS-MARTIAL

Sec. 432.101. **ERROR OF LAW; LESSER INCLUDED OFFENSE.** (a) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) A reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm instead as much of the finding as includes a lesser included offense. (V.A.C.S. Art. 5788, Sec. 59.)

Sec. 432.102. **INITIAL ACTION ON RECORD.** After trial by court-martial the record shall be forwarded to the convening authority, and action on the record may be taken by the person who convened the court, a commissioned officer then commanding, a successor in command, or any officer exercising general court-martial jurisdiction. (V.A.C.S. Art. 5788, Sec. 60.)

Sec. 432.103. **SAME GENERAL COURT-MARTIAL RECORDS.** The convening authority shall refer the record of each general court-martial to the authority's judge advocate who shall submit the judge advocate's written opinion on the record to the convening authority. If the final action of the court resulted in an acquittal of all charges and specifications, the opinion is limited to questions of jurisdiction. (V.A.C.S. Art. 5788, Sec. 61.)

Sec. 432.104. **RECONSIDERATION AND REVISION.** (a) If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

(b) If an apparent error or omission is in the record or the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence that can be corrected without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. However, a record may not be returned for:

(1) reconsideration of a finding of not guilty, or a ruling that amounts to a finding of not guilty;

(2) consideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge that sufficiently alleges a violation of this chapter; or

(3) increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory. (V.A.C.S. Art. 5788, Sec. 62.)

Sec. 432.105. **REHEARINGS.** (a) If the convening authority disapproves the finding and sentence of a court-martial, the authority, unless there is lack of sufficient evidence in the record to support the findings, may order a rehearing. The authority shall state the reasons for a disapproval. If the authority disapproves the findings and sentence and does not order a rehearing, the authority shall dismiss the charges.

(b) Each rehearing must take place before a court-martial composed of members who were not members of the court-martial that first heard the case. On a rehearing the

accused may not be tried for any offense of which the accused was found not guilty by the first court-martial, and sentence in excess of or more severe than the original sentence may not be imposed, unless the sentence is based on a finding of guilty of an offense not considered on the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory. (V.A.C.S. Art. 5788, Sec. 63.)

Sec. 432.106. APPROVAL BY CONVENING AUTHORITY. In acting on the findings and sentence of a court-martial, the convening authority may approve only findings of guilty and the sentence or part or amount of the sentence that the authority finds correct in law and fact and that the authority in his discretion determines should be approved. Unless the authority indicates otherwise, approval of the sentence is approval of the findings and sentence. (V.A.C.S. Art. 5788, Sec. 64.)

Sec. 432.107. DISPOSITION OF RECORDS AFTER REVIEW BY CONVENING AUTHORITY. (a) If the convening authority is the governor, the governor's action on the review of any record of trial is final.

(b) If the convening authority is not the governor, and if the sentence of a special court-martial as approved by the convening authority includes a dishonorable discharge, whether or not suspended, the entire record shall be sent to the appropriate judge advocate or legal officer of the state military forces concerned to be reviewed in the same manner as a record of trial by general court-martial. The record and the opinion of the judge advocate or legal officer shall then be sent to the state judge advocate general for review.

(c) All other special and summary court-martial records shall be sent to the judge advocate or legal officer of the appropriate force of the state military forces and shall be acted on, transmitted, and disposed of as prescribed by regulations of the governor.

(d) The state judge advocate general shall review the record of trial in each case sent to him for review under Subsection (b). If the final action of the court-martial has resulted in an acquittal of all charges and specifications, the opinion of the state judge advocate general is limited to questions of jurisdiction.

(e) The state judge advocate general shall take final action in any case reviewable by him. (V.A.C.S. Art. 5788, Sec. 65.)

Sec. 432.108. REVIEW BY STATE JUDGE ADVOCATE GENERAL. (a) In a case reviewable by the state judge advocate general under this section, the state judge advocate general may act only with respect to the findings and sentence as approved by the convening authority. He may affirm only findings of guilty and the sentence or part of the sentence that he finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, the state judge advocate general may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses. If the state judge advocate general sets aside the findings and sentence, he may order a rehearing, unless the setting aside is based on lack of sufficient evidence in the record to support the findings. If the state judge advocate general sets aside the findings and sentence and does not order a rehearing, he shall order that the charges be dismissed.

(b) In a case reviewable by the state judge advocate general under this section or Section 432.107, the state judge advocate general shall instruct the convening authority to act in accordance with his decision on the review. If he has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges. (V.A.C.S. Art. 5788, Sec. 66.)

Sec. 432.109. REVIEW BY TEXAS COURT OF MILITARY APPEALS. (a) The Texas Court of Military Appeals, located for administrative purposes only in the adjutant general's department, consists of five judges appointed by the adjutant general on the advice and recommendation of the state judge advocate general for staggered six-year terms. A judge appointed to fill a vacancy occurring before the expiration of the term for which the judge's predecessor was appointed shall be appointed only for the unexpired term of his predecessor. The adjutant general, on the advice and recommendation of the state judge advocate general, shall appoint the chief judge of the court. A person is eligible for appointment to the court if the person:

- (1) is a member of the bar of the highest court of this state;
  - (2) is a member of a federal bar;
  - (3) is a graduate of an accredited school of law;
  - (4) is a commissioned officer of the state military forces, active or retired, or a retired commissioned officer in the reserves of the armed forces of the United States; and
  - (5) has been engaged in the active practice of law for at least five years and has at least five years' experience as a staff judge advocate, judge advocate, or legal officer with the state military forces, except that the requirements of this subdivision are satisfied by equivalent experience or practice in the armed forces of the United States.
- (b) The court may promulgate rules of procedure, except that a majority constitutes a quorum and the concurrence of three judges is necessary for a decision of the court.
- (c) Judges of the Texas Court of Military Appeals may be removed by the adjutant general, on notice and hearing, for neglect of duty or malfeasance in office or mental or physical disability.
- (d) If a judge of the Texas Court of Military Appeals is temporarily unable to perform his duties, the adjutant general, on the advice and recommendation of the state judge advocate general, may designate a military judge to fill the office for the period of disability.
- (e) The judges of the Texas Court of Military Appeals, while sitting in review of a matter placed under their jurisdiction by this chapter and while travelling to and from such a session, shall be paid compensation equal to the compensation appropriated by the legislature for judges of the Texas Courts of Appeals, plus the actual cost of their meals and lodging and actual travel expense or the amount set by legislative appropriation if private transportation is used.
- (f) The Texas Court of Military Appeals has appellate jurisdiction, on petition of an accused, to hear and review the record in:
- (1) all general and special court-martial cases; and
  - (2) all other cases in which a judge of this court has made a determination that there may be a constitutional issue involved.
- (g) An accused, not later than the 60th day after the date he receives actual notice of the final action on his case, may petition the Texas Court of Military Appeals for review. The court shall act on the petition not later than the 60th day after the date the petition is received. If the court fails or refuses to grant the petition for review, the final action of the convening authority is considered approved. Notwithstanding any other provision of this chapter, on the court granting a hearing of an appeal, the court may grant a stay or defer service of the sentence of confinement or any other punishment under this chapter until the court's final decision on the case.
- (h) In a case reviewable under Subsection (f)(1), the Texas Court of Military Appeals may act only with respect to the findings and sentence as finally approved and ordered executed by the convening authority. In a case reviewable under Subsection (f)(2), the court need take action only with respect to issues specified in the grant of review. The court shall take action only with respect to matters of law, and the action of the court is final.
- (i) If the Texas Court of Military Appeals sets aside the findings and sentence, it may order a rehearing, unless the setting aside is based on lack of sufficient evidence in the record to support the findings. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed. After the Texas Court of Military Appeals has acted on the case, the record shall be returned to the state judge advocate general, who shall notify the convening authority of the court's decision. If further action is required, the state judge advocate general shall instruct the convening authority to take action in accordance with that decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, the convening authority may dismiss the charges. (V.A.C.S. Art. 5788, Sec. 67 (part).)

Sec. 432.110. APPELLATE COUNSEL. The trial counsel and defense counsel of a court-martial shall serve in the capacity of appellate counsel on an appeal authorized under this chapter. The accused has the additional right to be represented by civilian counsel at his own expense. If the defense or trial counsel becomes unable to perform these duties because of illness or other disability, the convening authority shall appoint a qualified trial or defense counsel to continue the proceedings. (V.A.C.S. Art. 5788, Sec. 70.)

Sec. 432.111. VACATION OF SUSPENSION. (a) Before the vacation of the suspension of a special court-martial sentence that as approved includes a dismissal or dishonorable discharge, or of a general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer has the right to be represented at the hearing by military counsel.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the governor in cases involving a general court-martial sentence and to the commanding officer of the force of the state military forces of which the probationer is a member in all other cases under Subsection (a). If the governor or commanding officer vacates the suspension, any unexecuted part of the sentence except a dismissal shall be executed.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence. (V.A.C.S. Art. 5788, Sec. 72.)

Sec. 432.112. PETITION FOR NEW TRIAL. At any time within two years after approval by the convening authority of a court-martial sentence, the accused may petition the state judge advocate general for a new trial on ground of newly discovered evidence or fraud on the court-martial. If the accused's case is pending before the Texas Court of Military Appeals when the petition is filed, the appeal does not proceed until the state judge advocate general has made a decision on the request. If the petition is granted, the appeal shall be dismissed. If the petition is denied, the court of military appeals shall continue its proceedings on the case. (V.A.C.S. Art. 5788, Sec. 73.)

Sec. 432.113. REMISSION OR SUSPENSION. (a) A convening authority may remit or suspend any part or amount of the unexecuted part of a sentence, including all uncollected forfeitures.

(b) The governor may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial. (V.A.C.S. Art. 5788, Sec. 74.)

Sec. 432.114. RESTORATION. (a) Under regulations the governor prescribes, all rights, privileges, and property affected by an executed part of a court-martial sentence that has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and the executed part is included in a sentence imposed on a new trial or hearing.

(b) If a previously executed sentence of dishonorable discharge is not imposed on a new trial, the governor shall substitute a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of the accused's enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the governor shall substitute a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed only by the governor to the commissioned grade and with the rank that in the opinion of the governor the former officer would have attained if the officer had not been dismissed. The reappointment of the former officer may be made if a position vacancy is available under applicable tables of organization. All time between the dismissal and reappointment shall be considered as service for all purposes. (V.A.C.S. Art. 5788, Sec. 75.)

Sec. 432.115. FINALITY OF PROCEEDINGS, FINDINGS, AND SENTENCES. The appellate review of records of trial provided by this chapter, the proceedings, findings, and sentences of courts-martial as reviewed and approved, as required by this chapter, and all dismissals and discharges carried into execution under sentences by courts-martial

following review and approval as required by this chapter, are final and conclusive. Orders publishing the proceedings of the courts-martial and all action taken pursuant to those proceedings are binding on all departments, courts, agencies, and officers of the state, subject only to action on a petition for a new trial as provided in Section 432.112. (V.A.C.S. Art. 5788, Sec. 76.)

[Sections 432.116–432.120 reserved for expansion]

#### SUBCHAPTER J. PUNITIVE ARTICLES

Sec. 432.121. **PERSONS TO BE TRIED OR PUNISHED.** A person may not be tried or punished for any offense provided for in this subchapter unless it was committed while the person was in a duty status or during a period in which the person was under lawful orders to be in a duty status. (V.A.C.S. Art. 5788, Sec. 76A.)

Sec. 432.122. **PRINCIPALS.** A person subject to this chapter is a principal if the person:

(1) commits an offense punishable under this chapter, or aids, abets, counsels, commands, or procures its commission; or

(2) causes an act to be done that if directly performed by the person would be punishable under this chapter. (V.A.C.S. Art. 5788, Sec. 77.)

Sec. 432.123. **ACCESSORY AFTER THE FACT.** A person subject to this chapter shall be punished as a court-martial directs if the person knows that an offense punishable under this chapter has been committed and receives, comforts, or assists the offender in order to hinder or prevent the offender's apprehension, trial, or punishment. (V.A.C.S. Art. 5788, Sec. 78.)

Sec. 432.124. **CONVICTION OF LESSER INCLUDED OFFENSE.** An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included in the offense charged. (V.A.C.S. Art. 5788, Sec. 79.)

Sec. 432.125. **ATTEMPTS.** (a) An act done with specific intent to commit an offense under this chapter amounting to more than mere preparation and tending, even though failing to effect its commission, is an attempt to commit that offense.

(b) A person subject to this chapter who attempts to commit an offense punishable under this chapter shall be punished as a court-martial directs, unless otherwise specifically prescribed.

(c) A person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated. (V.A.C.S. Art. 5788, Sec. 80.)

Sec. 432.126. **CONSPIRACY.** A person subject to this chapter who conspires with another person to commit an offense under this chapter shall be punished as a court-martial directs if one or more of the conspirators does an act to effect the object of the conspiracy. (V.A.C.S. Art. 5788, Sec. 81.)

Sec. 432.127. **SOLICITATION.** (a) A person subject to this chapter who solicits or advises another or others to desert in violation of Section 432.130 or mutiny in violation of Section 432.139 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense. If the offense solicited or advised is not committed or attempted, the person shall be punished as a court-martial directs.

(b) A person subject to this chapter who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of Section 432.144 or sedition in violation of Section 432.139 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense. If the offense solicited or advised is not committed, the person shall be punished as a court-martial directs. (V.A.C.S. Art. 5788, Sec. 82.)

Sec. 432.128. **FRAUDULENT ENLISTMENT, APPOINTMENT, OR SEPARATION.** A person shall be punished as a court-martial directs if the person:

(1) procures his own enlistment or appointment in the state military forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances under the enlistment or appointment; or

(2) procures his own separation from the state military forces by knowingly false representation or deliberate concealment as to his eligibility for that separation. (V.A.C.S. Art. 5788, Sec. 83.)

Sec. 432.129. **UNLAWFUL ENLISTMENT, APPOINTMENT, OR SEPARATION.** A person subject to this chapter who effects an enlistment or appointment in or a separation from the state military forces of a person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial directs. (V.A.C.S. Art. 5788, Sec. 84.)

Sec. 432.130. **DESERTION.** (a) A member of the state military forces is guilty of desertion if the member:

(1) without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away permanently;

(2) quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) without being regularly separated from one of the state military forces, enlists or accepts an appointment in the same or another of the state military forces, or in one of the armed forces of the United States, without fully disclosing the fact that he has not been regularly separated.

(b) A commissioned officer of the state military forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away permanently is guilty of desertion.

(c) A person found guilty of desertion or attempt to desert shall be punished as a court-martial directs. (V.A.C.S. Art. 5788, Sec. 85.)

Sec. 432.131. **ABSENCE WITHOUT LEAVE.** A person subject to this chapter shall be punished as a court-martial directs if the person without authority:

(1) fails to go to his appointed place of duty at the time prescribed;

(2) goes from that place; or

(3) absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed. (V.A.C.S. Art. 5788, Sec. 86.)

Sec. 432.132. **MISSING MOVEMENT.** A person subject to this chapter who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required to move in the course of duty shall be punished as a court-martial directs. (V.A.C.S. Art. 5788, Sec. 87.)

Sec. 432.133. **CONTEMPT TOWARDS GOVERNOR.** A person subject to this chapter who uses contemptuous words against the governor shall be punished as a court-martial directs. (V.A.C.S. Art. 5788, Sec. 88.)

Sec. 432.134. **DISRESPECT TOWARD SUPERIOR COMMISSIONED OFFICER.** A person subject to this chapter who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial directs. (V.A.C.S. Art. 5788, Sec. 89.)

Sec. 432.135. **ASSAULTING OR WILFULLY DISOBEYING SUPERIOR COMMISSIONED OFFICER.** A person subject to this chapter shall be punished as a court-martial directs if the person:

(1) strikes his superior commissioned officer or draws or lifts up a weapon or offers any violence against him while in the execution of his office; or

(2) wilfully disobeys a lawful command of his commissioned officer. (V.A.C.S. Art. 5788, Sec. 90.)

Sec. 432.136. **INSUBORDINATE CONDUCT TOWARD WARRANT OFFICER OF NONCOMMISSIONED OFFICER.** A warrant officer or enlisted member shall be punished as a court-martial directs if the officer or member:

(1) strikes or assaults a warrant officer or noncommissioned officer while that officer is in the execution of his office;

(2) wilfully disobeys the lawful order of a warrant officer or noncommissioned officer; or

(3) treats with contempt or is disrespectful in language or deportment toward a warrant officer or noncommissioned officer while that officer is in the execution of his office. (V.A.C.S. Art. 5788, Sec. 91.)

Sec. 432.137. **FAILURE TO OBEY ORDER OR REGULATION.** A person subject to this chapter shall be punished as a court-martial directs if the person:

(1) violates or fails to obey a lawful general order or regulation;

(2) having knowledge of any other lawful order issued by a member of the state military forces that it is the person's duty to obey, fails to obey the order; or

(3) is derelict in the performance of the person's duties. (V.A.C.S. Art. 5788, Sec. 92.)

Sec. 432.138. **CRUELTY AND MALTREATMENT.** A person subject to this chapter who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his order shall be punished as a court-martial directs. (V.A.C.S. Art. 5788, Sec. 93.)

Sec. 432.139. **MUTINY, SEDITION, FAILURE TO SUPPRESS MUTINY OR SEDITION.** A person subject to this chapter who:

(1) with intent to usurp or override lawful military authority refuses, in concert with any other person, to obey orders or otherwise do his duty or creates a violence or disturbance is guilty of mutiny;

(2) with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;

(3) fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition that he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition. (V.A.C.S. Art. 5788, Sec. 94.)

Sec. 432.140. **RESISTANCE, BREACH OF ARREST, AND ESCAPE.** A person subject to this chapter who resists apprehension, breaks arrest, or escapes from physical restraint lawfully imposed shall be punished as a court-martial directs. (V.A.C.S. Art. 5788, Sec. 95.)

Sec. 432.141. **RELEASING PRISONER WITHOUT PROPER AUTHORITY.** A person subject to this chapter who, without proper authority, releases a prisoner committed to his charge, or who through neglect or design permits the prisoner to escape, shall be punished as a court-martial directs, whether or not the prisoner was committed in strict compliance with law. (V.A.C.S. Art. 5788, Sec. 96.)

Sec. 432.142. **UNLAWFUL DETENTION OF ANOTHER.** A person subject to this chapter who, except as provided by law or regulation, apprehends, arrests, or confines a person shall be punished as a court-martial directs. (V.A.C.S. Art. 5788, Sec. 97.)

Sec. 432.143. **NONCOMPLIANCE WITH PROCEDURAL RULES.** A person subject to this chapter shall be punished as a court-martial directs if the person:

(1) is responsible for unnecessary delay in the disposition of a case of a person accused of an offense under this chapter; or

(2) knowingly and intentionally fails to enforce or comply with a provision of this chapter regulating the proceedings before, during, or after trial of an accused. (V.A.C.S. Art. 5788, Sec. 98.)

Sec. 432.144. **MISBEHAVIOR BEFORE ENEMY.** A person subject to this chapter shall be punished as a court-martial directs if the person, before or in the presence of the enemy:

(1) runs away;



- (2) shamefully abandons, surrenders, or delivers up any command, unit, place, or military property that it is his duty to defend;
- (3) through disobedience, neglect, or intentional misconduct endangers the safety of such a command, unit, place, or military property;
- (4) casts away his arms or ammunition;
- (5) is guilty of cowardly conduct;
- (6) quits his place of duty to plunder or pillage;
- (7) causes false alarms in the command, unit, or place under control of the armed forces of the United States, the state military forces of Texas, or any other state;
- (8) wilfully fails to do his utmost to encounter, engage, capture, or destroy enemy troops, combatants, vessels, aircraft, or any other thing that it is his duty to encounter, engage, capture, or destroy; or
- (9) does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies, to this state, or to any other state, when engaged in battle. (V.A.C.S. Art. 5788, Sec. 99.)

Sec. 432.145. **SUBORDINATE COMPELLING SURRENDER.** A person subject to this chapter who compels or attempts to compel the commander of any of the state military forces of Texas, the United States, or any other state, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial directs. (V.A.C.S. Art. 5788, Sec. 100.)

Sec. 432.146. **IMPROPER USE OF COUNTERSIGN.** A person subject to this chapter who in time of war discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished as a court-martial directs. (V.A.C.S. Art. 5788, Sec. 101.)

Sec. 432.147. **FORCING SAFEGUARD.** A person subject to this chapter who forces a safeguard shall be punished as a court-martial directs. (V.A.C.S. Art. 5788, Sec. 102.)

Sec. 432.148. **CAPTURED OR ABANDONED PROPERTY.** (a) All persons subject to this chapter shall secure all public property taken from the enemy for the service of the state or the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) A person subject to this chapter shall be punished as a court-martial directs if the person:

- (1) fails to carry out the duties prescribed in Subsection (a);
- (2) buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, from which he receives or expects a profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or
- (3) engages in looting or pillaging. (V.A.C.S. Art. 5788, Sec. 103.)

Sec. 432.149. **AIDING ENEMY.** A person subject to this chapter shall be punished as a court-martial directs if the person:

- (1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or
- (2) without proper authority, knowingly harbors, protects, or gives intelligence to, or communicates, corresponds, or holds any intercourse with the enemy, either directly or indirectly. (V.A.C.S. Art. 5788, Sec. 104.)

Sec. 432.150. **MISCONDUCT OF PRISONER.** A person subject to this chapter shall be punished as a court-martial directs if the person, while in the hands of the enemy in time of war:

- (1) for the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of any nationality held by the enemy as civilian or military prisoners; or

(2) while in a position of authority over such persons maltreats them without justifiable cause. (V.A.C.S. Art. 5788, Sec. 105.)

Sec. 432.151. **FALSE OFFICIAL STATEMENTS.** A person subject to this chapter who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial directs. (V.A.C.S. Art. 5788, Sec. 107.)

Sec. 432.152. **MILITARY PROPERTY—LOSS, DAMAGE, DESTRUCTION, OR WRONGFUL DISPOSITION.** A person subject to this chapter shall be punished as a court-martial directs if the person, without proper authority, sells or otherwise disposes of, or wilfully or through neglect damages, destroys, loses, or suffers to be damaged, destroyed, sold, or wrongfully disposed of any military property of the United States or the state. (V.A.C.S. Art. 5788, Sec. 108.)

Sec. 432.153. **PROPERTY OTHER THAN MILITARY PROPERTY—WASTE, SPOILAGE, OR DESTRUCTION.** A person subject to this chapter who, while in a duty status, wilfully or recklessly wastes, spoils, or otherwise wilfully and wrongfully destroys or damages any property other than military property of the United States or of this state shall be punished as a court-martial directs. (V.A.C.S. Art. 5788, Sec. 109.)

Sec. 432.154. **IMPROPER HAZARDING OF VESSEL.** A person subject to this chapter who wilfully and wrongfully or who negligently hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the state military forces shall be punished as a court-martial directs. (V.A.C.S. Art. 5788, Sec. 110.)

Sec. 432.155. **DRIVING WHILE INTOXICATED OR WHILE UNDER INFLUENCE OF NARCOTIC DRUG.** A person subject to this chapter who operates a vehicle while under the influence of intoxicating liquor or a narcotic drug, or in a reckless or wanton manner, shall be punished as a court-martial directs. (V.A.C.S. Art. 5788, Sec. 111.)

Sec. 432.156. **DRUNK ON DUTY; SLEEPING ON POST; LEAVING POST BEFORE RELIEF.** A person subject to this chapter who is found under the influence of intoxicating liquor or narcotic drugs while on duty, or found sleeping on his post, or who leaves his post before he is regularly relieved, shall be punished as a court-martial directs. (V.A.C.S. Art. 5788, Sec. 112.)

Sec. 432.157. **MALINGERING.** A person subject to this chapter shall be punished as a court-martial directs if the person, for the purpose of avoiding work, duty, or service in the state military forces:

- (1) feigns illness, physical disablement, mental lapse, or derangement; or
- (2) intentionally inflicts self-injury. (V.A.C.S. Art. 5788, Sec. 115.)

Sec. 432.158. **RIOT OR BREACH OF PEACE.** A person subject to this chapter who causes or participates in a riot or breach of the peace shall be punished as a court-martial directs. (V.A.C.S. Art. 5788, Sec. 116.)

Sec. 432.159. **PROVOKING SPEECHES OR GESTURES.** A person subject to this chapter who uses provoking or reproachful words or gestures towards another person subject to this chapter shall be punished as a court-martial directs. (V.A.C.S. Art. 5788, Sec. 117.)

Sec. 432.160. **LARCENY AND WRONGFUL APPROPRIATION.** (a) A person subject to this chapter who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or any other person any money, personal property, or article of value of any kind:

- (1) with intent permanently to deprive or defraud another person of the use and benefit of property, or to appropriate it to his own use or the use of any person other than the owner, steals that property and is guilty of larceny; or
- (2) with intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, is guilty of wrongful appropriation.

(b) A person found guilty of larceny or wrongful appropriation shall be punished as a court-martial directs. (V.A.C.S. Art. 5788, Sec. 121.)

Sec. 432.161. **FORGERY.** A person subject to this chapter is guilty of forgery and shall be punished as a court-martial directs if the person, with intent to defraud:

- (1) falsely makes or alters a signature to a writing or any part of a writing that would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or
- (2) utters, offers, issues, or transfers such a writing, known by him to be so made or altered. (V.A.C.S. Art. 5788, Sec. 123.)

Sec. 432.162. **EXTORTION.** A person subject to this chapter who communicates threats to another person with the intent to obtain anything of value or any acquittance, advantage, or immunity is guilty of extortion and shall be punished as a court-martial directs. (V.A.C.S. Art. 5788, Sec. 127.)

Sec. 432.163. **ASSAULT.** A person subject to this chapter who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial directs. (V.A.C.S. Art. 5788, Sec. 128.)

Sec. 432.164. **PERJURY.** A person subject to this chapter who in a judicial proceeding or in a court of justice conducted under this chapter wilfully and corruptly gives, on a lawful oath or in any form allowed by law to be substituted for an oath, false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial directs. (V.A.C.S. Art. 5788, Sec. 131.)

Sec. 432.165. **FRAUDS AGAINST GOVERNMENT.** A person subject to this chapter on conviction shall be punished as a court-martial directs if the person:

- (1) knowing it to be false or fraudulent:
  - (A) makes a claim against the United States, the state, or an officer of the United States or the state; or
  - (B) presents to a person in the civil or military service of the United States or the state for approval or payment a claim against the United States, the state, or an officer of the United States or the state;
- (2) for the purpose of obtaining the approval, allowance, or payment of a claim against the United States, the state, or an officer of the United States or the state:
  - (A) makes or uses a writing or other paper knowing it to contain false or fraudulent statements;
  - (B) makes an oath to a fact or to a writing or other paper knowing the oath to be false; or
  - (C) forges or counterfeits a signature on a writing or other paper, or uses such a signature knowing it to be forged or counterfeited;
- (3) having charge, possession, custody, or control of money or other property of the United States or the state, furnished or intended for the armed forces of the United States or the state military forces, knowingly delivers to a person having authority to receive it, any amount of the money or property less than that for which he receives a certificate or receipt; or
- (4) being authorized to make or deliver a paper certifying the receipt of property of the United States or the state, furnished or intended for the armed forces of the United States or the state military forces, makes or delivers to a person the paper without having full knowledge of the truth of its statements and with intent to defraud the United States or the state. (V.A.C.S. Art. 5788, Sec. 132.)

Sec. 432.166. **CONDUCT UNBECOMING AN OFFICER AND A GENTLEMAN.** A commissioned officer or officer candidate who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial directs. (V.A.C.S. Art. 5788, Sec. 133.)

Sec. 432.167. **GENERAL ARTICLE.** Whether or not specifically mentioned by this chapter, all disorders and neglects to the prejudice of good order and discipline in the state military forces and all conduct of a nature to bring discredit on the state military forces, of which persons subject to this chapter may be guilty, shall be taken cognizance

of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of the court. (V.A.C.S. Art. 5788, Sec. 134.)

[Sections 432.168–432.180 reserved for expansion]

#### SUBCHAPTER K. MISCELLANEOUS PROVISIONS

Sec. 432.181. **COURTS OF INQUIRY.** (a) Courts of inquiry to investigate any matter may be convened by the governor, by a person designated by the governor for that purpose, or by a person authorized to convene a general court-martial by this chapter, whether or not a person involved has requested an inquiry.

(b) A court of inquiry consists of three or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(c) A person subject to this chapter whose conduct is subject to inquiry shall be designated as a party. A person subject to this chapter or employed in the division of military affairs who has a direct interest in the subject of inquiry has the right to be designated as a party on request to the court. A person designated as a party is entitled to due notice and has the rights to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, reporter, and interpreters of courts of inquiry shall take an oath or affirmation to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel. (V.A.C.S. Art. 5788, Sec. 135.)

Sec. 432.182. **AUTHORITY TO ADMINISTER OATHS.** (a) The following persons on state active duty may administer oaths for the purpose of military administration including military justice, and they have the general powers of a notary public in the performance of all notarial acts to be executed by members of the state military forces, wherever they may be:

- (1) the state judge advocate general and all judge advocates;
- (2) law specialists and military judges;
- (3) summary courts-martial;
- (4) adjutants, assistant adjutants, acting adjutants, and personnel adjutants;
- (5) administrative officers, assistant administrative officers, and acting administrative officers;
- (6) staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers; and
- (7) all other persons designated by regulations of the state military forces or by statute.

(b) The following persons on state active duty may administer oaths necessary in the performance of their duties:

- (1) the president, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial;
- (2) the president, counsel for the court, and recorder of any court of inquiry;

- (3) officers designated to take a deposition;
- (4) persons detailed to conduct an investigation;
- (5) recruiting officers; and
- (6) all other persons designated by regulations of the state military forces or by statute.

(c) A fee may not be paid to or received by any person for the performance of a notarial act authorized by this section.

(d) The signature without seal of such a person acting as notary, together with the title of his office, is prima facie evidence of his authority. (V.A.C.S. Art. 5788, Sec. 136.)

Sec. 432.183. SECTIONS TO BE EXPLAINED. Sections 432.002, 432.003, 432.011–432.017, 432.021, 432.044, 432.046, 432.052, 432.062, 432.063, 432.091, 432.121–432.167, and 432.183–432.185 shall be carefully explained to every enlisted member at the time of or not later than the 30th day after the date of his enlistment, transfer, or induction into, or his order to duty in or with, any of the state military forces. They shall also be explained annually to each unit of the state military forces. A complete text of this chapter and of the regulations prescribed by the governor under this chapter shall be made available to any member of the state military forces, on his request, for his personal examination. (V.A.C.S. Art. 5788, Sec. 137.)

Sec. 432.184. COMPLAINTS OF WRONGS. (a) A member of the state military forces who believes himself wronged by his commanding officer, and who, on due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the next highest commander, who shall examine into the complaint and take proper measures for redressing the wrong complained of, and send to the adjutant general, as soon as possible, a true statement of that complaint with the proceedings had on it.

(b) If an action or proceeding of any nature is commenced in a court other than a military court by any person against a member of the state military forces for any act done or caused, or ordered or directed to be done, in the line of duty while the member was on active state duty, as determined by a finding of fact made by a court of inquiry under Section 432.181, all expenses of representation in the action or proceeding, including fees of witnesses, depositions, court costs, and all costs for transcripts of records or other documents that might be needed during trial or appeal shall be paid as provided by this chapter. In such an action or proceeding the adjutant general, on the written request of the member involved, shall designate the state judge advocate general, a judge advocate, or a legal officer of the state military forces to represent the member. Judge advocates or legal officers performing duty under this subsection will be called to state active duty by order of the governor. If the military legal services, as provided above are not available, the adjutant general, after consultation with the state judge advocate general and member involved, shall contract with a competent private attorney to conduct the representation. (V.A.C.S. Art. 5788, Sec. 138.)

Sec. 432.185. REDRESS OF INJURIES TO PROPERTY. (a) If complaint is made to a commanding officer that wilful damage has been done to the property of any person or that a person's property has been wrongfully taken by members of the state military forces, the officer, subject to regulations the governor prescribes, may convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers, and for the purpose of that investigation, it may summon witnesses, examine them on oath or affirmation, receive depositions or other documentary evidence, and assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and if the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges authorized by this section is conclusive, except as provided by Subsection (c), on any disbursing officer for the payment by him to the injured parties of the damages assessed and approved.

(b) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and

approved may be paid to the injured parties from the military funds of the units of the state military forces to which the offenders belong.

(c) A person subject to this chapter who is accused of causing wilful damage to property has the rights to be represented by counsel, to summon witnesses in his behalf, and to cross-examine those appearing against him. The counsel mentioned must be military counsel, provided by the commanding officer instituting this inquiry. The accused may also employ civilian counsel of his own choosing at his own expense. The accused has the right of appeal to the next higher commander. (V.A.C.S. Art. 5788, Sec. 139.)

Sec. 432.186. IMMUNITY FOR ACTION OF MILITARY COURTS. An accused may not bring an action or proceeding against the convening authority or a member of a military court, board convened under this chapter or military regulations, or officer or person acting under the authority of a court or board or reviewing its proceedings because of the approval, imposition, or execution of a sentence, the imposition or collection of a fine or penalty, or the execution of a process or mandate of a military court, board convened under this chapter, or military regulation. (V.A.C.S. Art. 5788, Sec. 139A.)

Sec. 432.187. DELEGATION OF AUTHORITY BY GOVERNOR. The governor may delegate any authority vested in him under this chapter and may provide for the subdelegation of this authority. The governor may not delegate the power given him by Section 432.093(d). (V.A.C.S. Art. 5788, Sec. 140.)

Sec. 432.188. EXECUTION OF PROCESS AND SENTENCE. (a) In the state military forces not in federal service, the processes and sentences of its courts-martial shall be executed by the civil officers prescribed by the laws of the state.

(b) If the sentence of a court-martial, as approved and ordered executed, adjudges confinement, and the convening authority has approved the sentence in whole or in part, the reviewing authority, or the commanding officer for the time being, as the case may be, shall issue a warrant of commitment to the sheriff of the county in which the court-martial was held or in which the offense was committed, directing the sheriff to take the body of the sentenced person and confine him in the county jail of the county for the period named in the sentence, as approved, or until the sheriff is directed to release him by proper authority. (V.A.C.S. Art. 5788, Sec. 141.)

Sec. 432.189. PROCESS OF MILITARY COURTS. (a) A military court may issue any process or mandate necessary to carry into effect its powers. The court may issue subpoenas and subpoenas duces tecum and enforce by attachment attendance of witnesses and production of books and records if it is sitting in the state and the witnesses, books, and records sought are also located in the state.

(b) A process or mandate may be issued by a summary court-martial, provost court, or the president of another military court and may be directed to and executed by a marshal of the military court or any peace officer. A process or mandate must be in the form prescribed by regulations issued under this chapter.

(c) All officers to whom process or mandates may be directed shall execute them and make return of their acts under the process or mandates according to the requirements of those documents. Except as otherwise specifically provided by this chapter, an officer may not demand or require payment of a fee or charge for receiving, executing, or returning such a process or mandate or for any service in connection with the process or mandate.

(d) The president of a court-martial and any summary court officer may issue all necessary process, subpoenas, attachments, warrants, or arrest and warrant of commitment, under his hand, in the name of the state, and directed to a sheriff or constable, who shall serve or execute it in the same manner in which similar process issued by a magistrate is served or executed. (V.A.C.S. Art. 5788, Sec. 142.)

Sec. 432.190. PAYMENT OF FINES, COSTS, AND DISPOSITION THEREOF. (a) A fine or forfeiture imposed by general court-martial shall be paid to the officer ordering the court or to the officer commanding at that time. The officer, not later than the fifth

day after the date of the payment's receipt, shall pay it to the adjutant general, who shall disburse it as he sees fit for military purposes.

(b) A fine or forfeiture imposed by a special or summary court-martial shall be paid to the officer ordering the court or the officer commanding at that time. The officer, not later than the fifth day after the date of the payment's receipt, shall place it to the credit of the military unit fund of the unit of which the person fined was a member when the fine was imposed.

(c) If the sentence of a court-martial adjudges a fine against a person and the fine has not been fully paid before the 11th day after the date of its confirmation, the convening authority shall issue a warrant of commitment directed to the sheriff of the county in which the court-martial was held or in which the offense was committed, directing him to take the body of the convicted person and confine him in the county jail for one day for a fine not exceeding \$1 and one additional day for every dollar above that amount. (V.A.C.S. Art. 5788, Sec. 143.)

Sec. 432.191. PRESUMPTION OF JURISDICTION. The jurisdiction of the military courts and boards established by this chapter shall be presumed and the burden of proof rests on a person seeking to oust those courts or boards of jurisdiction in any action or proceeding. (V.A.C.S. Art. 5788, Sec. 144.)

Sec. 432.192. WITNESSES' EXPENSES. (a) Persons in the employ of this state but not belonging to its military forces if traveling on summons as witnesses before military courts, are entitled to round trip transportation between their place of residence and the place where the court is in session. If transportation is not furnished, they are entitled to reimbursement of the cost of travel actually performed by the shortest usually traveled route and to reimbursement of the actual cost of meals and rooms at a rate not to exceed \$25 a day for each actually and unavoidably consumed in travel or in attendance on the court under the order or summons. Allowance may not be made to them if attendance on court does not require them to leave their place of residence.

(b) A person not in the employ of this state and not belonging to its active military forces, who has been duly summoned to appear as a witness before a military court, is entitled to receive \$50 a day for each day actually in attendance on the court, and 12 cents a mile for going from his place of residence to the place of trial or hearing, and 12 cents a mile for returning. Civilian witnesses will be paid by the adjutant general's department.

(c) The charges for return journeys of witnesses shall be made on the basis of the actual charges allowed for travel to the court, and the entire account thus completed in this manner shall be paid on discharge from attendance without waiting for completion of return travel.

(d) Fees may not be allowed to a person as witness fees, unless the person has been subpoenaed, attached, or recognized as a witness in the case. (V.A.C.S. Art. 5788, Sec. 145.)

Sec. 432.193. ARREST, BONDS, LAWS APPLICABLE. (a) If charges against a person in the military service of this state are made or referred to a convening authority authorized to convene a court-martial for the trial of the person, and a convening authority, believing that the charges can be sustained and that the person charged will not appear for trial or intends to flee from justice, may issue a warrant of arrest to the sheriff or any constable of the county in which the person charged resides, or in which he is supposed to be, commanding the sheriff or constable to take the body of the charged person and confine him in jail until his case is finally disposed of. The sheriff or constable, on the order of the convening authority, shall bring the charged person before the court-martial for trial, or turn him over to whoever the order may direct. The convening authority issuing the warrant of arrest shall endorse on it the amount of bail to be required. It is a violation of duty on the part of a sheriff or constable to permit a committed person to remain out of jail, except that the sheriff or constable may, if the person desires it, permit the person to give bail in the sum endorsed on the warrant conditioned for his appearance, from time to time, before the court-martial as he may be ordered for trial and until his case is finally disposed of or until he surrenders to the sheriff or constable as directed by the convening authority of the court-martial before which he may be ordered for trial.

(b) On the failure of any person who has been admitted to bail conditioned for his appearance for trial before a court-martial, or on failure of any person admitted to bail to appear as a witness in any case before a court-martial, as conditioned in the bail bond of the person, the court-martial shall certify the fact of the failure to appear to the convening authority, or to the officer commanding for the time being, as the case may be. The officer shall cause a judge advocate or district or county attorney to file suit in Travis County for the bail.

(c) The rules laid down in the Code of Criminal Procedure relating to the giving of bail, the amount of bail, the number of sureties, the persons who may be sureties, the property exempt from liability, the responsibility of parties to it, and all other rules of a general nature not inconsistent with this chapter are applicable to bail taken as provided by this chapter.

(d) A warrant of arrest issued by a convening authority to order a court-martial, and all subpoenas and other process issued by courts-martial and courts of inquiry, extend to every part of the state.

(e) If a lawful process, issued by the proper officer of a court-martial, comes to the hands of a sheriff or constable, the sheriff or constable shall perform the usual duties of that officer and perform all acts and duties imposed by this chapter or authorized to be performed by a sheriff or constable. Failure of a sheriff or constable to perform the duties required by this chapter is a misdemeanor punishable by a fine of not more than \$1,000 and by confinement of not less than six months nor more than 12 months in jail. (V.A.C.S. Art. 5788, Sec. 146.)

Sec. 432.194. EXPENSES OF ADMINISTRATION. The adjutant general may pay all expenses incurred in the administration of state military justice, including the expenses of courts-martial and expenses incurred under Sections 432.109, 432.184, and 432.192, from any funds appropriated to the adjutant general's department. (V.A.C.S. Art. 5788, Sec. 147.)

Sec. 432.195. SHORT TITLE. This chapter may be cited as the Texas Code of Military Justice. (V.A.C.S. Art. 5788, Sec. 148.)

#### CHAPTER 433. STATE OF EMERGENCY

- Sec. 433.001. PROCLAMATION OF STATE OF EMERGENCY
- Sec. 433.002. ISSUANCE OF DIRECTIVES
- Sec. 433.003. DURATION OF STATE OF EMERGENCY
- Sec. 433.004. DUTIES OF LAW ENFORCEMENT AGENCY
- Sec. 433.005. CALLING OF STATE MILITARY FORCES
- Sec. 433.006. VIOLATIONS
- Sec. 433.007. CONSTRUCTION OF CHAPTER

#### CHAPTER 433. STATE OF EMERGENCY

Sec. 433.001. PROCLAMATION OF STATE OF EMERGENCY. On application of the chief executive officer or governing body of a county or municipality during an emergency, the governor may proclaim a state of emergency and designate the area involved. For the purposes of this section an emergency exists in the following situations:

- (1) a riot or unlawful assembly by three or more persons acting together by use of force or violence;
- (2) if a clear and present danger of the use of violence exists; or
- (3) a natural or man-made disaster. (V.A.C.S. Art. 5890e, Sec. 3 (part).)

Sec. 433.002. ISSUANCE OF DIRECTIVES. (a) After a state of emergency is proclaimed, the governor may issue reasonable directives calculated to control effectively and terminate the emergency and protect life and property. Before a directive takes effect, reasonable notice must be given in a newspaper of general circulation in the affected area, through television or radio serving the affected area, or by circulating notices or posting signs at conspicuous places in the affected area.



(b) The directive may provide for:

- (1) control of public and private transportation in the affected area;
- (2) designation of specific zones in the affected area in which, if necessary, the use and occupancy of buildings and vehicles may be controlled;
- (3) control of the movement of persons;
- (4) control of places of amusement or assembly;
- (5) establishment of curfews;
- (6) control of the sale, transportation, and use of alcoholic beverages, weapons, and ammunition; and
- (7) control of the storage, use, and transportation of explosives or flammable materials considered dangerous to public safety.

(c) A directive takes effect according to its terms, but not before notice is given as required by Subsection (a). The governor may amend, modify, or rescind a directive in a manner similar to adoption of a directive during the state of emergency. (V.A.C.S. Art. 5890e, Secs. 2 (part), 3 (part).)

Sec. 433.003. DURATION OF STATE OF EMERGENCY. (a) Except as provided by Subsection (b), a directive expires 72 hours after the time of proclamation of the state of emergency for which it was issued.

(b) The governor by proclamation may terminate or set a shorter period for a directive. The governor may proclaim successive states of emergency, each not exceeding 72 hours, as necessary to protect health, life, and property in the affected area, and may extend a directive from one state of emergency to the next. (V.A.C.S. Art. 5890e, Sec. 3 (part).)

Sec. 433.004. DUTIES OF LAW ENFORCEMENT AGENCY. (a) During a state of emergency, each law enforcement agency in the state shall cooperate in the manner the governor or the governor's designated representative requests and shall allow the use of the agency's equipment and facilities as the governor or the governor's designated representative requires, except that if the agency is not located within the affected area, the use may not substantially interfere with the normal duties of the agency.

(b) A county or municipal law enforcement agency shall notify the director of the Department of Public Safety if the agency receives notice of a threatened or actual disturbance indicating the possibility of serious domestic violence. (V.A.C.S. Art. 5890e, Sec. 4.)

Sec. 433.005. CALLING OF STATE MILITARY FORCES. (a) The chief executive officer or governing body of a county or municipality may request the governor to provide state military forces to aid in controlling conditions in the county or municipality that the officer or governing body believes cannot be controlled by the local law enforcement agencies alone. On receiving the request, the governor may order a commander of a unit of the state military forces to appear at a time and place the governor directs to aid the civil authorities.

(b) After the forces have appeared at the appointed place, the commanding officer shall obey and execute the general instructions of the civil authorities charged by law with the suppression of riot, the preservation of public peace, and the protection of life and property. The instructions must be in writing, except that if written instructions are impracticable, the instructions may be given verbally in the presence of two or more credible witnesses. The commanding officer shall exercise his discretion as to the proper method of practically accomplishing the instructions. (V.A.C.S. Art. 5890e, Sec. 5.)

Sec. 433.006. VIOLATIONS. (a) A person who violates this chapter or a directive issued under this chapter commits an offense. An offense under this subsection is a misdemeanor punishable by a fine of not more than \$200, confinement for not more than 60 days, or both.

(b) A temporary restraining order or temporary or permanent injunction may be issued to prevent violation of this chapter or a directive issued under this chapter as provided by the Texas Rules of Civil Procedure and applicable law.

(c) The governor may institute an action under this section in any court of competent jurisdiction in the state. (V.A.C.S. Art. 5890e, Sec. 6.)

Sec. 433.007. CONSTRUCTION OF CHAPTER. This chapter shall be construed broadly to effect its intent to recognize the governor's broad power of action in the exercise of the police power of the state to provide adequate control over persons and conditions during periods of impending or actual public crisis or disaster and to provide means for local governments to protect lives and property and maintain the operation of government. (V.A.C.S. Art. 5890e, Sec. 1.)

#### CHAPTER 434. VETERAN ASSISTANCE AGENCIES

##### SUBCHAPTER A. TEXAS VETERANS COMMISSION

- Sec. 434.001. COMMISSION
- Sec. 434.002. APPLICATION OF SUNSET, OPEN MEETINGS, AND ADMINISTRATIVE PROCEDURE LAWS
- Sec. 434.003. MEMBERS
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- Sec. 434.005. REMOVAL
- Sec. 434.006. OFFICERS; COMMISSION ACTIONS
- Sec. 434.007. DUTIES
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- Sec. 434.009. EXECUTIVE DIRECTOR
- Sec. 434.010. RULES
- Sec. 434.011. OFFICE; EXPENSES; EMPLOYEES
- Sec. 434.012. COMPENSATION AND EXPENSES
- Sec. 434.013. FINANCES
- Sec. 434.014. EMPLOYMENT PRACTICES
- Sec. 434.015. INFORMATION OF PUBLIC INTEREST

[Sections 434.016–434.030 reserved for expansion]

##### SUBCHAPTER B. VETERANS COUNTY SERVICE OFFICES

- Sec. 434.031. DEFINITIONS
- Sec. 434.032. CREATION
- Sec. 434.033. OFFICERS
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#### CHAPTER 434. VETERAN ASSISTANCE AGENCIES

##### SUBCHAPTER A. TEXAS VETERANS COMMISSION

Sec. 434.001. COMMISSION. The Texas Veterans Commission is an agency of the state. (V.A.C.S. Art. 5787, Sec. 3(b) (part).)

Sec. 434.002. APPLICATION OF SUNSET, OPEN MEETINGS, AND ADMINISTRATIVE PROCEDURE LAWS. (a) The Texas Veterans Commission is subject to the Texas Sunset Act (Chapter 325). Unless continued in existence as provided by that Act, the commission is abolished September 1, 1993.

(b) The commission is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252–17, Vernon's Texas Civil Statutes), and

the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 5787, Sec. 3(b-1).)

Sec. 434.003. MEMBERS. (a) The commission is composed of six members appointed by the governor with the advice and consent of the senate. The governor shall make each appointment without regard to the race, creed, sex, religion, or national origin of the appointee.

(b) A member must be a citizen and resident of the state. At least four members must have been honorably discharged or honorably released from active military service of the United States. At least one member must be a person classified as a disabled veteran by the United States Veterans Administration or the branch of the United States armed forces in which the person served. This person's disability must be service-connected and compensable.

(c) A person having a less than honorable discharge from military service is not eligible to be a member. No two members may reside in the same senatorial district, and not more than one member may be from a senatorial district composed of a single county.

(d) Members are appointed for staggered six-year terms. (V.A.C.S. Art. 5787, Sec. 3(b) (part).)

Sec. 434.004. CONFLICT OF INTEREST. A person required to register as a lobbyist under Chapter 305 because of activities on behalf of a veterans association may not serve as a member of or as general counsel to the commission. (V.A.C.S. Art. 5787, Sec. 3(b) (part).)

Sec. 434.005. REMOVAL. (a) It is a ground for removal from the commission if a member:

- (1) did not have when appointed, or does not maintain during the service on the commission, the qualifications required by Section 434.003 for appointment to the commission;
- (2) violates a prohibition under Section 434.004; or
- (3) fails to attend at least half of the regularly scheduled commission meetings held in a calendar year, excluding meetings held while the person was not a member of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a member exists. (V.A.C.S. Art. 5787, Secs. 3(m), (n).)

Sec. 434.006. OFFICERS; COMMISSION ACTIONS. (a) The commission annually shall elect from among its members a chairman, a vice-chairman, and a secretary. An officer shall serve until the officer's successor is appointed and qualified.

(b) The commission shall meet at least once in each three-month period. No action may be taken by less than a majority of the commission. (V.A.C.S. Art. 5787, Sec. 3(d) (part).)

Sec. 434.007. DUTIES. The commission shall:

- (1) compile federal, state, and local laws enacted to benefit members of the armed forces, veterans, and their families and dependents;
- (2) collect information relating to services and facilities available to veterans;
- (3) cooperate with veterans service agencies in the state;
- (4) inform members and veterans of the armed forces, their families and dependents, and military and civilian authorities about the existence or availability of:
  - (A) educational training and retraining facilities;
  - (B) health, medical, rehabilitation, and housing services and facilities;
  - (C) employment and reemployment services;
  - (D) provisions of federal, state, and local law affording rights, privileges, and benefits to members and veterans of the armed forces and their families and dependents; and
  - (E) other similar, related, or appropriate matters;

(5) assist veterans and their families and dependents in presenting, proving, and establishing claims, privileges, rights, and benefits they may have under federal, state, or local law;

(6) cooperate with all government and private agencies securing services or benefits to veterans and their families and dependents;

(7) investigate, and if possible correct, abuses or exploitation of veterans or their families or dependents, and recommend necessary legislation for full correction;

(8) coordinate the services and activities of state departments and divisions having services and resources affecting veterans or their families or dependents; and

(9) cooperate with and assist in training county service officers. (V.A.C.S. Art. 5787, Sec. 3(c) (part).)

Sec. 434.008. FEES PROHIBITED. The commission may not charge a fee or permit the payment of a fee by an applicant to a third person for services rendered by the commission. (V.A.C.S. Art. 5787, Sec. 3(c) (part).)

Sec. 434.009. EXECUTIVE DIRECTOR. (a) The commission shall employ an executive director qualified by experience and training to administer the policies of the commission.

(b) The executive director shall:

(1) place into operation the policies and instructions of the commission;

(2) serve as the executive officer of the commission, without the power to vote;

(3) be in charge of commission offices;

(4) direct the paid personnel of the commission; and

(5) be responsible to the commission for all reports, data, and similar information required by the commission.

(c) The executive director may:

(1) administer oaths;

(2) certify official acts under the commission's seal;

(3) take depositions inside or outside the state, as provided by law; and

(4) compel the production of pertinent books, accounts, records, and documents.

(d) The executive director shall devote the executive director's entire time to the duties of the office and may not actively engage or be employed in another business, vocation, or profession. (V.A.C.S. Art. 5787, Secs. 3(f), (i) (part).)

Sec. 434.010. RULES. The commission may adopt rules that it considers necessary for its administration. (V.A.C.S. Art. 5787, Sec. 3(d) (part).)

Sec. 434.011. OFFICE; EXPENSES; EMPLOYEES. (a) The state shall provide the commission suitable offices and office equipment in Austin. The commission may incur the expenses necessary to perform its work.

(b) The commission shall employ sufficient office personnel, stenographers, typists, and clerical help to maintain the efficient operation of the office. (V.A.C.S. Art. 5787, Sec. 3(e) (part).)

Sec. 434.012. COMPENSATION AND EXPENSES. (a) A member of the commission is entitled to a per diem as set by legislative appropriation for each day that the member engages in commission business.

(b) A member is entitled to receive compensation for meals, lodging, or other travel expenses as provided by the General Appropriations Act. (V.A.C.S. Art. 5787, Sec. 3(b) (part).)

Sec. 434.013. FINANCES. (a) The state auditor shall audit the financial transactions of the commission during each fiscal year.

(b) On or before December 1 each year, the commission shall make a written report to the governor and the presiding officer of each house of the legislature. The report must include a complete and detailed accounting for all money received and disbursed by the commission during the preceding year. (V.A.C.S. Art. 5787, Sec. 3(d) (part).)

Sec. 434.014. EMPLOYMENT PRACTICES. (a) The executive director or the executive director's designee shall develop a career ladder program. The program must require that openings in all positions except entry level positions be posted within the commission for at least 10 days before they are posted for the public.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluation based on measurable job tasks. Merit pay for commission employees must be based on this system. (V.A.C.S. Art. 5787, Sec. 3(i) (part).)

Sec. 434.015. INFORMATION OF PUBLIC INTEREST. The commission shall prepare information of public interest describing the functions of the commission and the procedures for filing and for resolution by the commission of public complaints. The commission shall make the information available to the general public and appropriate state agencies. (V.A.C.S. Art. 5787, Sec. 3(o).)

[Sections 434.016–434.030 reserved for expansion]

#### SUBCHAPTER B. VETERANS COUNTY SERVICE OFFICES

Sec. 434.031. DEFINITIONS. In this subchapter:

- (1) "Office" means a Veterans County Service Office created under this subchapter.
- (2) "Officer" means a veterans county service officer or assistant veterans county service officer. (New.)

Sec. 434.032. CREATION. (a) In a county with a population of 200,000 or more, the commissioners court shall maintain a veterans county service office. The office must be:

- (1) separate and distinct from other county offices; and
- (2) staffed by at least one full-time employee.

(b) In a county with a population of less than 200,000, the commissioners court, by a majority vote of its full membership, may maintain and operate a veterans county service office if the commissioners court determines that the office is a public necessity to enable county residents who are veterans to promptly, properly, and rightfully obtain benefits to which they are entitled. (V.A.C.S. Art. 5787, Secs. 1(a) (part), (f).)

Sec. 434.033. OFFICERS. (a) A commissioners court that maintains and operates an office shall appoint a veterans county service officer and the number of assistant veterans county service officers that it considers necessary.

(b) To be appointed as an officer a person must:

- (1) be qualified by education and training for the duties of the office;
- (2) be experienced in the law, regulations, and rulings of the United States Veterans Administration controlling cases that come before the commission; and
- (3) have the service experience specified by Subsection (c) or be a widowed Gold Star Mother or unremarried widow of a serviceman or veteran whose death resulted from service.

(c) To meet the service experience requirement of Subsection (b)(3) a person must have:

- (1) served in the active armed forces or nurses corps of the United States or Canada during:
  - (A) World War I;
  - (B) World War II;
  - (C) the Korean War; or
  - (D) the period beginning July 1953 and ending at the end of the Vietnam War;
- (2) served for at least four months or have a service-connected disability; and
- (3) been honorably discharged.

(d) A person may not be appointed as an officer unless at or before the time of the appointment a statement showing that the person meets the requirements of this section is filed with the commissioners court.

(e) The term of office for an officer initially appointed expires at the end of the county fiscal year during which the appointment is made. Subsequent consecutive appointments of the officer are for a term of two years. (V.A.C.S. Art. 5787, Secs. 1(a) (part), (b).)

Sec. 434.034. **JOINT EMPLOYMENT.** The commissioners courts of any number of contiguous counties, by a majority vote of the full membership of each commissioners court, may agree to jointly establish an office and employ a veterans county service officer. The agreement must stipulate the amount of compensation and travel and other expenses to be paid by each county. (V.A.C.S. Art. 5787, Sec. 1(e).)

Sec. 434.035. **DUTIES.** An officer shall aid any county resident who served in the armed forces or nurses corps of the United States, and any orphan or dependent of the person, to prepare, submit, and present any claim against the United States or a state for benefits to which the person may be entitled under United States or state law. The officer shall defeat all unjust claims that come to the officer's attention. (V.A.C.S. Art. 5787, Sec. 1(c) (part).)

Sec. 434.036. **PROHIBITIONS.** (a) An officer may not charge a fee or permit the payment of a fee by an applicant to a third person for services the officer renders under this subchapter.

(b) An officer may not seek to influence the execution of a power of attorney to one national service organization over that of another. (V.A.C.S. Art. 5787, Sec. 1(c) (part).)

Sec. 434.037. **ACCESS TO RECORDS.** A state eleemosynary or penal institution shall give an officer access to its records to enable the officer to determine the status of a person confined in the institution relating to a benefit to which the person may be entitled. Access to records of a penal institution is governed by rules of the Texas Department of Corrections. (V.A.C.S. Art. 5787, Sec. 1(d).)

#### CHAPTER 435. TEXAS NATIONAL GUARD ARMORY BOARD

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**CHAPTER 435. TEXAS NATIONAL GUARD ARMORY BOARD**

**SUBCHAPTER A. COMPOSITION AND ADMINISTRATION**

**Sec. 435.001. DEFINITIONS.** In this subchapter:

(1) "Bond" includes a debenture or other evidence of indebtedness.

(2) "Board" means the Texas National Guard Armory Board. (New.)

**Sec. 435.002. BOARD.** The Texas National Guard Armory Board is an agency of the state. (V.A.C.S. Art. 5931-1 (part).)

**Sec. 435.003. APPLICATION OF SUNSET, OPEN MEETINGS, AND ADMINISTRATIVE PROCEDURE LAWS.** (a) The Texas National Guard Armory Board is subject to the Texas Sunset Act (Chapter 325). Unless continued in existence as provided by that Act, the board is abolished and this chapter expires September 1, 1993.

(b) The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Arts. 5931-1a, 5931-3(b).)

**Sec. 435.004. COMPOSITION.** (a) The board is composed of:

(1) the two senior officers of the Texas Army National Guard, who must be actively serving in the Texas Army National Guard at the time of appointment;

(2) the senior officer of the Texas Air National Guard, who must be actively serving in the Texas Air National Guard at the time of appointment; and

(3) three members of the general public who are appointed by the governor with the advice and consent of the senate and who must not be actively serving in the Texas National Guard at the time of appointment.

(b) The governor shall appoint each public member without regard to the appointee's race, creed, sex, religion, or national origin.

(c) A person may not serve as a member of the board if the person holds another office or position of honor, trust, or profit under the state or federal government, except as a member of the Texas National Guard.

(d) A person required to register as a lobbyist under Chapter 305 of this code may not serve as a member of the board or act as general counsel to the board. (V.A.C.S. Art. 5931-1 (part).)

**Sec. 435.005. VACANCY; INABILITY TO SERVE.** (a) If a member of the board who is an officer of the Texas National Guard retires from active service with the Texas National Guard, the member's position on the board becomes vacant.

(b) A vacancy on the board is filled for the unexpired term by the person who fills the position in the Texas National Guard of the person whose retirement created the vacancy. The governor shall certify the officer filling the vacancy to the secretary of state, who shall notify the officer of the officer's eligibility to fill the vacancy not later than the 10th

day after the date the vacancy occurs. Not later than the 15th day after the date the officer receives the notice, the officer shall qualify by taking and filing with the secretary of state the constitutional oath of office. If the officer fails to qualify as a member of the board under the state constitution or this chapter, the governor shall certify to the secretary of state the next senior officer in military rank to qualify.

(c) If a member of the board who is a member of the Texas National Guard is unable to serve as a board member because of induction into federal service of the member or the member's military unit, the governor shall designate the next senior officer of the Texas National Guard as the member's successor in function on the board for the period of the induction into federal service. The successor shall qualify as a member of the board. (V.A.C.S. Art. 5931-1 (part).)

Sec. 435.006. REMOVAL. It is a ground for removal from the board if a member fails to attend at least one-half of the regularly scheduled board meetings held in a calendar year, excluding meetings held while the person was not a member. (V.A.C.S. Art. 5931-1 (part).)

Sec. 435.007. TERM AND OFFICERS. (a) The term of office of a board member is six years without regard to the organizational structure of the Texas National Guard.

(b) The board annually shall elect a chairman and treasurer from among its members. (V.A.C.S. Art. 5931-1 (part).)

Sec. 435.008. PER DIEM AND EXPENSES. (a) A member is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the board.

(b) A member may not receive compensation for meals, lodging, or other travel expenses, except that the member is entitled to compensation for transportation expenses as provided by the General Appropriations Act. (V.A.C.S. Art. 5931-3(c).)

Sec. 435.009. PERSONNEL. (a) The board may employ an executive secretary and other officials, counsel, agents, and employees as necessary to carry out the board's purposes and duties, and may prescribe their duties and fix their compensation.

(b) The executive secretary or the executive secretary's designee shall develop a career ladder program within the agency. The program must require that openings in all positions except entry level positions be posted within the board for at least 10 days before they are posted for the public.

(c) The executive secretary or the executive secretary's designee shall develop a system of annual performance evaluation based on measurable job tasks. Merit pay for board employees shall be based on this system. (V.A.C.S. Art. 5931-5(a) (part), (b), (c).)

Sec. 435.010. HEADQUARTERS. The board shall maintain a headquarters in Travis County. (V.A.C.S. Art. 5931-2.)

Sec. 435.011. RULES; ACTIONS OF THE BOARD. (a) The board may adopt necessary rules for carrying out its business and may adopt reasonable methods to accomplish its purposes. This chapter shall be construed liberally to effect those purposes.

(b) The board shall act by resolution adopted at a meeting held according to its rules. (V.A.C.S. Arts. 5931-3(a) (part), 5931-5(a) (part), 5931-8(a) (part).)

Sec. 435.012. RECORDS; AUDIT; REPORT. (a) The board shall keep accurate minutes of its meetings and shall keep accurate records and books of account that conform with approved methods of accounting and that clearly reflect the income and expenses of the board and all transactions in relation to its property.

(b) The state auditor shall audit the financial transactions of the board during each fiscal biennium.

(c) On or before January 1 of each year, the board shall make in writing to the governor and the presiding officer of each house of the legislature a complete and detailed report accounting for all funds received and disbursed by the board during the preceding year. (V.A.C.S. Art. 5931-8(a) (part), (b), (c).)

Sec. 435.013. GENERAL POWERS. (a) The board is a public authority and a body politic and corporate and has all powers necessary for the acquisition, construction, rental,



control, maintenance, and operation of Texas National Guard or Texas State Guard armories, including all property and equipment necessary or useful in connection with the armories.

- (b) The board may:
- (1) sue and be sued;
  - (2) enter into contracts in connection with any matter within its purposes or duties; and
  - (3) have and use a corporate seal. (V.A.C.S. Arts. 5931-4, 5931-5(a) (part).)

[Sections 435.014-435.020 reserved for expansion]

#### SUBCHAPTER B. PROPERTY TRANSACTIONS AND MANAGEMENT

**Sec. 435.021. ACQUISITION; MANAGEMENT; PLEDGE OF RENTS, ISSUES, AND PROFITS.** (a) The board by gift or purchase may acquire real and personal property, including leasehold estates in real property, for use for any purpose the board considers necessary in connection with the Texas National Guard or for the use of units of the Texas National Guard.

(b) The board by gift, purchase, or construction may acquire furniture and equipment suitable for armory purposes.

(c) The board may hold, manage, and maintain its property and may pledge all or part of the rents, issues, and profits of the property. (V.A.C.S. Art. 5931-5(a)(6), (7) (part).)

**Sec. 435.022. CONSTRUCTION; FURNISHING AND EQUIPMENT.** (a) The board may construct buildings on its real property, whether held in fee simple or otherwise. The board may furnish and equip the buildings.

(b) The board may construct a building on land comprising a state camp only on a site selected and described by a board of officers. The adjutant general shall select the officers from time to time for that purpose. The officers shall select and describe the site promptly after request by the board to the adjutant general. The site may not exceed 200,000 square feet. The officers shall certify the description to the board and furnish a copy of it to the adjutant general, who shall preserve it in the adjutant general's office. If the board constructs a building on the site selected and described, the site becomes the property of the board for all purposes of this chapter as if the site had been acquired by gift to or purchase by the board. (V.A.C.S. Art. 5931-5(a)(7) (part).)

**Sec. 435.023. LEASE OF PROPERTY.** (a) The board may execute and deliver a lease that leases to the state a building, its site, and the equipment in it. The adjutant general shall execute the lease for the state as provided by Section 431.030. The board shall determine a lawful term of the lease and may renew the lease from time to time.

(b) The board may make the annual rent charged the state under the lease payable in installments. The amount of the rent must be sufficient to:

- (1) provide for the operation and maintenance of the property;
- (2) pay the interest on, provide for the retirement of, and pay the expenses related to the issuance of, any bonds issued to acquire, construct, or equip the property; and
- (3) pay the board's necessary expenses not otherwise provided for.

(c) The board may lease the property to any person under terms the board determines if the state fails or refuses to:

- (1) lease the property;
- (2) renew an existing lease at the rent provided to be paid; or
- (3) pay the rent required in the lease.

(d) The law requiring notice and competitive bids does not apply to a lease under this section.

(e) For the purposes of this section the term "lease" includes "sublease." (V.A.C.S. Art. 5931-5(9).)

Sec. 435.024. **TRANSFER TO STATE.** When property that the board owns is fully paid for and free of liens, and all obligations incurred in connection with the acquisition and construction of the property have been fully paid, the board may donate and transfer the property to the state by appropriate instruments of transfer. The instruments of transfer shall be kept in the custody of the adjutant general's department. (V.A.C.S. Art. 5931-6.)

Sec. 435.025. **TEXAS NATIONAL GUARD PROPERTY.** (a) The board may receive from the adjutant general a state-owned national guard camp and all the land, improvements, and personal property connected with it. The board may:

- (1) administer the property with its other property; or
- (2) properly dispose of the property if:
  - (A) the property is designated by the board and adjutant general as surplus; and
  - (B) the disposal is in the best interests of the Texas National Guard or its components or successors.

(b) To accomplish the purposes of Subsection (a), the board may remove, dismantle, or sever any of the property or authorize its removal, dismantling, or severance.

(c) If property under this section is designated for sale, the board shall sell it to the highest bidder for cash. The board may reject any or all bids.

(d) Except as provided by Subsection (e)(1), a sale or deed made under this section must reserve to the state a one-sixteenth mineral interest free of cost of production.

(e) The board may:

- (1) reconvey to the original grantor or donor all rights, title, and interests, including mineral interests, to all or part of the land conveyed by that person; and
- (2) convey to the original grantor or donor, on a negotiated basis at fair market value, improvements constructed on the land reconveyed.

(f) The board shall deposit proceeds of sales under this section in the state treasury to the credit of the board for the use and benefit of the Texas National Guard or its components or successors. (V.A.C.S. Arts. 5931-9, 5931-10.)

Sec. 435.026. **TAX STATUS OF PROPERTY.** Property held by the board and rents, issues, and profits of the property are exempt from taxation by the state, a municipality, a county or other political subdivision, or a taxing district of the state. (V.A.C.S. Art. 5931-7.)

[Sections 435.027-435.040 reserved for expansion]

#### SUBCHAPTER C. FINANCING

Sec. 435.041. **BORROWING MONEY; ISSUING AND SELLING BONDS.** (a) The board from time to time may borrow money and issue and sell fully negotiable bonds to acquire one or more building sites or buildings or to construct, remodel, repair, or equip one or more buildings.

(b) The board may sell the bonds in any manner it determines, except that it may not sell a bond that has not been approved by the attorney general and registered with the comptroller. (V.A.C.S. Art. 5931-5(a)(8) (part).)

Sec. 435.042. **FORM.** (a) The bonds must be signed by the board's chairman and countersigned by its treasurer. The board's corporate seal must be affixed to the bonds and attested by the board's executive secretary. The board is not prohibited from issuing bonds signed or attested by a board officer because the officer ceased to be an officer before the bonds were issued.

(b) The board may issue bonds in:

- (1) fully registered form without interest coupons;
- (2) coupon form registrable as to principal only; or
- (3) bearer form with coupons attached.

(c) Coupons must be authenticated by the facsimile signature of the board's treasurer.

(d) The board may issue bonds in series. All series of bonds issued under the same trust indenture or trust agreement must rank equally without preference or priority of one series over another. (V.A.C.S. Art. 5931-5(a)(8) (part).)

Sec. 435.043. SECURITY AND REPAYMENT. (a) Except as provided by Subsection (b), the bonds must be secured by a pledge of, and payable solely from, the rents, issues, and profits of:

- (1) all board property; or
- (2) property the board acquires or constructs, in whole or part, with the proceeds of the sale of the bonds.

(b) Interest due not later than two years after the date bonds or a series of bonds are issued and sold may be paid from the proceeds of the sale of the bonds. (V.A.C.S. Art. 5931-5(a)(8) (part).)

Sec. 435.044. TAX STATUS OF BONDS. The bonds and interest on the bonds are exempt from taxation, except inheritance taxes, by the state, a municipality, a county or other political subdivision, or a taxing district of the state. (V.A.C.S. Art. 5931-5(a)(8) (part).)

Sec. 435.045. SECURITY FOR DEPOSITS. The bonds are eligible to secure deposits of public funds of the state and of a municipality, county, school district, or other political corporation or subdivision of the state. The bonds are lawful and sufficient security for these deposits to the extent of their value when accompanied by all unmatured coupons. (V.A.C.S. Arts. 5931-5(a)(8) (part), 5931-11 (part).)

Sec. 435.046. BONDS AS INVESTMENTS. The bonds are legal and authorized investments for:

- (1) a bank;
- (2) a savings bank;
- (3) a trust company;
- (4) a savings and loan association;
- (5) an insurance company;
- (6) a fiduciary;
- (7) a trustee;
- (8) public funds of the state, including the permanent school fund; and
- (9) a sinking fund of a municipality, county, school district, or other political corporation or subdivision of the state. (V.A.C.S. Arts. 5931-5(a)(8) (part), 5931-11 (part).)

Sec. 435.047. TRUST DEEDS AND TRUST AGREEMENTS. (a) The board may from time to time execute and deliver trust deeds and trust agreements. The trustee under a trust deed or trust agreement must be a bank or trust company authorized by the laws of this state or the United States to accept and execute trusts in this state, or an individual selected by the board. The board shall select the trustee on the basis of written competitive bids.

(b) The trust deed or trust agreement must be signed in the name and on behalf of the board by the board's chairman and countersigned by the board's treasurer. The corporate seal of the board must be affixed to the trust deed or agreement and attested by the board's executive secretary.

(c) The trust deed or trust agreement may contain provisions approved by the board for the protection and enforcement of the rights and remedies of the trustee and the holders of the bonds, including provisions for the acceleration of the maturity of the bonds on default by the board on the bonds or the trust deed or trust agreement under which they were issued. The trust deed or trust agreement must equally secure all bonds issued under it. The trust deed or trust agreement may limit or place conditions on the board's right to issue additional bonds.

(d) If a bank or trust company is named as trustee, the trust deed or trust agreement may provide for deposit with and disbursement by the trustee of proceeds of the bonds

issued under or secured by the trust deed or trust agreement and rents, issues, and profits of all property acquired or constructed from those proceeds. (V.A.C.S. Art. 5931-5(a)(8) (part).)

Sec. 435.048. REFUNDING BONDS. (a) The board may issue refunding bonds to refund any outstanding bonds that the board has lawfully issued, and interest on the bonds. The board may issue the refunding bonds in exchange or substitution for outstanding bonds or may sell the refunding bonds and use the proceeds to pay or redeem outstanding bonds.

(b) If refunding bonds are sold, they may be sold in an amount necessary to:

- (1) pay principal of, interest on, and premium, if any, of the bonds being refunded;
- (2) make a deposit in a reserve fund as provided in the resolution authorizing the refunding bonds; and
- (3) pay expenses incurred in the issuance, sale, and delivery of the refunding bonds.

(c) Until refunding bond proceeds are needed for purposes under Subsection (b), the board may invest them in direct obligations of the United States, and may use or pledge the income from the investments as provided in the resolution authorizing the refunding bonds.

(d) In addition to the authority provided by this section, the board may refund its outstanding bonds according to applicable general law. (V.A.C.S. Art. 5931-12.)

[Chapters 436-440 reserved for expansion]

#### CHAPTER 441. LIBRARIES AND ARCHIVES

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- Sec. 441.003. EMPLOYEES
- Sec. 441.004. CAREER LADDER; PERFORMANCE EVALUATIONS
- Sec. 441.005. STANDARDS OF CONDUCT; EQUAL EMPLOYMENT OPPORTUNITY
- Sec. 441.006. GENERAL POWERS AND DUTIES
- Sec. 441.007. CERTIFICATION OF COUNTY LIBRARIANS
- Sec. 441.008. TRANSFER OR EXCHANGE OF BOOKS OR DOCUMENTS
- Sec. 441.009. STATE PLAN FOR LIBRARY SERVICES AND CONSTRUCTION
- Sec. 441.010. CUSTODY OF RECORDS
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- Sec. 441.013. REPORT TO GOVERNOR
- Sec. 441.014. AUDIT
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##### SUBCHAPTER B. ARCHIVES OF CERTAIN AGENCIES

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- Sec. 441.022. ARCHIVES OF OFFICE OF SECRETARY OF STATE
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- Sec. 441.024. ARCHIVES OF EXECUTIVE DEPARTMENTS
- Sec. 441.025. UNIVERSITY ARCHIVES
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- Sec. 441.038. PHOTOGRAPHIC REPRODUCTIONS
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**SUBCHAPTER D. PRESERVATION OF ESSENTIAL RECORDS**

- Sec. 441.051. SHORT TITLE
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- Sec. 441.053. RECORDS MANAGEMENT AND PRESERVATION ADVISORY COMMITTEE
- Sec. 441.054. RECORDS PRESERVATION OFFICER
- Sec. 441.055. BOND
- Sec. 441.056. CATEGORIES OF ESSENTIAL RECORDS
- Sec. 441.057. SELECTION OF RECORDS
- Sec. 441.058. PRESERVATION DUPLICATES
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- Sec. 441.060. CONFIDENTIALITY
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**SUBCHAPTER E. REGIONAL HISTORICAL RESOURCE DEPOSITORIES**

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- Sec. 441.072. REGIONAL DEPOSITORIES
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CHAPTER 441. LIBRARIES AND ARCHIVES

SUBCHAPTER A. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

Sec. 441.001. COMMISSION; MEMBERS. (a) The Texas State Library and Archives Commission is composed of six members appointed by the governor with the advice and consent of the senate.

(b) Members of the commission serve staggered terms of six years.

(c) A person appointed to fill a vacancy serves for the remainder of the term to which that person's predecessor was appointed.

(d) An appointment to the commission shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

(e) A person who is required to register as a lobbyist under Chapter 305 may not serve as a member of the commission or act as the general counsel to the commission.

(f) A member or employee of the commission may not be an officer, employee, or paid consultant of a trade association in the library or archival industry but may hold office in a professional archival association.

(g) It is a ground for removal from the commission that a member violates Subsection (e) or (f). The validity of an action of the commission is not affected by the fact that it was taken at a time a ground for removal of a member of the commission existed.

(h) The commission shall be assigned suitable offices in the Capitol area in which the commission shall hold at least one regular meeting annually and as many special meetings as are necessary.

(i) Members of the commission may choose their presiding officers.

(j) While attending a meeting of the commission, a member is entitled to reimbursement for actual expenses incurred in attending the meeting and to a per diem as provided by the General Appropriations Act.

(k) The commission is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). At an open meeting of the commission, a member of the public is entitled to appear and speak on any issue under the jurisdiction of the commission, within the limits of any reasonable rules of the commission designed to expedite consideration of issues at a meeting.

(l) The commission is subject to the Texas Sunset Act (Chapter 325). Unless continued in existence as provided by that Act, the commission is abolished September 1, 1999 (V.A.C.S. Arts. 5434, 5434a.)

Sec. 441.002. DIRECTOR AND LIBRARIAN. (a) The commission shall appoint a director and librarian.

(b) The director and librarian is the executive and administrative officer of the commission and shall discharge the administrative and executive functions of the commission.

(c) To be appointed as the director and librarian, a person must have:

(1) at least two years of training in library science or experience in teaching or research or in a library that is the equivalent of two years of training in library science and

(2) at least two years of administrative experience in the field of libraries or research or in a related field.

(d) The director and librarian serves at the will of the commission.

(e) The director and librarian shall give bond in the sum of \$5,000 for the proper care of the Texas State Library and its equipment.

(f) Based on the sworn account of the director and librarian showing expenses in detail, the director and librarian is entitled to reimbursement for actual expenses incurred when traveling in the service of the commission.

(g) Under the direction of the commission, the director and librarian shall:

- (1) record the commission's proceedings;
- (2) keep an accurate account of the commission's financial transactions;
- (3) have charge of the state library and any book, picture, document, newspaper, manuscript, archive, relic, memento, flag, or similar item contained in the library;
- (4) endeavor to collect any manuscript record relating to the history of Texas possessed by a private individual, or if the original record cannot be obtained, endeavor to procure an authenticated copy;
- (5) seek diligently to procure a copy of any printed matter, including any book, pamphlet, or map, giving valuable information concerning this state;
- (6) collect portraits or photographs of as many prominent Texans as possible;
- (7) endeavor to complete the files of early Texas newspapers in the state library and of other publications of this state that seem necessary to preserve in the state library an accurate record of the history of Texas;
- (8) demand and receive from the officer of the state department in charge of it, any book, map, paper, manuscript, document, memoranda, or data relating to the history of Texas not connected with or necessary to the current duties of the officer;
- (9) carefully classify, catalogue, and preserve any book, map, paper, manuscript, document, memoranda, or data received under Subdivision (8);
- (10) endeavor to procure from Mexico the original archives that have been removed from Texas and that relate to the history and settlement of Texas or, if the originals cannot be procured, endeavor to procure authentic copies of the originals;
- (11) procure the original of any manuscript relating to the history of Texas that is preserved in an archive outside this state or, if the original cannot be procured, procure an authentic copy of the original;
- (12) preserve any historical relic, memento, antiquity, or work of art relating to the history of Texas that comes into the director and librarian's possession as director and librarian;
- (13) endeavor constantly to build up a historical museum worthy of the interesting and important history of this state;
- (14) give careful attention to the proper classification, indexing, and preserving of the official archives in the director and librarian's custody;
- (15) make a biennial report to the commission that is accompanied by any historical papers or documents the director and librarian considers to be of sufficient importance;
- (16) ascertain the condition of all public libraries in this state and report the results to the commission; and
- (17) perform any other duty the commission assigns.

(h) Under the direction of the commission, the director and librarian may:

- (1) spend money appropriated for that purpose to purchase any book relating to Texas;
- (2) approve the voucher for any expenditure made in connection with the state library; and
- (3) withhold from any library a public document furnished the commission for distribution or an interlibrary loan the library desires if the library refuses or neglects to furnish an annual report or other information the librarian requests.



(i) If there is a disagreement as to the proper custody of a book, map, paper, manuscript, document, memorandum, or data under Subsection (g)(8), the attorney general shall decide proper custody. (V.A.C.S. Art. 5435, Sec. 3 (part); Art. 5441 (part).)

Sec. 441.003. EMPLOYEES. (a) Subject to the approval of the commission, the director and librarian shall appoint an assistant state librarian, a state archivist, and other assistants and employees necessary for the maintenance of the libraries and archives of this state.

(b) The assistant state librarian has the rank of a department head. In the absence of the director and librarian, the assistant may sign and certify accounts and documents in the same manner and with the same legal authority as the director and librarian. The assistant shall give bond to the governor in the sum of \$3,000 and shall take the official oath.

(c) To be eligible for appointment as state archivist, a person must present satisfactory evidence of completion of one year's advance work in American or Southwestern history in a standard college and of a fluent reading knowledge of Spanish and French but is not required to have technical library school training or library experience to be appointed state archivist.

(d) An assistant other than the assistant state librarian serves in the grade of head of a department, library assistant, clerk, or laborer. To be eligible for appointment as the head of a department, a person must have technical library training and at least one year of experience in library work. To be eligible for appointment as a library assistant, a person must have technical library training. To be eligible for appointment as a clerk, a person must hold a diploma from a high school considered to be first class according to the standards of the State Board of Education or The University of Texas or present satisfactory evidence of educational training equivalent to that provided by a first class high school, and the person must present satisfactory evidence of proficiency in stenography and typewriting or bookkeeping. To be eligible for appointment as a laborer, a person must present satisfactory evidence of education sufficient to do any elementary clerical work required. (V.A.C.S. Art. 5435, Sec. 4; Art. 5445.)

Sec. 441.004. CAREER LADDER; PERFORMANCE EVALUATIONS. (a) The director and librarian or the director and librarian's designee shall develop a career ladder program within the commission. The program must require that openings in all positions except entry level positions be posted within the commission for at least 10 days before they are posted for the public.

(b) The director and librarian or the director and librarian's designee shall develop a system of annual performance evaluations based on measurable job tasks. Merit pay for commission employees must be based on that system. (V.A.C.S. Art. 5435, Secs. 5(a), (b).)

Sec. 441.005. STANDARDS OF CONDUCT; EQUAL EMPLOYMENT OPPORTUNITY. (a) As often as necessary, the commission shall provide to its members and staff information regarding their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(b) The commission shall prepare and maintain a written plan to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, age, or national origin. The plan must cover an annual period and must be updated at least annually. The plan must include:

(1) a comprehensive analysis of all employees by race, sex, ethnic origin, class of position, and salary or wage;

(2) plans for recruitment, evaluation, selection, appointment, training, promotion and other personnel policies;

(3) steps reasonably designed to overcome any identified underuse of minorities and women in the commission's work force; and

(4) objectives and goals, timetables for the achievement of those objectives and goals, and assignments of responsibility for the achievement of the objectives and goals.

(c) Before the expiration of 30 days after April 1 and November 1 of each year, the commission shall submit a progress report to the governor. The report must include a statement of the steps that the commission has taken during the reporting period to comply with the requirements of Subsection (b). (V.A.C.S. Art. 5435, Sec. 5(c); Art. 5435a, Sec. 1.)

Sec. 441.006. GENERAL POWERS AND DUTIES. (a) The commission shall:

- (1) govern the Texas State Library;
- (2) adopt policies and rules to aid and encourage the development of and cooperation among all types of libraries, including public, academic, special, and other types of libraries;
- (3) collect materials relating to the history of Texas and adjoining states;
- (4) preserve, classify, and publish the manuscript archives and other matters it considers proper;
- (5) diffuse knowledge relating to the history of Texas;
- (6) encourage historical work and research;
- (7) mark historic sites and houses and secure their preservation;
- (8) aid those studying problems to be dealt with by legislation;
- (9) prepare and make available to the general public and appropriate state agencies information of interest to consumers describing the functions of the commission and the procedures by which complaints are filed with and resolved by the commission;
- (10) deposit in the state treasury money paid to the commission;
- (11) give to any person contemplating the establishment of a public library advice regarding matters such as maintaining a public library, selecting books, cataloging, and managing a library; and
- (12) conduct library institutes and encourage library associations.

(b) The commission may:

- (1) purchase, as state property, any suitable book, picture, or similar item, within the limits of the annual legislative appropriation;
- (2) receive a donation or gift of money or property on any terms and conditions it considers proper as long as the state does not incur financial liability;
- (3) accept, receive, and administer federal funds made available by grant or loan to improve the public libraries of this state; and
- (4) contract or agree with the governing body or head of a county, city, or town of this state to meet the terms prescribed by the United States and consistent with state law for the expenditure of federal funds for improving public libraries. (V.A.C.S. Art. 5435, Sec. 1; Art. 5435a, Sec. 2; Art. 5435b, Sec. 1; Arts. 5436(a), (c), (d); Art. 5437 (part).)

Sec. 441.007. CERTIFICATION OF COUNTY LIBRARIANS. (a) The commission shall pass on the qualifications of a person wanting to become a county librarian in this state and shall adopt rules necessary to administer that responsibility.

(b) The educational requirement for permanent certification as a county librarian is:

- (1) graduation from a library school accredited by the American Library Association, if the commission determines that the association has accreditation standards that ensure a high level of scholarship from students; or
- (2) graduation with a master's degree in library science from an institution of higher education accredited by an organization that the commission determines has accreditation standards that ensure a high level of scholarship from students.

(c) The commission by rule may establish a fee payable by an applicant to recover its costs arising from certification of county librarians.

(d) The commission shall keep an information file about each complaint filed with the commission relating to an individual certified under this section.

(e) The commission shall notify the parties to a written complaint filed with the commission of the status of the complaint at least quarterly until final disposition. (V.A.C.S. Art. 5435, Sec. 2.)

Sec. 441.008. TRANSFER OR EXCHANGE OF BOOKS OR DOCUMENTS. (a) The commission may transfer a book or document to another library that is supported by state appropriation if the commission believes that the transfer would benefit the state library. The commission may make the transfer permanent or temporary.

(b) If a duplicate book or document is no longer needed by the state library, the commission may exchange the duplicate or may dispose of the duplicate to any state or local public library.

(c) This section does not apply to a book or document that is an archive of the state library. (V.A.C.S. Art. 5436(b).)

Sec. 441.009. STATE PLAN FOR LIBRARY SERVICES AND CONSTRUCTION. (a) The commission may adopt a state plan for improving services of and constructing county, municipal, and other public libraries.

(b) The state library shall prepare the plan for the commission and shall administer the plan the commission adopts.

(c) The plan must include a procedure by which a county or municipal library may apply for money under the plan and a procedure for a fair hearing for a library whose application for money is refused. Money from local, state, or federal sources may be used. The money shall be administered according to local, state, and federal requirements. (V.A.C.S. Art. 5436a.)

Sec. 441.010. CUSTODY OF RECORDS. (a) A book, picture, document, publication, or manuscript received through gift, purchase, or exchange or on deposit, from any source, for use of the state, except an item subject to control of the State Preservation Board, constitutes part of the state library and shall be placed in the state library for use by the public. With the advice of the commission, the State Preservation Board may determine the placement and removal of items in buildings under the board's care.

(b) A book or paper, including a picture, map, document, manuscript, memorandum, or data, that relates to the history of Texas as a province, colony, republic, or state and that is delivered to the director and librarian by an officer or other person, in accordance with law, is considered a book or paper of the state library and constitutes a part of the archives of the state library. On application of an interested person, the director or librarian or archivist of the state library shall make and certify a copy from the archive. That certificate has the same force and effect as if made by the officer originally in custody of it.

(c) The commission has custody and control of a book, document, newspaper, manuscript, archive, relic, memento, flag, work of art, or similar item and shall collect and preserve historical data.

(d) A state, county, or other official may turn over to the state library for permanent preservation in the library an official book, record, document, original paper, map, chart, newspaper file, or printed book not in current use in the official's office. The director or librarian shall give the official a receipt for an item turned over under this subsection. (V.A.C.S. Arts. 256, 5438, 5439.)

Sec. 441.011. RELICS. (a) Under conditions and terms of agreement that will ensure the safekeeping of the relics in the Texas Museum, the commission temporarily may place in the custody of the Daughters of the Republic of Texas or the United Daughters of the Confederacy, Texas Division, all or part of the historical relics belonging to the state library.

(b) A transfer under Subsection (a) does not affect the state's title to the relic.

(c) The commission may remove the relics at any time. (V.A.C.S. Arts. 5438a, 5438b, 5438c.)

Sec. 441.012. SALE OF TEXAS ARCHIVES. (a) The commission may sell copies of the Texas Archives at a price not exceeding 25 percent above the cost of publishing.

(b) Any money received from the sale of the Texas Archives shall be deposited in the state treasury.

(c) The cost of printing the Texas Archives shall be paid with funds appropriated for that purpose.

(d) A copy of each volume of the Texas Archives may be distributed free to the governor, each member of the legislature, and each public or institutional library of this state. (V.A.C.S. Art. 5443.)

Sec. 441.013. REPORT TO GOVERNOR. (a) The commission shall make a biennial report to the governor that includes:

- (1) a comprehensive view of the operation of the commission in discharging the duties imposed by this subchapter;
- (2) a review of the library conditions in this state;
- (3) an itemized statement of the commission's expenditures;
- (4) any recommendations suggested by the experience of the commission;
- (5) careful estimates of money necessary for carrying out this subchapter; and
- (6) the biennial report of the director and librarian required by Section 441.002(g)(15).

(b) The report shall be printed, and the governor shall lay the report before the legislature as the governor does with other departmental reports. (V.A.C.S. Arts. 5441 (part), 5446.)

Sec. 441.014. AUDIT. The state auditor shall audit the financial transactions of the commission during each fiscal year. (V.A.C.S. Art. 5435b, Sec. 2.)

Sec. 441.015. SEAL. (a) The official seal of the state library is a circle of not less than 1-½ nor more than two inches in diameter that bears a star of five points surrounded by two concentric circles between which is printed "Texas State Library."

(b) The seal shall be used to authenticate the official acts of the Texas State Library. (V.A.C.S. Art. 5437 (part).)

Sec. 441.016. BUILDING. The name of the state archives and library building is the Lorenzo de Zavala State Archives and Library Building. (V.A.C.S. Art. 678m-2-½, Sec. 1.)

[Sections 441.017–441.020 reserved for expansion]

#### SUBCHAPTER B. ARCHIVES OF CERTAIN AGENCIES

Sec. 441.021. ARCHIVES OF GENERAL LAND OFFICE. (a) Any papers, including any book, transfer, power of attorney, field note, map, plat, legal proceeding, official report, or original document, that pertain to the land of the Republic or State of Texas and that have been deposited or filed in the General Land Office in accordance with any law of the republic or of this state are considered to be papers of and constitute a part of the archives of the General Land Office.

(b) A person owning land between the Nueces River and the Rio Grande under a grant or title from the former government that was issued before November 13, 1835, and, before the adoption of the constitution, was recorded in the county in which the land is situated but that has not been deposited or archived in the General Land Office shall deposit and archive the grant or title in the General Land Office. The act of archiving does not invest the title or grant with any greater validity than it had as a title or grant recorded in the proper county, and it is subject to any defense or objection to which it would have been subject if not so archived. The commissioner of the General Land Office shall receive the title or grant as an archive of the General Land Office.

(c) The commissioner of the General Land Office shall procure, accept, and file in the General Land Office the original papers relating to the survey of lands by virtue of certificates issued by the State of Texas to the Texas & Pacific Railway Company and its predecessors in title, including the maps, sketches, reports, and other papers that were drawn by the surveyors in making the original or corrected surveys of the land and that

are in the custody of the railway company. If the commissioner cannot procure the original papers, the commissioner may procure, accept, and file verified copies. The commissioner shall verify the authenticity of the papers. If the commissioner can procure only a portion of the originals, the commissioner shall procure and accept that portion and take and file verified copies of those originals the commissioner cannot procure. The original papers or verified copies filed by the commissioner are archives in the General Land Office and are admissible in evidence as are other papers, documents, and records and certified copies of the office.

(d) This section does not give any papers named in this section any greater force or validity, because of being recognized as archives of the General Land Office, than was accorded the papers by the laws in force at the date of their execution and deposit in the General Land Office.

(e) A written instrument, including a deed, that was executed or issued before March 2, 1836, on stamped paper of the second or third seal and that is not an original document in the General Land Office nor expressly declared by law to be an archive of that office does not constitute a part of the archives of the office. An owner of land to which the instrument relates may withdraw the instrument from the General Land Office on making a written, sworn application for the instrument to the commissioner. The application must state the fact of ownership of the land to which the instrument relates. If the commissioner is satisfied that the person applying is the owner, the commissioner may deliver the instrument to the applicant. The commissioner shall take a receipt for the instrument that describes the instrument delivered, summarizes its contents, and names the original grantee of the land to which the instrument relates or refers. (V.A.C.S. Art. 250, Subdivs. 5, 6; Arts. 251, 252, 253, 253a.)

Sec. 441.022. ARCHIVES OF OFFICE OF SECRETARY OF STATE. (a) The archives of the Congress of the Republic of Texas and of the legislatures of this state, arranged and filed according to law, and the records, books, and journals of the congress and legislatures, prepared in accordance with law and deposited in the office of the secretary of state, are the archives of that office.

(b) The secretary of state may use rooms in the basement of the Capitol for the better preservation of archives. (V.A.C.S. Arts. 254, 255.)

Sec. 441.023. ARCHIVES OF COMPTROLLER'S OFFICE. Any paper or record, including any book or archive that was an archive of the auditor's office or of the office of the commissioner of the court of claims and that was delivered to the comptroller in accordance with law, is considered a paper or record of the comptroller's office and constitutes a part of the archives of that office. (V.A.C.S. Art. 257.)

Sec. 441.024. ARCHIVES OF EXECUTIVE DEPARTMENTS. Any papers, including any book, record, roll, document, return, report, or list required by law to be kept, filed, or deposited in any office of an executive department of this state, constitute a part of the archives of that office. (V.A.C.S. Art. 258.)

Sec. 441.025. UNIVERSITY ARCHIVES. (a) The librarian of The University of Texas and the archivist of the department of history of the university may make a certified copy of any public record in the custody of the university. The certified copy is valid in law and has the same force and effect for all purposes as if certified by the county clerk or other custodian as provided by law.

(b) In making a certificate to a certified copy, the librarian or archivist shall certify that the copy is a true and correct copy of the document and, after signing the certificate, shall swear to that fact before an officer authorized to take oaths under the laws of this state. (V.A.C.S. Art. 259.)

Sec. 441.026. LOAN OF ARCHIVES. A county commissioner or other custodian of public records may lend to the library of The University of Texas, for the length of time and on the conditions the custodian determines, any part of the custodian's archives or records that are of mainly historical value. The custodian shall take a receipt for the archive or record from the librarian of the university. The librarian may give a receipt for any archive or record transferred to the library and may make a copy for historical study. (V.A.C.S. Art. 260.)

[Sections 441.027–441.030 reserved for expansion]

SUBCHAPTER C. RECORDS MANAGEMENT DIVISION OF  
TEXAS STATE LIBRARY

Sec. 441.031. DEFINITIONS. In this subchapter:

- (1) "Department or institution" means any executive, educational, judicial, or eleemosynary state department, institution, board, or commission.
- (2) "Head of department or institution" means any appointive or elective official with authority over the records of the department or institution.
- (3) "Local unit of government" means any local unit of government, including a city, town, county, or district.
- (4) "Photographic reproduction" means reproduction by any photographic process and includes reproduction by microprint or by microphotography on film and a positive or negative copy.
- (5) "Public record" means a document, book, paper, photograph, sound recording, or other material, regardless of physical form or characteristic, made or received according to law or ordinance or in connection with the transaction of official business. The term does not include library or museum material made or acquired and preserved solely for reference or exhibition purposes, an extra copy of a document preserved only for convenience of reference, or a stock of publications or of processed documents. (V.A.C.S. Art. 5441a, Sec. 2.)

Sec. 441.032. GENERAL POWERS AND DUTIES OF DIVISION. (a) The Texas State Library and Archives Commission may establish and maintain a records management division in the state library.

(b) The division shall:

- (1) manage all public records of the state with the cooperation of the heads of the various departments or institutions in charge of the records; and
- (2) operate a photographic laboratory to make photographs, microphotographs, or reproductions on film or to arrange for all or any part of the work to be done by an established commercial agency that meets the specifications established by this section for the proper accomplishment of the work. (V.A.C.S. Art. 5441a, Sec. 1 (part).)

Sec. 441.033. DIRECTOR OF DIVISION. (a) The commission shall appoint an assistant to serve as the director of the records management division.

(b) To be eligible for appointment as director, a person must have appropriate training and experience in the field of public records management. (V.A.C.S. Art. 5441a, Sec. 1 (part).)

Sec. 441.034. CLASSIFICATION OF RECORDS. Under the direction of the records management division and with the cooperation of the heads of departments and institutions, the public records of the departments or institutions shall be surveyed, indexed, and classified. (V.A.C.S. Art. 5441a, Sec. 3 (part).)

Sec. 441.035. DESTRUCTION OF RECORDS. (a) The director and librarian may transfer, destroy, or otherwise dispose of a record of this state that has been consigned by law to the custody of the director and librarian, that is more than 10 years old, and that the director and librarian determines to be valueless or of no further use to the state as an official record if the comptroller, state auditor, and attorney general agree with the director and librarian that the preservation of the record is not necessary as evidence and will serve no useful purpose in the future efficient operation of state government. Any record disposed of as agreed must be generally listed and referred to, and each official shall consent to the disposition by subscribing to the list.

(b) Any record that the director and librarian, comptroller, state auditor, or attorney general considers necessary to preserve may be preserved by microfilming the record if funds are appropriated by the legislature to cover the cost of microfilming for the state or are otherwise available for that purpose. Once microfilmed, an original record may be disposed of in a manner agreed on by the officials. The microfilm copy constitutes an original for all legal purposes.

(c) A record determined to be no longer needed for the operation of state government or replaced by microfilm copy may be transferred to the archives division of the state library if the director and librarian considers the record to be of historical value.

(d) With the approval of the director and librarian, in accordance with this section, the head of any department or institution may destroy any public record in the custody of the head of the department or institution that, in the opinion of the head of the department or institution, does not have any further legal, administrative, or historical value. Before destroying the public record, the head of a department or institution must file an application to do so with the director and librarian that describes the original purpose and the contents of the public record. In addition, the approval of the state auditor is required in the case of the destruction of a public record of a fiscal or financial nature. (V.A.C.S. Art. 5441a, Sec. 3 (part); Art. 5441b.)

Sec. 441.036. DESTRUCTION OF CERTAIN AGENCIES' RECORDS. (a) An agency listed in Subsection (b) shall:

- (1) examine all its books, papers, correspondence, or records dated earlier than 1952 and stored with the records management division;
- (2) classify and index its records;
- (3) furnish the records management division with a copy of the index that includes a list of records to be preserved;
- (4) name a retention period on each record to be stored for a definite time; and
- (5) request destruction of any worthless record or material as provided by Section 441.035(d).

(b) This section applies to the state auditor, State Board of Barber Examiners, State Purchasing and General Services Commission, Texas Cosmetology Commission, Texas State Board of Medical Examiners, Board of Pardons and Paroles, Board of Regents, Texas State University System, Texas Department of Labor and Standards, comptroller of public accounts, Court of Appeals for the Third Court of Appeals District, governor, Texas Department of Health, State Board of Insurance, Legislative Budget Board, Parks and Wildlife Commission, Railroad Commission of Texas, Texas Real Estate Commission, secretary of state, State Securities Board, Teacher Retirement System of Texas, Central Education Agency, Texas State Library, Texas Water Commission, and the state treasury department. (V.A.C.S. Art. 5441c, Secs. 2, 3.)

Sec. 441.037. DUTIES OF HEAD OF DEPARTMENT OR INSTITUTION REGARDING RECORDS. The head of any department or institution shall:

- (1) establish and maintain an active, continuing program for the economical and efficient management of the records of the department or institution;
- (2) make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the department or institution designed to furnish information to protect the legal and financial rights of the state and of any person directly affected by activities of the department or institution;
- (3) submit to the director of the records management division, in accordance with standards established by the director, schedules proposing the length of time after being adopted or received by the department or institution each state record series should be retained for administrative, legal, or fiscal purposes;
- (4) submit a list of any public records in the custody of the head of the department or institution that do not have sufficient administrative, legal, or fiscal value to warrant retention and that are to be disposed of in accordance with Section 441.035; and
- (5) act as or appoint an employee of the department or institution performing other administrative duties to act as a records administrator of the department or institution and, in that role, to comply with the rules, standards, and procedures issued by the director of the records management division. (V.A.C.S. Art. 5441a, Sec. 3 (part).)

Sec. 441.038. PHOTOGRAPHIC REPRODUCTIONS. (a) On request of the head of a department or institution, or on the director and librarian's own initiative with the consent of the head of the department or institution, the director and librarian may provide for

making photographic reproductions of the public records of the department or institution. Public records are open to the director and librarian for that purpose.

(b) Any photographic reproduction of a public record made by microprint or by microphotography on film must comply with the minimum standards of quality approved for permanent photographic records by the National Bureau of Standards.

(c) Any device used to reproduce a public record must accurately reproduce the original record in detail.

(d) The director and librarian may make photographic reproductions for public use as follows:

- (1) free of charge for official use of a department or institution;
- (2) for a fee to cover costs for official use of a local unit of government; or
- (3) for standard commercial rates fixed by the director and librarian for private use.

(e) Any money the state library receives in payment for charges for photographic reproduction shall be deposited in the state treasury.

(f) A state official may designate a photographic reproduction of a public record in the officer's office as an original record for all legal purposes, even though the record is current. The officer may transfer the replaced record to the director and librarian, who shall issue a receipt for the record. The director and librarian, with the consent of the state auditor, may further transfer or destroy the transferred record. Copies, in any form, of a photographic reproduction that has been designated as an original record and certified or authenticated according to law may be introduced in evidence. (V.A.C.S. Arts. 5439a; 5441a, Secs. 4, 5, 6.)

Sec. 441.039. AUDITOR REPORTS ON RECORDS. The state auditor shall include in an audit report of a state agency:

- (1) the degree to which an agency has complied with record disposal instructions and transfer agreements to reduce filing space and equipment required to store records;
- (2) the date on which records last were reviewed for transfer or disposal; and
- (3) any revisions required in scheduled transfer and disposal dates. (V.A.C.S. Art. 5441a, Sec. 6a.)

[Sections 441.040–441.050 reserved for expansion]

#### SUBCHAPTER D. PRESERVATION OF ESSENTIAL RECORDS

Sec. 441.051. SHORT TITLE. This subchapter may be cited as the Preservation of Essential Records Act. (V.A.C.S. Art. 5441d, Sec. 2.)

Sec. 441.052. DEFINITIONS. In this subchapter:

- (1) "Agency" means a state executive, judicial, legislative, or eleemosynary department, institution, board, or commission.
- (2) "Departmental records supervisor" means a person having authority over a department's records.
- (3) "Disaster" means a natural or man-made occurrence of fire, flood, storm, earthquake, explosion, epidemic, riot, sabotage, or other condition of extreme peril resulting in substantial damage or injury to persons or property in this state.
- (4) "Essential record" means written or graphic material that is made or received by an agency in the conduct of official state business and that is filed or intended to be preserved permanently or for a definite period as a record of that business.
- (5) "Preservation duplicate" means a copy of an essential record used to preserve the record. (V.A.C.S. Art. 5441d, Sec. 3.)

Sec. 441.053. RECORDS MANAGEMENT AND PRESERVATION ADVISORY COMMITTEE. (a) The Records Management and Preservation Advisory Committee is composed of:

- (1) each of the following officers or the officer's designee:
  - (A) the secretary of state;



- (B) the state auditor;
- (C) the comptroller of public accounts;
- (D) the attorney general;
- (E) the state archivist; and
- (F) the executive director of the State Purchasing and General Services Commission; and

(2) the executive head or, if the executive head chooses, the departmental supervisor of:

- (A) the Texas Department of Human Services;
- (B) the Texas Department of Mental Health and Mental Retardation;
- (C) the Texas Department of Health;
- (D) the Department of Public Safety;
- (E) the Central Education Agency; and
- (F) the State Board of Insurance.

(b) The committee shall select its presiding officers.

(c) A member of the committee is not entitled to compensation for performing the work of the committee but is entitled to reimbursement for actual expenses incurred in performing that work.

(d) The committee shall recommend improvements to the state's system of records management. The committee shall submit its recommendations before March 2 of each even-numbered year in a report to the Texas State Library and Archives Commission, the Legislative Budget Board, the budget division of the governor's office, the lieutenant governor, and the speaker of the house of representatives. The report must include an evaluation of savings that would result from the implementation of the recommendations (V.A.C.S. Art. 5441d, Sec. 4.)

Sec. 441.054. **RECORDS PRESERVATION OFFICER.** The director of the records management division is the records preservation officer. The records preservation officer shall adopt rules concerning the selection and preservation of essential records as necessary and proper to carry out the purpose of this subchapter. (V.A.C.S. Art. 5441d, Sec. 5.)

Sec. 441.055. **BOND.** The director and librarian and the records preservation officer each shall execute and file with the secretary of state a good and sufficient bond, payable to the state, in an amount set by the committee consistent with the person's duties, and conditioned on the faithful performance of those duties. (V.A.C.S. Art. 5441d, Sec. 6.)

Sec. 441.056. **CATEGORIES OF ESSENTIAL RECORDS.** Essential records in the following categories shall be preserved:

- (1) Category A—Records containing information necessary to the operation of government in an emergency created by a disaster; and
- (2) Category B—Records to protect the rights and interests of individuals or to establish and affirm the powers and duties of government in the resumption of operation after a disaster. (V.A.C.S. Art. 5441d, Sec. 7.)

Sec. 441.057. **SELECTION OF RECORDS.** (a) Each agency shall select the state records that are essential to carry out its work and shall determine the category of each record.

(b) Each departmental records supervisor, according to the rules adopted by the records preservation officer, shall:

- (1) inventory the state records in the departmental records supervisor's custody or control;
- (2) submit to the records preservation officer a report on the inventory containing, in addition to the information required by the rules, specific information showing which records are essential; and

(3) periodically review the inventory and report and if necessary revise the report so that it is current, accurate, and complete. (V.A.C.S. Art. 5441d, Sec. 9.)

Sec. 441.058. **PRESERVATION DUPLICATES.** (a) The records preservation officer shall make preservation duplicates or shall designate as preservation duplicates existing copies of essential state records. A preservation duplicate made by means of photography, microphotography, photocopying, or microfilm must be made according to standards that the records preservation officer prescribes in conformity with the rules of the United States Bureau of Standards.

(b) A preservation duplicate made by a process that accurately reproduces or forms a durable medium for accurately reproducing the original record has the same force and effect for all purposes as the original record, regardless of whether the original record exists. A transcript, exemplification, or certified copy of such a preservation duplicate is for all purposes a transcript, exemplification, or certified copy of the original record. (V.A.C.S. Art. 5441d, Secs. 10, 11.)

Sec. 441.059. **STORAGE.** (a) The records preservation officer shall prescribe the place and manner of safekeeping of essential records or preservation duplicates and shall establish storage facilities for the records and duplicates. At least one copy of each essential record and a duplicate seal of the state shall be stored in the safest possible location in facilities constructed to withstand blast, fire, water, and other destructive forces. The facilities must be in a place other than the legally designated or customary storage location for the records or duplicates. The records preservation officer shall properly maintain essential records and preservation duplicates that the records preservation officer stores.

(b) The regularly designated custodian of an agency record or preservation duplicate stored by the records preservation officer may recall the record or duplicate for temporary use as necessary for the proper conduct of an agency. The custodian shall return the record or duplicate to the records preservation officer immediately after the use.

(c) On request of the regularly designated custodian of an essential record stored by the records preservation officer, the records preservation officer shall provide the record for inspection or the making of certified copies. Copies certified by the records preservation officer have the same force and effect as if certified by the regularly designated custodian. (V.A.C.S. Art. 5441d, Secs. 12, 13, 14.)

Sec. 441.060. **CONFIDENTIALITY.** The departmental records supervisor shall label as confidential a state record that is required by law to be treated in a confidential manner. The records preservation officer and the officer's staff shall protect the confidential nature of a labeled record. An employee who fails in this responsibility shall be dismissed from the employee's duties and may not hold another state appointment. (V.A.C.S. Art. 5441d, Sec. 8.)

Sec. 441.061. **REVIEW.** At least once every two years the records preservation officer and the committee shall review the entire program established by this subchapter. (V.A.C.S. Art. 5441d, Sec. 15.)

Sec. 441.062. **STATE AUDITOR'S REPORT OF COMPLIANCE.** In the audit of an agency the state auditor shall report on the agency's compliance with this subchapter. (V.A.C.S. Art. 5441d, Sec. 16.)

[Sections 441.063–441.070 reserved for expansion]

#### SUBCHAPTER E. REGIONAL HISTORICAL RESOURCE DEPOSITORIES

Sec. 441.071. **DEFINITIONS.** In this subchapter:

- (1) "Commission" means the Texas State Library and Archives Commission.
- (2) "Depository" means a regional historical resource depository authorized under this subchapter.
- (3) "Disaster" has the meaning assigned by Section 441.052.
- (4) "Division" means the Regional Historical Resource Depository and Local Records Division of the Texas State Library.

(5) "Essential local government record" means a Category A or Category B essential record, as provided by Section 441.056, that is made or received by a local government.

(6) "Historical resource" means a book, publication, newspaper, manuscript, paper, document, memorandum, record, map, picture, photograph, microfilm, sound recording, or other material of historical interest or value.

(7) "Local government" means a political subdivision of the state, including a municipality, county, school or community college district, or special-purpose district or authority.

(8) "Security copy" means the original camera microfilm negative. (V.A.C.S. Art. 5442b, Sec. 1 (part).)

Sec. 441.072. REGIONAL DEPOSITORIES. (a) To provide for an orderly, uniform, statewide system for the manageable retention and preservation of historical resources under professional care in the region of origin or interest, the commission may designate an institution that meets standards the commission establishes under this section to serve as a regional historical resource depository. The commission shall specify the geographical area to be served by the depository and the methods of accessing, cataloging, storing, preserving, servicing, and caring for the historical resources placed in the depository by or in the name of the commission.

(b) The director and librarian shall:

(1) propose rules necessary to the administration of the system of depositories and publicize the rules adopted by the commission; and

(2) supervise the system of depositories. (V.A.C.S. Art. 5442b, Secs. 2, 3(a), 7, 8.)

Sec. 441.073. LOCAL RECORDS MICROFILMING SECTION. (a) The commission shall establish a local records microfilming section in the Regional Historical Resource Depository and Local Records Division to operate a microfilming service for local government records in conjunction with the division's depository program. The division shall microfilm or obtain security copies of historical and essential local government records.

(b) The determination and selection of essential local government records for preservation under this section shall be made according to the laws governing the retention and preservation of local records. (V.A.C.S. Art. 5442b, Sec. 2A.)

Sec. 441.074. DONATIONS. (a) To further establish regional historical resource depositories and preserve essential local government records, the commission, without obligation to the state or the general revenue fund, may:

(1) accept on behalf of the state land and buildings that the commission considers suitable for regional historical resource depositories or microfilm storage facilities; and

(2) accept money or property donations designated by the donors for the purpose of constructing, purchasing, remodeling, operating, or maintaining libraries and regional depositories or for the purpose of establishing or maintaining microfilming services under this subchapter.

(b) For the purposes provided by Subsection (a) the commission may enter into agreements that the commission considers advisable with donors for the acceptance, designation, and construction of regional depositories or combined library and depository centers, but the agreements may not create a financial obligation on behalf of the state.

(c) A regional library or depository accepted and designated under this section is subject to this subchapter, except that the library or depository is owned by the state and is under the direct control and supervision of the commission. The commission may accept gifts of furniture, equipment, paintings, museum pieces, and other historical resources for placement in a depository under conditions agreed to by the commission and the donor.

(d) The commission may keep donated money in a separate bank depository that the commission designates and may use the money for the purposes that the donors designate if:

(1) the money is donated and accepted by the commission for the building, maintenance, supplementing, expanding, or staffing of a regional depository or combined library and regional depository; or

(2) the money is deposited and accepted by the commission for the maintenance, support, expansion, or staffing of a microfilming program for the preservation of essential local government records.

(e) If personal or real property is specifically donated to and accepted by the commission for the purpose of sale or lease to provide funds for any of this subchapter's purposes, the commission shall deposit and use the proceeds of the sale or lease as provided for money donated under Subsection (d). In converting donated property to money, the commission may execute bills of sale, leases, or deeds in consideration of the payment to the commission by the purchasers or lessees of the reasonable market value of the property as determined in writing by a licensed or professional appraiser. The instruments of conveyance must be authorized by written resolution of the commission and must be signed by the chairman and attested to by the secretary.

(f) Subject to the terms of the donation, and unless provided otherwise by the donor, the commission in action for the state with respect to donated property has the powers of a trustee under the Texas Trust Code (Subtitle B, Title 9, Property Code), with the state as the beneficiary and owner of the remainder of the donated property.

(g) The commission annually shall report to the governor and the legislature all donations, transactions, agreements, and special accounts under this section, and those transactions are subject to audit by the state auditor.

(h) The commission may provide for local staffing and maintenance of a regional library, depository, or microfilm storage facility and may enter into any cooperative agreement that it considers advisable with a city, county, state institution, or other governmental entity to carry out this subchapter.

(i) A county commissioner, city council, custodian of public records, or private person may offer, and the commission may accept, historical resources for preservation and retention in a depository. A county commissioner, city council member, city clerk or secretary, other custodian of public records, or private person may lend historical resources to a depository for the period and on the conditions that the commission determines. (V.A.C.S. Art. 5442b, Secs. 2B, 5(a) (part), (b).)

Sec. 441.075. TRANSFERS. The commission may:

(1) transfer historical resources in the commission's custody and control to a depository;

(2) lend historical resources in the commission's custody and control to a depository, for purposes of research or exhibit, for the period and under the conditions that the commission determines; and

(3) transfer historical resources placed by or in the name of the commission in a depository to another depository. (V.A.C.S. Art. 5442b, Sec. 4.)

Sec. 441.076. EXHIBITS AND DISCOVERY INSTRUMENTS. A document filed as an exhibit or discovery instrument in a county, district, or justice court, or a recorded instrument not created to be maintained in a county or district office, if not deliverable to a party entitled to take possession of the document or instrument, may be transferred to the Texas State Library or destroyed after the period set by law. (V.A.C.S. Art. 5442b, Sec. 5(a) (part).)

Sec. 441.077. REMOVAL OF RESOURCES. This chapter does not prevent the commission from removing historical resources placed by the commission or in its name in a depository if the commission determines that the removal would ensure the safety or availability of the resources. (V.A.C.S. Art. 5442b, Sec. 6.)

Sec. 441.078. PROCESSING AND STORAGE. (a) The division shall coordinate the filming of essential local government records with the preservation activities conducted by the depository program.

(b) For a designated depository's geographical area, microfilming, storage of security copies, film processing, or duplication of microfilm records may be done:

- (1) at a regional depository that has adequate facilities;
- (2) in the local government office in which the records are created or stored;
- (3) at any other suitable and convenient location in the geographical area. (V.A.C. Art. 5442b, Secs. 3(b), (c).)

Sec. 441.079. **FORCE AND EFFECT OF MICROFILM COPIES.** A microfilm copy of an original record that the division produces under this chapter has the same force and effect as the original record and may be used as the original in any judicial or administrative proceeding in this state. (V.A.C.S. Art. 5442b, Sec. 9.)

Sec. 441.080. **FORM AND STORAGE OF SECURITY COPY.** A security copy must conform to the specifications of the American National Standards Institute for archival quality and must be preserved as a master copy in a location, separate from the location of the original record and duplicate microfilm copies, that is secure from fire and burglary and in which constant archival environmental conditions are maintained. (V.A.C.S. Art. 5442b, Sec. 1(8) (part).)

[Sections 441.081–441.090 reserved for expansion]

**SUBCHAPTER F. MAINTENANCE AND DISPOSITION OF  
CERTAIN COUNTY RECORDS**

Sec. 441.091. **DEFINITIONS.** In this subchapter:

- (1) "County record" means a record required or authorized by law to be maintained in a county or precinct office or the office of district clerk.
- (2) "Custodian" means the officer responsible for keeping a county record. (V.A.C.S. Art. 5442c, Sec. 1.)

Sec. 441.092. **REVIEW COMMITTEE.** (a) A review committee is composed of:

- (1) the director and librarian;
- (2) the attorney general;
- (3) a representative of the Texas Historical Commission, appointed by the commission; and
- (4) one each of a holder of the following offices, nominated as required by this section, and appointed by the director and librarian:
  - (A) county clerk;
  - (B) district clerk;
  - (C) county judge or commissioner;
  - (D) county auditor;
  - (E) county, district, or criminal district attorney;
  - (F) county treasurer;
  - (G) sheriff; and
  - (H) county tax assessor-collector.

(b) Not later than the 30th day before the date that the director and librarian make an appointment under Subsection (a)(4), the director and librarian shall publish in the Texas Register a notice of the intent to make an appointment.

(c) The nomination for appointment under Subsection (a)(4) must be either by petition signed by at least 50 other officers of the type nominated or by an organization representing officers of the type nominated that has as members at least 50 of the officers. For the purposes of this subsection, county judges and commissioners are of the same type and county, district, and criminal district attorneys are of the same type. If the director and librarian does not receive a nomination for an intended appointment before the 31st day after the date notice is published under Subsection (b), a nomination is not required.

(d) The director and librarian is chairman of a review committee.

(e) Service on a review committee by a public officer is an additional duty of the person's public office. A member of the committee serves without compensation for service on the committee but is entitled to be reimbursed for actual expenses incurred on committee business. Expenses of the attorney general shall be paid from funds of the attorney general's office, and expenses of the representative of the Texas Historical Commission shall be paid from funds of the commission. Expenses of other committee members shall be paid from funds of the Texas State Library and Archives Commission.

(f) A review committee ceases to exist when it completes the work for which it was constituted unless it is sooner discharged by the director and librarian. (V.A.C.S. Art. 5442c, Sec. 3.)

Sec. 441.093. RECORDS MANUAL. (a) The director and librarian shall direct the staff of the regional historical resource depository program in the preparation of a county records manual. Persons preparing the manual shall consult with local officials that may be affected by the manual and other interested persons.

(b) The manual must:

(1) list various types of county records;

(2) state the minimum retention period prescribed by law for those records for which a period is prescribed and prescribe a minimum retention period for all other records; and

(3) contain information to assist local officials in carrying out their functions under this subchapter, including model records schedules and implementation plans.

(c) The manual may prescribe rules governing the disposition of obsolete county records.

(d) Minimum retention periods prescribed by the manual have the same effect as minimum retention periods prescribed by law.

(e) The manual takes effect when a copy of the manual and a statement of its approval by the review committee, signed and acknowledged by a majority of the members of the review committee, are filed in the office of the secretary of state.

(f) The director and librarian may amend the manual. An amendment takes effect when the director and librarian files a certified copy of the amendment in the office of the secretary of state, except that an amendment must first be approved by a review committee in the same manner as provided for approval of the original manual if it:

(1) prescribes a minimum retention period for a county record required by law to be kept and for which a minimum retention period is not prescribed by state law;

(2) changes a minimum retention period established by the manual; or

(3) changes the rules governing disposition of obsolete records. (V.A.C.S. Art. 5442c, Sec. 2.)

Sec. 441.094. RECORDS SCHEDULE AND IMPLEMENTATION PLAN. (a) A custodian may prepare a records schedule applicable to the custodian's office. If the custodian prepares a schedule, the custodian shall also prepare a plan for its implementation that prescribes, in conformity with this subchapter, the manner and procedure for disposing of records no longer needed on the expiration of the applicable retention period. On request of the custodian, the director and librarian and the staff of the regional historical resource depository program shall furnish the custodian recommended model records schedules, implementation plans, and other information.

(b) A records schedule must:

(1) contain an inventory of county records kept by the custodian; and

(2) prescribe a minimum retention period for each type of record that is at least as long as that prescribed by law or the county records manual.

(c) A custodian may amend a records schedule or implementation plan.

(d) A records schedule, implementation plan, or amendment takes effect when the custodian files a certified copy of the schedule, plan, or amendment in the office of the county clerk. (V.A.C.S. Art. 5442c, Sec. 4.)

Sec. 441.095. **DISPOSITION OF OBSOLETE RECORDS.** (a) A custodian may dispose of a county record that is subject to an approved records schedule and implementation plan as provided by the implementation plan, the county records manual, and this subchapter, if:

- (1) the applicable retention period has expired; and
- (2) the custodian believes that the record is no longer needed.

(b) Not later than 60 days before the date that a county record is destroyed under an implementation plan, the custodian shall give written notice of the intent to destroy the record to the director and librarian. The notice must sufficiently describe the record to enable the director and librarian to determine if the record should be transferred to the Texas State Library for preservation in a regional historical resource depository. On request of the director and librarian, the custodian shall make this transfer.

(c) Not later than the 10th day before a record is destroyed, the custodian shall file and record a notice with the county clerk. The notice must indicate the record to be destroyed, how it is to be destroyed, and the date of its destruction. On the day the notice is filed, the county clerk shall post a copy of it in the same manner that a notice of a meeting is posted under Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes).

(d) A county record may be destroyed only by sale for recycling purposes, shredding, or burning. Adequate safeguards shall be employed to ensure that the record does not remain in its original state and is no longer recognizable as a county record.

(e) A person is not civilly liable for destruction of a record in accordance with this subchapter and an approved records schedule and implementation plan. (V.A.C.S. Art. 5442c, Sec. 5.)

Sec. 441.096. **TRANSFER OF RECORDS TO TEXAS STATE LIBRARY.** (a) A custodian may transfer to the Texas State Library for preservation in a regional historical resource depository any county record that is not needed for administrative purposes. The director and librarian shall give a custodian a receipt for a record transferred under this section or Section 441.095. The custodian is not required to make a copy of the record before the transfer.

(b) The director and librarian may make a certified copy of a county record that has been transferred to the state library. The certified copy must state that it is a true and correct copy of the record in the director and librarian's custody, and it has the same force and effect for all purposes as a copy certified by the county clerk or other custodian as provided by law. (V.A.C.S. Art. 5442c, Sec. 6.)

Sec. 441.097. **MICROFILMING OF RECORDS.** This chapter does not require the microfilming of a county record, but an implementation plan may include provision for microfilming of a record in accordance with other state law. (V.A.C.S. Art. 5442c, Sec. 7.)

[Sections 441.098–441.100 reserved for expansion]

#### SUBCHAPTER G. STATE PUBLICATIONS

Sec. 441.101. **DEFINITIONS.** In this subchapter:

- (1) "Commission" means the Texas State Library and Archives Commission.
- (2) "Depository library" means the Texas State Library, the Legislative Reference Library, the Library of Congress, the Center for Research Libraries, or any other library that the commission designates as a depository library.
- (3) "State agency" means a state office, officer, department, division, bureau, board, commission, legislative committee, authority, institution, substate planning bureau, university system, institution of higher education as defined by Section 61.003, Education Code, or a subdivision of one of those entities.
- (4) "State publication" means printed matter that is produced in multiple copies by the authority of or at the total or partial expense of a state agency, including a publication sponsored by or purchased for distribution by a state agency or released by a research firm, consulting firm, or other similar private institution under contract with

a state agency. The term does not include correspondence, an interoffice memorandum, or a routine form. (V.A.C.S. Art. 5442a, Sec. 1.)

Sec. 441.102. DISTRIBUTION OF STATE PUBLICATIONS. The commission by rule shall establish procedures for the distribution of state publications to depository libraries and for the retention of those publications. The commission may enter into a contract with a depository library under which the depository library receives all or part of the state publications that are distributed. (V.A.C.S. Art. 5442a, Sec. 2.)

Sec. 441.103. STATE AGENCY DUTIES. (a) A state agency shall designate one or more staff persons as agency publications contact persons and shall notify the Texas State Library of those persons' identities. A publications contact person monthly shall furnish to the Texas State Library a list of all of the agency's state publications that were produced during the preceding month.

(b) A state agency shall furnish its state publications to the Texas State Library in the number specified by commission rules. On the printing of or awarding of a contract for the printing of a publication, a state agency shall arrange for the required number of copies to be deposited with the Texas State Library. The commission may not require more than 75 copies of a state publication. (V.A.C.S. Art. 5442a, Secs. 3, 5.)

Sec. 441.104. DUTIES OF TEXAS STATE LIBRARY. The Texas State Library shall:

- (1) acquire, organize, and retain state publications;
- (2) collect state publications and distribute them to depository libraries;
- (3) establish a microform program for the preservation and management of state publications and make available state publications in microform to depository libraries and other libraries at a reasonable cost;
- (4) periodically issue a list of all state publications that it has received to all depository libraries and other libraries on request;
- (5) catalog, classify, and index all state publications that it receives and distribute the cataloging, classification, and indexing information to depository libraries and to other libraries on request; and
- (6) ensure that state publications are fully represented in regional and national automated library networks. (V.A.C.S. Art. 5442a, Sec. 4.)

Sec. 441.105. EXEMPT PUBLICATIONS. The state librarian may specifically exempt a publication from this subchapter. (V.A.C.S. Art. 5442a, Sec. 7.)

Sec. 441.106. PAYMENT FOR PRINTING OF STATE PUBLICATIONS. If a state agency's printing is done by contract, an account for the printing may not be approved and a warrant may not be issued unless the agency first furnishes to the State Purchasing and General Services Commission a receipt from the state librarian for the publication or a written waiver from the state librarian exempting the publication from this subchapter. (V.A.C.S. Art. 5442a, Sec. 6.)

[Sections 441.107–441.110 reserved for expansion]

#### SUBCHAPTER H. READING DEVICES FOR VISUALLY HANDICAPPED PERSONS

Sec. 441.111. DEFINITIONS. In this subchapter:

- (1) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.
- (2) "Public library" means a library that is operated by a single public agency or board and that is freely open to all persons under identical conditions and receives part of its financial support from public funds.
- (3) "Reading device" means a small computer that has an optical scanner that converts written words into synthetic speech.
- (4) "State library" means the Texas State Library. (V.A.C.S. Art. 5441e, Sec. 1.)

Sec. 441.112. PLACEMENT OF READING DEVICES IN PUBLIC LIBRARIES. Except as provided by Section 441.116, a public library in a city with a population of at



least 50,000 shall provide a reading device for use by blind and visually handicapped persons. The public library shall place the reading device in the branch of the public library that is most easily accessible to the majority of the blind and visually handicapped persons expected to use the device. (V.A.C.S. Art. 5441e, Sec. 2.)

Sec. 441.113. **PLACEMENT OF READING DEVICES IN COLLEGE LIBRARIES.** Except as provided by Section 441.116, an institution of higher education in which at least two blind students are enrolled shall provide a reading device for use in its library by blind and visually handicapped individuals. The institution shall place the reading device in the library that is most easily accessible to the majority of the blind and visually handicapped individuals expected to use the device. (V.A.C.S. Art. 5441e, Sec. 3.)

Sec. 441.114. **STATE LIBRARY ASSISTANCE.** (a) From funds appropriated for the purpose, the state library shall acquire and supply a reading device to each library required to have a device under Section 441.112 or 441.113 at no cost to the receiving library. The state library shall pay the costs of maintaining the device for two years after the date that the library receives the device. After the expiration of the two-year period, the library having the device shall pay the costs of maintenance.

(b) If a library determines that it is not financially able to pay maintenance costs that it is required to pay, the library may apply to the state library for an exemption from the requirements of Section 441.112 or 441.113. If the state library determines that the library is not able to maintain the reading device properly and that the lack of maintenance will result in the deterioration of the device, the state library shall grant the exemption and reclaim the reading device.

(c) The state library shall distribute a reading device reclaimed under Subsection (b) to a public library that requests a reading device, regardless of whether this subchapter requires the library to have a reading device, or to an institution of higher education that requests an additional reading device. In making this distribution the state library shall give priority to a library or institution that demonstrates the greatest need for the device. (V.A.C.S. Art. 5441e, Sec. 4.)

Sec. 441.115. **TRAINING, MAINTENANCE, AND INFORMATION.** (a) The state library shall provide training in the use of a reading device to:

(1) library employees in a public library provided a reading device under this subchapter; and

(2) library employees on the campus of each institution of higher education provided a reading device under this subchapter, if the institution requests training assistance.

(b) The state library shall develop guidelines for the use and maintenance of a reading device provided under this subchapter.

(c) The state library shall contract with an organization for blind and visually handicapped persons to develop and publicly distribute information regarding the locations and use of reading devices provided under this subchapter. (V.A.C.S. Art. 5441e, Sec. 5.)

Sec. 441.116. **FUNDING.** The requirements of this subchapter for the provision and placement of reading devices by the state library, public libraries, and institutions of higher education are contingent on adequate appropriations to the state library for the purchase and maintenance of the devices. (V.A.C.S. Art. 5441e, Sec. 6.)

[Sections 441.117–441.120 reserved for expansion]

#### SUBCHAPTER I. LIBRARY SYSTEMS

Sec. 441.121. **SHORT TITLE.** This subchapter may be cited as the Library Systems Act. (V.A.C.S. Art. 5446a, Sec. 1.)

Sec. 441.122. **DEFINITIONS.** In this subchapter:

(1) “Accreditation of libraries” means the evaluation and rating of public libraries and library systems according to commission accreditation standards.

(2) “Accreditation standards” means the criteria established by the commission that a library must meet to be accredited and eligible for membership in a major resource system.

(3) "Area library" means a medium-sized public library serving a population of 25,000 or more that has been designated as an area library by the commission and is a member of a library system interrelated to a major resource center.

(4) "Commission" means the Texas State Library and Archives Commission.

(5) "Community library" means a small public library serving a population of less than 25,000 that is a member of a library system interrelated to a major resource center.

(6) "Governing body" means the body having power to authorize a library to join, participate in, or withdraw from a library system.

(7) "Interlibrary contract" means a written agreement between two or more libraries to cooperate, consolidate, or receive one or more services.

(8) "Library board" means the body that has the authority to give administrative direction or advisory counsel to a library or library system.

(9) "Library system" means two or more public libraries cooperating in a system approved by the commission to improve library service and to make their resources accessible to all residents of the area the libraries serve.

(10) "Major resource center" means a large public library serving a population of 200,000 or more within 4,000 or more square miles that is designated as the central library of a major resource system for referral service from area libraries in the system, for cooperative service with other libraries in the system, and for federated operations with other libraries in the system.

(11) "Major resource system" means a network of library systems attached to a major resource center, consisting of area libraries joined cooperatively to the major resource center and of community libraries joined cooperatively to area libraries or directly to the major resource center.

(12) "Public library" means a library that is operated by a single public agency or board, that is freely open to all persons under identical conditions, and that receives its financial support in whole or part from public funds.

(13) "Regional library system" means a network of library systems established under this subchapter.

(14) "State library system" means a network of library systems, interrelated by contract, for the purpose of organizing library resources and services for research, information, and recreation to improve statewide library service and to serve collectively the entire population of the state. (V.A.C.S. Art. 5446a, Sec. 2 (part).)

Sec. 441.123. ESTABLISHMENT OF STATE LIBRARY SYSTEM. The commission shall establish and develop a state library system. (V.A.C.S. Art. 5446a, Sec. 3.)

Sec. 441.124. ADVISORY BOARD. (a) The commission shall appoint an advisory board composed of five librarians qualified by training, experience, and interest to advise the commission on the policy to be followed in applying this subchapter.

(b) The term of office of a board member is three years.

(c) The board shall meet at least once a year. The commission may call other meetings during the year.

(d) A member of the board serves without compensation but is entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties.

(e) A vacancy shall be filled for the remainder of the unexpired term in the same manner as an original appointment.

(f) A member may not serve more than two consecutive terms. (V.A.C.S. Art. 5446a, Sec. 4 (part).)

Sec. 441.125. PLAN OF SERVICE. The director and librarian shall submit an annual plan for the development of the state library system for review by the advisory board and approval by the commission. (V.A.C.S. Art. 5446a, Sec. 5 (part).)

Sec. 441.126. AUTHORITY TO ESTABLISH MAJOR RESOURCE SYSTEMS. The commission may establish and develop major resource systems in conformity with the

plan for a state library system as provided by this subchapter. (V.A.C.S. Art. 5446a, Sec. 6.)

Sec. 441.127. **MEMBERSHIP IN SYSTEM.** (a) To be eligible for membership in a major resource system a library must be accredited by the commission as having met the accreditation standards established by the commission.

(b) To meet population change, economic change, and changing service strengths of member libraries, a major resource system may be reorganized, merged with another major resource system, or partially transferred to another major resource system by the commission with the approval of the majority of the appropriate governing bodies of the libraries comprising the system. A regional library system may be reorganized, divided, dissolved, or merged into another regional library system in a manner provided by bylaws of the corporation operating the system or by contract between the member libraries and the managing authority of the system.

(c) The governing body of a public library that proposes to become a major resource center shall submit to the director and librarian an initial plan of service for the major resource system and annually after the library becomes a major resource center shall submit a plan of system development made in consultation with the advisory council. (V.A.C.S. Art. 5446a, Secs. 7, 9(c).)

Sec. 441.128. **OPERATION AND MANAGEMENT.** (a) Governing bodies within a major resource system area or regional library system area may join in the development, operation, and maintenance of the system and appropriate and allocate funds for its support.

(b) Governing bodies of political subdivisions of the state may negotiate separately or collectively a contract with the governing bodies of member libraries of a major resource system or regional library system for all library services or for those services defined in the contract.

(c) On petition of 10 percent of the persons qualified to vote in the most recent general election of a county or municipality within a major resource system service area or a regional library system service area, the governing body of that political subdivision shall call an election to vote on the question of whether or not the political subdivision shall establish contractual relationships with the system.

(d) The governing body of a major resource center, the governing body or managing authority of a regional library system, and the commission may enter into agreements with the governing bodies of other libraries, including other public libraries, school libraries and media centers, academic libraries, technical information and research libraries, or systems of those libraries, to provide or receive specialized resources and services. The commission shall coordinate and encourage the dissemination of specialized resources and services and may adopt rules for the contracts and agreements authorized by this subsection. (V.A.C.S. Art. 5446a, Sec. 8.)

Sec. 441.129. **WITHDRAWAL FROM SYSTEM.** (a) The governing body of a political subdivision of the state may by resolution or ordinance withdraw from a major resource system. The governing body must give notice of withdrawal not later than the 90th day before the end of the state fiscal year.

(b) The provision for termination of all or part of a major resource system does not prohibit revision of the system by the commission, with the approval of the majority of the appropriate governing bodies, by reorganization, by transfer of part of the system, or by merger with other systems. (V.A.C.S. Art. 5446a, Secs. 9(a), (b).)

Sec. 441.130. **ADVISORY COUNCIL.** (a) Each major resource system has an advisory council composed of six lay members representing the member libraries of the system.

(b) The governing body of each member library of the system shall elect or appoint a representative to elect council members. The representatives shall meet following their selection and shall elect the initial council from their group. The representatives in an annual meeting shall elect members of their group to fill council vacancies caused by expiration of terms of office. Other vacancies shall be filled for the unexpired term by the remaining members of the council. At all times one member of the council must be a representative of the major resource center.

(c) The term of office of a council member is three years, except that the initial members shall draw lots for terms, two to serve one-year terms, two to serve two-year terms, and two to serve three-year terms. An individual may not serve more than two consecutive terms.

(d) The council shall elect a chairman, vice-chairman, and secretary.

(e) The council shall meet at least once a year. Other meetings may be held as often as is required to transact necessary business. The council shall report business transacted at each meeting to all member libraries of the system.

(f) The members of the council serve without compensation but are entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties.

(g) The council shall serve as a liaison agency between the member libraries and their governing bodies and library boards to:

- (1) advise in the formulation of the annual plan for service to be offered by the system;
- (2) recommend policies appropriate to services needed;
- (3) evaluate services received;
- (4) counsel with administrative personnel; and
- (5) recommend functions and limitations of contracts between cooperating agencies.

(h) The functions of the advisory council do not diminish the powers of a local library board. (V.A.C.S. Art. 5446a, Sec. 10 (part).)

Sec. 441.131. REGIONAL LIBRARY SYSTEM. (a) The governing bodies of two-thirds of the member libraries of a major resource system may elect, for the purpose of administering the receipt and dispersal of services under this subchapter within their area, to form a regional library system that includes all libraries that are members of the major resource system.

(b) Governing bodies of libraries within a regional library system may establish a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) to administer the system or may contract with a private business to administer the system. If the governing bodies form a nonprofit corporation, they may select a board of directors and adopt bylaws for the corporation. Bylaws adopted or a contract executed under this section may provide for funding and participation by other libraries. Bylaws may provide for reorganization, merger, division, and dissolution. (V.A.C.S. Art. 5446a, Sec. 10A.)

Sec. 441.132. MAJOR RESOURCE CENTERS. (a) The commission may designate major resource centers from existing public libraries according to criteria approved by the commission and agreed to by the governing body of the library involved. The governing body of a library designated as a major resource center may accept the designation by resolution or ordinance stating the type of service to be given and the area to be served.

(b) The commission may revoke the designation of a major resource center that ceases to meet the criteria for a major resource center or that fails to comply with obligations stated in the resolution or ordinance agreements. The commission shall provide a fair hearing on request of the major resource center.

(c) Funds allocated by governing bodies contracting with the major resource center and funds contributed from state grants for the purposes of this subchapter shall be deposited with the governing body operating the major resource center following procedures agreed to by the contributing agency.

(d) The powers of the governing board of the major resource center do not diminish the powers of local library boards. (V.A.C.S. Art. 5446a, Sec. 11.)

Sec. 441.133. AREA LIBRARIES. (a) The commission may designate area libraries within each major resource system service area to serve the surrounding area with library services for which interlibrary contracts are made with participating libraries. Area libraries may be designated only from existing public libraries and on the basis of criteria approved by the commission and agreed to by the governing body of the library involved.

The governing body of a library designated as an area library may accept the designation by resolution or ordinance stating the type of service to be given and the area to be served.

(b) The commission may revoke the designation of an area library that ceases to meet the criteria for an area library or fails to comply with obligations stated in the resolution or ordinance agreement. The commission shall provide a fair hearing on request of the major resource center or area library.

(c) Funds allocated by governing bodies contracting with the area library and funds contributed from state grants for the purposes of this subchapter shall be deposited with the governing body operating the area library following procedures agreed to by the contributing agency. (V.A.C.S. Art. 5446a, Sec. 12.)

Sec. 441.134. COMMUNITY LIBRARIES. (a) Community libraries accredited by the commission are eligible for membership in a major resource system. A community library may join a system by resolution or ordinance of its governing body and execution of interlibrary contracts for service.

(b) The commission may terminate the membership of a community library in a system if the community library loses its accreditation by ceasing to meet the minimum standards established by the commission or fails to comply with obligations stated in the resolution or ordinance agreement. (V.A.C.S. Art. 5446a, Sec. 13.)

Sec. 441.135. GRANTS. (a) The commission shall establish a program of state grants within the limitations of funds appropriated by the legislature.

(b) The program of state grants shall include one or more of the following:

(1) system operation grants, to strengthen major resource system services to member libraries and regional library system services to member libraries, including grants to reimburse other libraries for providing specialized services to major resource systems and regional library systems;

(2) incentive grants, to encourage libraries to join together into larger units of service in order to meet criteria for major resource system membership or regional library system membership;

(3) establishment grants, to help establish libraries that will qualify for major resource system membership or regional library system membership in communities without library service; and

(4) equalization grants, to help libraries in communities with relatively limited taxable resources to meet criteria for major resource system membership or regional library system membership. (V.A.C.S. Art. 5446a, Sec. 14.)

Sec. 441.136. RULES. (a) The director and librarian, with the advice of the advisory board, shall propose initial rules necessary to the administration of the program of state grants, including qualifications for major resource system membership. The proposed rules shall be published in the official publication of the Texas State Library with notice of a public hearing before the commission on the proposed rules to be held on a specified date not less than 30 nor more than 60 days after the date of the publication.

(b) After the public hearing, the commission shall adopt the proposed rules or return them to the director and librarian with recommendations for change. If the commission returns the proposed rules to the director and librarian with recommendations for change, the director and librarian shall consider the recommendations for change in consultation with the advisory board and resubmit the proposed rules to the commission for its adoption.

(c) Revised rules shall be adopted under the same procedure provided in this subchapter for the adoption of the initial rules.

(d) The commission shall include requirements in its rules to ensure that both the population served and the constituent member libraries are adequately represented in the conduct of system business relating to activities involved in the development of a plan of service and adequately represented on each major resource system advisory council. Rules adopted as required by this subsection do not apply to the governing board or board of directors of a regional library system governed by applicable requirements of the

Texas Business Corporation Act or the Texas Non-Profit Corporation Act (Article 1396-1-01 et seq., Vernon's Texas Civil Statutes).

(e) The commission shall include in its rules provisions necessary to ensure that title to library materials and equipment that have a cost for each unit of less than \$300 and that are purchased with funds appropriated under this subchapter is held by the library for which the materials and equipment were purchased, and that title to materials and equipment that have a cost for each unit of \$300 or more is held by the Texas State Library. (V.A.C.S. Art. 5446a, Sec. 15.)

Sec. 441.137. ADMINISTRATION. The director and librarian shall administer the program of state grants and shall make public the rules adopted by the commission. (V.A.C.S. Art. 5446a, Sec. 16.)

Sec. 441.138. FUNDING. (a) The commission may use funds appropriated by the legislature for personnel and other administrative expenses necessary to carry out the provisions of this subchapter.

(b) Libraries and library systems may use state grants for materials, personnel, equipment, administrative expenses, and financing programs that enrich the services and materials offered a community by its public library. State grants may not be used for site acquisition, construction, acquisition of buildings, or payment of past debts.

(c) State aid to a free tax-supported public library is a supplement to and not a replacement of local support.

(d) Twenty-five percent of system operation grants shall be apportioned equally among the major resource systems and regional library systems that are operating under commission-approved programs of services, budgets, and bylaws or contracts, and the remaining 75 percent of these grants shall be apportioned among those systems on a per capita basis determined by the most recent decennial census or the most recent official population estimate of the U.S. Department of Commerce, Bureau of the Census. (V.A.C.S. Art. 5446a, Sec. 17.)

#### CHAPTER 442. TEXAS HISTORICAL COMMISSION

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#### CHAPTER 442. TEXAS HISTORICAL COMMISSION

Sec. 442.001. DEFINITION. In this chapter, "historic structure" means a structure that:

- (1) is included on the National Register of Historic Places;
- (2) is designated as a Recorded Texas Historic Landmark;
- (3) is designated as a State Archeological Landmark;

(4) is determined by the Texas Historical Commission to qualify as eligible proper under criteria for inclusion on the National Register of Historic Places or for designation as a Recorded Texas Historic Landmark or as a State Archeological Landmark;

(5) is certified by the Texas Historical Commission to other state agencies as worthy of preservation. (V.A.C.S. Art. 6145, Sec. 8.)

Sec. 442.002. COMMISSION; MEMBERS; SUNSET ACT. (a) The Texas Historical Commission is an agency of the state.

(b) The commission is composed of 18 members appointed by the governor with the advice and consent of the senate.

(c) Members serve for staggered six-year terms, with the terms of one-third of the members expiring February 1 of each odd-numbered year.

(d) Any vacancy occurring on the commission shall be filled for the unexpired term.

(e) A member of the commission must be a citizen of this state who has demonstrated an interest in the preservation of the state's historical heritage. In making appointments to the commission, the governor shall seek to have each geographical section of the state represented as nearly as possible.

(f) A person who is required to register as a lobbyist under Chapter 305, by virtue of the person's activities for compensation in or on behalf of a profession related to the operation of the commission, may not serve as a member of the commission or act as the general counsel to the commission.

(g) It is a ground for removal from the commission that a member violates the prohibition established by Subsection (f) or does not have at the time of appointment and does not maintain during the service on the commission the qualifications required for appointment by Subsection (e). The validity of an action of the commission is not affected by the fact that the action was taken when a ground for removal of a member of the commission existed.

(h) The commission shall hold at least one regular meeting in each calendar quarter each year. The commission may hold other meetings at times and places scheduled by the commission in formal session or called by the chairman of the commission.

(i) At its first meeting in each odd-numbered year, the commission shall select from its membership a chairman, vice-chairman, and secretary.

(j) A member of the commission serves without pay but shall be reimbursed for actual expenses incurred in attending a meeting of the commission.

(k) The commission is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). At an open meeting of the commission, a member of the public is entitled to appear and speak on any issue under the jurisdiction of the commission, within the limits of any reasonable rules of the commission designed to expedite consideration of issues at a meeting.

(l) The commission is subject to the Texas Sunset Act (Chapter 325). Unless continued in existence as provided by that Act, the commission is abolished and this chapter expires September 1, 1995. (V.A.C.S. Art. 6145, Secs. 1 (part); 1B; 2, as amended Ch. 38, Acts 68th Leg., R.S. 1983; 2A; 3(a), (b); 5.)

Sec. 442.003. PURPOSE OF COMMISSION. The commission shall provide leadership and coordinate services in the field of historic preservation. (V.A.C.S. Art. 6145, Sec. 1 (part).)

Sec. 442.004. PERSONNEL. (a) The commission shall employ an executive director.

(b) A person employed as executive director must:

- (1) be a citizen of this state;
- (2) have ability in organization, administration, and coordination of organizational work; and
- (3) have particular qualities for carrying out the purposes of the commission.

(c) The executive director may employ professional and clerical personnel as considered necessary. The number of employees, their compensation, and other expenditures shall be in accordance with appropriations to the commission by the legislature.

(d) As often as necessary, the commission shall provide to its members and staff information regarding their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(e) The executive director or the executive director's designee shall develop a career ladder program within the agency. The program must require that openings in all positions except entry level positions be posted within the commission for at least 10 days before they are posted for the public.

(f) The executive director or the executive director's designee shall develop a system of annual performance evaluations based on measurable job tasks. Any merit pay for commission employees must be based on that system.

(g) The executive director shall prepare and maintain a written plan to assure implementation of a program of equal employment opportunity under which any personnel transaction is made without regard to race, color, disability, sex, religion, age, or national origin. The plan must cover an annual period and be updated at least annually. The plan must include:

- (1) a comprehensive analysis of the commission's employees by race, sex, ethnic origin, class of position, and salary or wage;
- (2) plans for recruitment, evaluation, selection, appointment, training, promotion, and other personnel policies;
- (3) steps reasonably designed to overcome any identified underuse of minorities and women in the commission's work force; and
- (4) objectives and goals, timetables for the achievement of the objectives and goals, and assignments of responsibility for the achievement of the objectives and goals.

(h) Before the expiration of 30 days after April 1 and November 1 of each year the commission shall submit a progress report to the governor. The report must include a statement of the steps that the commission has taken during the previous six months to comply with the requirement of Subsection (g).

(i) The governor shall designate the executive director as the state liaison officer, and the executive director shall act in that capacity for the conduct of relations with the representatives of the federal government and the respective states concerning matters of historic preservation. (V.A.C.S. Art. 6145, Secs. 6, 6A, 6B, 10.)

Sec. 442.005. GENERAL POWERS AND DUTIES OF COMMISSION. (a) The commission shall furnish leadership, coordination, and services to county historical commissions, historical societies, and the organizations, agencies, institutions, museums, and individuals of this state interested in the preservation of historical heritage and shall act as a clearinghouse and information center for that work in this state.

(b) The commission shall furnish professional consultant services to museums and to agencies, individuals, and organizations interested in the preservation and restoration of historic structures, sites, or landmarks.

(c) On receiving notification from a state agency that the agency is proposing construction of a new state building in an area, the commission shall compile a list of historic structures that are suitable and available for state purchase in the area. The list must include the name and address of the owner of each structure if that information is available to the commission. The commission shall furnish the list to the state agency proposing the construction not later than the 45th day after the date on which it receives notice from the agency.

(d) The commission shall compile and furnish to the State Purchasing and General Services Commission a list of the names and addresses of owners of historic structures that are suitable and available for lease by the state and a list of the names and addresses of individuals and organizations that are interested in the preservation of historic structures. The lists shall be updated at least once each year.



(e) The commission shall administer the federal National Historic Preservation Act of 1966 and may prepare, maintain, and keep up to date a statewide comprehensive historic preservation plan.

(f) The commission by rule may establish a reasonable fee to recover its costs arising from review of a rehabilitation project on an income-producing property included in the National Register of Historic Places. Any fee established is payable by the applicant for the rehabilitation project.

(g) The commission may apply to any appropriate agency or officer of the United States for participation in any federal program pertaining to historic preservation.

(h) The commission may certify to another state agency the worthiness of preservation of any historic district, site, structure, or object significant in Texas or American history, architecture, archeology, or culture.

(i) The commission may provide matching grants to assist the preservation of historic structures significant in Texas or American history, architecture, archeology, or culture.

(j) The commission shall use its facilities and leadership to stimulate the development of historical resources in every locality of this state, emphasizing responsibility and the privilege of local effort except in a case in which the project or problem clearly demands a broader approach.

(k) The commission may provide matching grants to preserve collections of historical artifacts in history museums in this state if the collections are significant in Texas or American history, architecture, archeology, or culture.

(l) The commission may conduct educational programs, seminars, and workshops throughout this state covering any phase of historic preservation.

(m) The commission shall continue cooperative studies and surveys of the various aspects of historical heritage.

(n) Not later than December 1 before each regular session of the legislature, the commission shall make a report of its activities to the governor and to the legislature.

(o) The commission may enter into contracts with other state agencies or institutions and with qualified private institutions to carry out the purposes of this chapter.

(p) The commission may accept a gift, grant, devise, or bequest of money, securities, or property to carry out the purposes of this chapter.

(q) The commission may adopt rules as it considers proper for the effective administration of this chapter. (V.A.C.S. Art. 6145, Secs. 3(c), 7, 8A, 8B, 8C, 9, 11, 15, 15A, 16B, 17, 19, 20, 21, 22.)

Sec. 442.006. STATE HISTORICAL MARKER PROGRAM. (a) The commission shall give direction and coordination to the state historical marker program.

(b) The commission shall install markers recognizing districts, sites, individual events, structures, and objects significant in Texas or American history, architecture, archeology, or culture and shall keep a register of those markers.

(c) To assure a degree of uniformity and quality of historical markers, monuments, and medallions in this state, the commission shall review and approve or reject the form or dimensions of or text or illustrations on any marker, monument, or medallion before its fabrication by the state or by a county, county historical commission, incorporated city, individual, or organization in this state. The commission shall designate an approved marker as an Official Texas Historical Marker.

(d) The commission shall designate any structure receiving the Official Texas Historical Building Medallion as a Recorded Texas Historic Landmark that is considered worthy of preservation because of its history, culture, or architecture.

(e) The commission by rule may establish a reasonable fee to recover its costs arising from review of a proposal for a historical marker, monument, or medallion. Any fee established is payable by the applicant for the marker, monument, or medallion.

(f) A person may not damage the historical or architectural integrity of a structure designated as a Recorded Texas Historic Landmark without notifying the commission.

commission at least 60 days before the date on which the action causing the damage is to begin. After receiving the notice, the commission may waive the waiting period or, if the commission determines that a longer period will enhance the chance for preservation, it may require an additional waiting period of not longer than 30 days. On the expiration of the time limits imposed by this section, the person may proceed, but must proceed not later than the 180th day after the date on which notice was given or the notice is considered to have expired.

(g) This chapter does not authorize the commission to review or determine the placement or location of an object in or on a Recorded Texas Historic Landmark if the placement or location does not result in substantial structural change or damage to the landmark. (V.A.C.S. Art. 6145, Sec. 12.)

Sec. 442.007. STATE ARCHEOLOGICAL PROGRAM. (a) The commission, through the state archeologist, shall direct the state archeological program.

(b) The program must include:

- (1) a continuing inventory of nonrenewable archeological resources;
- (2) evaluation of known sites through testing and excavation;
- (3) maintenance of extensive field and laboratory data, including data on collections of antiquities;
- (4) consultation with state agencies and organizations and local groups concerning archeological and historical problems; and
- (5) publication of the results of the program through various sources, including a regular series of reports.

(c) The commission may enter into contracts or cooperative agreements with the federal government, other state agencies, state or private museums or educational institutions, or qualified individuals for prehistoric or historic archeological investigations, surveys, excavations, or restorations in this state.

(d) The state archeologist has general jurisdiction and supervision over archeological work, reports, surveys, excavations, and archeological programs of the commission and of cooperating state agencies.

(e) The duties of the state archeologist include:

- (1) maintaining an inventory of significant historic or prehistoric sites of archeological or historic interest;
- (2) providing public information and education in the fields of archeology and history;
- (3) conducting surveys and excavations with respect to significant archeological or historic sites in this state;
- (4) preparing reports and publications concerning the work of the office of the state archeologist;
- (5) doing cooperative and contract work in prehistoric and historic archeology with other state agencies, the federal government, state or private institutions, or individuals;
- (6) maintaining and determining the repository of catalogued collections of artifacts and other materials of archeological or historic interest; and
- (7) preserving the archeological and historical heritage of this state.

(e) The state archeologist shall withhold from disclosure to the public information relating to the location or character of archeological or historic resources if the state archeologist determines that the disclosure of the information may create a substantial risk of harm, theft, or destruction to the resources or to the area or place where the resources are located. (V.A.C.S. Art. 6145, Sec. 13; Art. 6145-6, Secs. 2, 3.)

Sec. 442.008. HISTORIC COURTHOUSES. (a) A county may not demolish, sell, lease, or damage the historical or architectural integrity of any building that serves or has served as a county courthouse without notifying the commission of the intended action at least six months before the date on which it acts.

(b) If the commission determines that a courthouse has historical significance worthy of preservation, the commission shall notify the commissioners court of the county of that fact not later than the 30th day after the date on which the commission received notice from the county. A county may not demolish, sell, lease, or damage the historical architectural integrity of a courthouse before the 180th day after the date on which received notice from the commission. The commission shall cooperate with any interested person during the 180-day period to preserve the historical integrity of the courthouse.

(c) A county may carry out ordinary maintenance of and repairs to a courthouse without notifying the commission. (V.A.C.S. Art. 6145, Sec. 14.)

Sec. 442.009. CONSUMER INFORMATION AND COMPLAINTS. (a) The commission shall prepare information of consumer interest describing the functions of the commission and describing the commission's procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the general public and appropriate state agencies.

(b) The commission shall keep an information file about each complaint filed with the commission.

(c) If a written complaint is filed with the commission, the commission shall notify parties to the complaint of the status of the complaint at least quarterly until final disposition of the complaint. (V.A.C.S. Art. 6145, Sec. 20A.)

Sec. 442.010. AUDITS. The state auditor shall audit the financial transactions of the commission during each fiscal year. (V.A.C.S. Art. 6145, Sec. 22A.)

Sec. 442.011. PENALTY. A person who violates this chapter is subject to a penalty of not less than \$50 nor more than \$1,000 for each day of violation. (V.A.C.S. Art. 6145, Sec. 24.)

Sec. 442.012. LAWSUITS. (a) The attorney general or any resident of this state may file suit in district court to restrain and enjoin a violation or threatened violation of this chapter, to recover on behalf of the state a civil penalty provided by this chapter, or both injunctive relief and a civil penalty.

(b) Venue of the suit filed is in Travis County or the county in which the act sought to be restrained or penalized is alleged to have occurred, be occurring, or be about to occur.

(c) In issuing a final order in the action, the court may award costs of litigation including reasonable attorney's and expert witness's fees. (V.A.C.S. Art. 6145, Secs. 26.)

Sec. 442.013. NO EFFECT ON OTHER ORGANIZATIONS AND ACTIVITIES. It is not the purpose of this chapter to duplicate or replace existing historical heritage organizations and activities, but to give leadership, coordination, and service as needed and desired. (V.A.C.S. Art. 6145, Sec. 18.)

#### CHAPTER 443. STATE PRESERVATION BOARD

Sec. 443.001. BOARD

Sec. 443.002. APPLICATION OF SUNSET ACT

Sec. 443.003. MEMBERSHIP

Sec. 443.004. CHAIRMAN; MEETINGS

Sec. 443.005. ARCHITECT OF THE CAPITOL

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Sec. 443.009. OFFICES, RECORDS, AND DOCUMENTS IN THE CAPITOL

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## Sec. 443.013. TEXAS SOUVENIRS

## CHAPTER 443. STATE PRESERVATION BOARD

Sec. 443.001. BOARD. The State Preservation Board is an agency of the State (V.A.C.S. Art. 6145-14, Sec. 1 (part).)

Sec. 443.002. APPLICATION OF SUNSET ACT. The State Preservation Board is subject to the Texas Sunset Act (Chapter 325). Unless continued in existence as provided by that Act, the board is abolished and this chapter expires September 1, 1995. (V.A.C.S. Art. 6145-14, Sec. 10.)

Sec. 443.003. MEMBERSHIP. (a) The board consists of the governor, lieutenant governor, speaker of the house of representatives, one senator appointed by the lieutenant governor, one representative appointed by the speaker of the house of representatives, and one member appointed by the governor.

(b) The senator and representative appointed to the board serve two-year terms expiring on the date that the regular session of the legislature convenes. The governor's appointee serves a two-year term expiring February 1 of each odd-numbered year.

(c) The committee functions performed by the governor, lieutenant governor, speaker of the house of representatives, and appointed senator and representative are additional functions of their other public offices.

(d) The governor's appointee is entitled to a per diem as set by the General Appropriations Act for each day the person engages in board business. (V.A.C.S. Art. 6145-14, Sec. 2.)

Sec. 443.004. CHAIRMAN; MEETINGS. (a) The governor is chairman of the board.

(b) The board shall meet at least twice a year and at other times at the call of the governor and as provided by board rules. (V.A.C.S. Art. 6145-14, Sec. 3.)

Sec. 443.005. ARCHITECT OF THE CAPITOL. (a) The board shall employ an architect of the Capitol who serves for a four-year renewable contract period under the sole direction of the board.

(b) The architect of the Capitol must:

- (1) have a bachelor's degree from an institution of higher education;
- (2) be registered to practice architecture in this state; and

(3) have at least four years' experience in various aspects of architectural preservation, including historical research, preparation of plans and specifications, personnel management, policy development, and budget management.

(c) The architect of the Capitol shall:

(1) employ staff necessary to administer the functions of the office and contract professional services of qualified consultants, including architectural historians, landscape architects with experience in landscape architectural preservation, conservation historians, historic architects, engineers, and craftsmen;

(2) develop for board approval a master plan with a projection of at least 20 years concerning the maintenance, preservation, restoration, and modification of the Capitol and the General Land Office Building, their contents, and their grounds, including a plan to restore the buildings to their original architecture;

(3) review and recommend for board approval an annual work program and budget consistent with the master plan for all work, including usual maintenance for buildings, their contents, and their grounds;

(4) maintain archives relating to the construction and development of the buildings, their contents, and their grounds, including documents such as plans, specifications, photographs, purchase orders, and other related documents, the original copies of which shall be maintained by the Texas State Library and Archives Commission;

(5) develop a program to purchase or accept by donation, permanent loan, or other funding items necessary to implement the master plan;

(6) make recommendations to transfer, sell, or otherwise dispose of unused surplus property that is not of significance as defined in the collections policy and by the registration system and inventory prepared by the curator of the Capitol, in the manner provided by Article 9, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes); and

(7) approve all exhibits placed in the buildings. (V.A.C.S. Art. 6145-14, Secs. 4(a), 5, 6(a) (part).)

Sec. 443.006. CURATOR OF THE CAPITOL. (a) The architect of the Capitol shall employ a curator of the Capitol. The curator of the Capitol must have at least a master's degree and four years' experience in historic collections administration with a specialization in the material culture of this state.

(b) The curator of the Capitol shall:

(1) assist in matters dealing with the preservation of historic materials;

(2) develop and maintain a registration system and inventory of the contents of the Capitol and the General Land Office Building and their grounds and of the original documents relating to the buildings' construction and alteration;

(3) develop a program to purchase or accept by donation, permanent loan, or outside funding items of historical significance that were at one time in the buildings;

(4) develop a collections policy regarding the items of historic significance as identified in the registration system and inventory for the approval of the permanent advisory committee and the board;

(5) make recommendations on conservation needs and make arrangements to contract for conservation services for objects of significance; and

(6) make recommendations for the transfer or loan of objects of significance as detailed in the approved collections policy. (V.A.C.S. Art. 6145-14, Sec. 6(a) (part), (b).)

Sec. 443.007. GENERAL POWERS AND DUTIES OF BOARD. (a) The board shall:

(1) preserve, maintain, and restore the Capitol, the General Land Office Building, their contents, and their grounds;

(2) define the buildings' grounds, except that the grounds may not include another state office building;

(3) review and approve the architect of the Capitol's annual work plan, budget, and long-range master plan for the buildings, their grounds, and the objects under the care of the curator of the Capitol;

(4) approve all changes to the buildings and their grounds, including usual maintenance and any transfers or loans of objects under the curator of the Capitol's care; and

(5) define and identify, with the architect of the Capitol, all significant aspects of the buildings and their grounds and all significant contents of the buildings.

(b) The board may adopt rules concerning the buildings, their contents, and their grounds. The board may allocate specific duties to other state agencies.

(c) Any power or duty related to the buildings and formerly vested in the Texas Commission on the Arts, State Purchasing and General Services Commission, Antiquities Committee, Texas Historical Commission, Texas State Library and Archives Commission, or any other state agency is vested solely in the board. (V.A.C.S. Art. 6145-14, Secs. 1 (part), 4(b), (c), (d), (e).)

Sec. 443.008. ADVISORY COMMITTEES. (a) The board shall appoint a permanent advisory committee consisting of the executive director of the Texas Historical Commission, chairman of the Antiquities Committee, director of the Texas State Library and Archives Commission, director of the Texas Commission on the Arts, and three citizens, one each appointed by the governor, lieutenant governor, and speaker of the house of representatives.

(b) An appointed member serves at the will of the authority who appointed the member. A citizen member is entitled to a per diem as set by the General Appropriations Act for each day that the person engages in committee business.

(c) The committee shall assist in the development of the master plan, annual work program, and budget prepared by the architect of the Capitol and a collection policy prepared by the curator of the Capitol, and make recommendations concerning board approval of those documents.

(d) The board may appoint other advisory committees to aid it in carrying out its duties. (V.A.C.S. Art. 6145-14, Secs. 4(f), (g).)

Sec. 443.009. OFFICES, RECORDS, AND DOCUMENTS IN THE CAPITOL. (a) The board, the architect of the Capitol, or the curator of the Capitol may not move the office of the governor, lieutenant governor, or a member of the legislature from the Capitol unless the removal is approved by the governor in the case of the governor's office, the lieutenant governor in the case of the lieutenant governor's office, or the house of the legislature in which the member serves in the case of a legislative member's office.

(b) The board, the architect of the Capitol, and the curator of the Capitol have no control over the furniture, furnishings, and decorative objects in the offices of the members of the legislature.

(c) The board and the architect of the Capitol have no control over records and documents produced by or in the custody of a state agency, official, or employee having an office in the Capitol. (V.A.C.S. Art. 6145-14, Secs. 4(h), 7.)

Sec. 443.010. DONATIONS. (a) The board shall develop plans and programs to solicit, and may solicit, gifts, money, and items of value from private persons, foundations, or organizations. Property provided by those entities and money donated to the board become the property of the state and are under the control of the board. The board shall use gifts of money made to the board for the purpose specified by the grantor, if any.

(b) This section does not apply to temporary exhibits or property of a person having an office in the Capitol. (V.A.C.S. Art. 6145-14, Sec. 8.)

Sec. 443.011. RESPONSIBILITY FOR ITEMS. Furniture, furnishings, fixtures, works of art, and decorative objects for which the board has responsibility under this chapter are not part of the Texas State Library and are not subject to the custody or control of the Texas State Library and Archives Commission or any other agency. (V.A.C.S. Art. 6145-14, Sec. 11.)

Sec. 443.012. FIRE INSPECTION. The state fire marshal shall inspect the Capitol annually and when requested by the board and shall report the results of the inspection to the board. (V.A.C.S. Art. 6145-14, Sec. 9.)

Sec. 443.013. TEXAS SOUVENIRS. (a) The board may select one vendor to sell Texas souvenirs in the Capitol and may select vendors to sell Texas souvenirs at tourist information bureaus that the state operates adjacent to highways in the national interstate highway system. The board shall determine the location in the Capitol where the vendor may operate and the location and area in a tourist information bureau facility where a vendor may operate. The board shall determine for the Capitol vendor and may determine for a vendor at a tourist information bureau:

(1) the form and appearance of a booth or stand from which the souvenirs are sold; and

(2) which souvenirs may be sold.

(b) The board may charge a vendor a reasonable fee for the right to operate in the Capitol or tourist information bureau facility and may charge each supplier of souvenirs a royalty for the right to have the souvenirs sold in the Capitol or facility. The proceeds of the fee and royalties shall be handled in the same manner as donations of money under Section 443.010.

(c) Chapter 94, Human Resources Code, does not apply to a vending facility under this section.

(d) This section expires January 1, 1989. (V.A.C.S. Art. 6145-14, Sec. 11A.)

CHAPTER 444. TEXAS COMMISSION ON THE ARTS

SUBCHAPTER A. GENERAL PROVISIONS AND ADMINISTRATION

- Sec. 444.001. COMMISSION
- Sec. 444.002. APPLICATION OF SUNSET, OPEN MEETINGS, AND ADMINISTRATIVE PROCEDURES LAWS
- Sec. 444.003. COMPOSITION
- Sec. 444.004. COMPENSATION
- Sec. 444.005. OFFICERS
- Sec. 444.006. CONFLICT OF INTEREST
- Sec. 444.007. DIRECTOR AND EMPLOYEES
- Sec. 444.008. MEETINGS
- Sec. 444.009. RULES
- Sec. 444.010. EMPLOYMENT PRACTICES
- Sec. 444.011. STANDARDS OF CONDUCT
- Sec. 444.012. INFORMATION OF INTEREST; COMPLAINTS

[Sections 444.013–444.020 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES

- Sec. 444.021. GENERAL DUTIES
- Sec. 444.022. GATHERING OF INFORMATION
- Sec. 444.023. COMMITTEES; CONSULTANTS
- Sec. 444.024. GRANTS
- Sec. 444.025. DONATIONS; APPROPRIATIONS; AUDIT

CHAPTER 444. TEXAS COMMISSION ON THE ARTS

SUBCHAPTER A. GENERAL PROVISIONS AND ADMINISTRATION

Sec. 444.001. COMMISSION. The Texas Commission on the Arts is an agency of state. (V.A.C.S. Art. 6144g, Sec. 1(a).)

Sec. 444.002. APPLICATION OF SUNSET, OPEN MEETINGS, AND ADMINISTRATIVE PROCEDURES LAWS. (a) The Texas Commission on the Arts is subject to Texas Sunset Act (Chapter 325). Unless continued in existence as provided by that the commission is abolished and this chapter expires September 1, 1995.

(b) The commission and its committees are subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252–17, Vernon’s Texas Civil Statutes). The commission is subject to the Administrative Procedure and Register Act (Article 6252–13a, Vernon’s Texas Civil Statutes). (V.A.C.S. Art. 6: Secs. 1A, 4(c) (part).)

Sec. 444.003. COMPOSITION. The commission is composed of 18 members appointed by the governor with the advice and consent of the senate. The members must represent all fields of the arts and be widely known for their professional competence and experience in connection with the arts. Appointments to the commission must be made without regard to the race, creed, sex, religion, or national origin of the appointee. (V.A.C.S. Art. 6144g, Sec. 1(b).)

Sec. 444.004. COMPENSATION. (a) A member of the commission is entitled to per diem as set by legislative appropriation for each day that the member engages in commission business.

(b) A member is not entitled to other compensation for service on the commission. The member is entitled to reimbursement for travel and other necessary expenses incurred in the performance of commission business in an amount not exceeding the amount authorized to be paid to a member of the legislature for similar expenses. (V.A.C.S. Art. 6144g, Sec. 6.)

Sec. 444.005. OFFICERS. The commission may elect from its members a chairperson and other officers. (V.A.C.S. Art. 6144g, Sec. 4(a).)

Sec. 444.006. CONFLICT OF INTEREST. (a) A person required to register as lobbyist under Chapter 305 because of activities for compensation in or on behalf of a profession related to the operation of the commission may not be a member of or general counsel to the commission.

(b) It is a ground for removal from the commission if a member violates a prohibition established by Subsection (a). The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a member exists. (V.A.C.S. Art. 6144g, Secs. 1(c), 2A.)

Sec. 444.007. DIRECTOR AND EMPLOYEES. The commission may employ a director and other clerical employees that it considers necessary. (V.A.C.S. Art. 6144g, Sec. 4(g).)

Sec. 444.008. MEETINGS. (a) The commission may meet at the times and places within the state that the commission designates.

(b) At an open meeting of the commission, a member of the public is entitled to appear and speak on any issue under the jurisdiction of the commission, within limits and reasonable rules of the commission designed to expedite consideration of issues at meeting. (V.A.C.S. Art. 6144g, Secs. 4(b), (c) (part).)

Sec. 444.009. RULES. The commission may adopt rules to govern itself, its officers and its committees and may prescribe the duties of its officers, consultants, and employees. (V.A.C.S. Art. 6144g, Sec. 4(f).)

Sec. 444.010. EMPLOYMENT PRACTICES. (a) The director of the commission or the director's designee shall develop a career ladder program within the agency. The program must require that openings in all positions except entry level positions be posted within the commission for at least 10 days before they are posted for the public.

(b) The director or the director's designee shall develop a system of annual performance evaluation based on measurable job tasks. Merit pay for commission employees must be based on that system.

(c) The director shall prepare and maintain a written plan to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The plan must cover an annual period and be updated annually. The plan must include:

- (1) a comprehensive analysis of the commission's work force by race, sex, ethnic background, class of position, and salary or wage;
- (2) plans for recruitment, evaluation, selection, appointment, training, promotion and other personnel policies;
- (3) steps reasonably designed to overcome identified underuse of minorities and women in the agency's work force; and
- (4) objectives, goals, timetables for achievement of the objectives and goals, and assignment of responsibility for their achievement.

(d) Before the expiration of 30 days after April 1 and November 1 of each year the commission shall submit a progress report to the governor. The report must include a statement of the steps that the commission has taken during the previous six months to comply with the requirements of Subsection (c). (V.A.C.S. Art. 6144g, Sec. 6B.)

Sec. 444.011. STANDARDS OF CONDUCT. As often as necessary the commission shall provide to its members and staff information regarding their responsibilities under applicable laws relating to standards of conduct for state officers or employees. (V.A.C.S. Art. 6144g, Sec. 6A.)

Sec. 444.012. INFORMATION OF INTEREST; COMPLAINTS. (a) The commission shall prepare information of interest describing the functions of the commission and the procedures for filing complaints and for their resolution by the commission. The commission shall make the information available to the general public and appropriate state agencies.



(b) The commission shall keep an information file about each complaint filed with the commission.

(c) If a written complaint is filed with the commission, at least quarterly and until final disposition of the complaint the commission shall notify the parties to the complaint of the complaint's status, unless the notice would jeopardize an undercover investigation (V.A.C.S. Art. 6144g, Sec. 7A.)

[Sections 444.013–444.020 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES

Sec. 444.021. GENERAL DUTIES. The commission shall:

- (1) foster the development of a receptive climate for the arts that will culturally enrich and benefit state citizens in their daily lives;
- (2) make visits and vacations to the state more appealing to the world;
- (3) attract, through appropriate programs of publicity and education, additional outstanding artists to become state residents;
- (4) direct activities such as the sponsorship of lectures and exhibitions and the central compilation and dissemination of information on the progress of the arts in the state;
- (5) provide advice to the State Purchasing and General Services Commission, Texas Historical Commission, Texas State Library, Texas Tourist Development Agency, State Department of Highways and Public Transportation, and other state agencies to provide a concentrated state effort in encouraging and developing an appreciation of the arts in the state;
- (6) provide advice relating to the creation, acquisition, construction, erection, remodeling by the state of a work of art; and
- (7) provide advice, on request of the governor, relating to the artistic character of buildings constructed, erected, or remodeled by the state. (V.A.C.S. Art. 6144g, Sec. 4(d).)

Sec. 444.022. GATHERING OF INFORMATION. The commission may conduct search, investigations, and inquiries necessary to inform the commission of the development of the arts in the state. (V.A.C.S. Art. 6144g, Sec. 4(d).)

Sec. 444.023. COMMITTEES; CONSULTANTS. (a) The commission may appoint committees from its membership and prescribe their duties.

(b) The commission may appoint consultants to the commission. In appointing consultants, the commission shall attempt to achieve representation from each geographic area of the state and from the various racial and ethnic groups present in the state. (V.A.C.S. Art. 6144g, Sec. 4(e).)

Sec. 444.024. GRANTS. (a) An applicant for a grant of money from the commission shall specify in the grant application a minimum and maximum amount of money requested.

(b) Before making a grant of money, the commission shall submit the grant application to a panel of commission consultants for its recommendations. The panel shall include in its recommendations its determination of the reasonableness of the proposed amounts of funding.

(c) Grants of money shall be made without regard to the race, creed, sex, religion, or national origin of the applicant. (V.A.C.S. Art. 6144g, Sec. 4A.)

Sec. 444.025. DONATIONS; APPROPRIATIONS; AUDIT. (a) The commission may accept on behalf of the state donations of money, property, art objects, and historical relics as it determines best further the orderly development of the artistic resources of the state. All money paid to the commission under this chapter shall be deposited in the state treasury.

(b) The legislature may make appropriations to the commission to carry out the purposes of this chapter.

(c) The state auditor shall audit the financial transactions of the commission during each fiscal year. (V.A.C.S. Art. 6144g, Sec. 5.)

#### CHAPTER 445. TEXAS MUSIC COMMISSION

- Sec. 445.001. COMMISSION
- Sec. 445.002. APPLICATION OF SUNSET ACT
- Sec. 445.003. COMPOSITION
- Sec. 445.004. TERM
- Sec. 445.005. MEETINGS
- Sec. 445.006. COMPENSATION
- Sec. 445.007. CONFLICT OF INTEREST
- Sec. 445.008. POWERS AND DUTIES
- Sec. 445.009. MUSIC COMMISSION FUND

#### CHAPTER 445. TEXAS MUSIC COMMISSION

Sec. 445.001. COMMISSION. The Texas Music Commission is an agency of the state. (V.A.C.S. Art. 6144i, Sec. 1(a) (part).)

Sec. 445.002. APPLICATION OF SUNSET ACT. The Texas Music Commission is subject to the Texas Sunset Act (Chapter 325). Unless continued in existence as provided by that Act, the commission is abolished and this chapter expires September 1, 1997. (V.A.C.S. Art. 6144i, Sec. 3.)

Sec. 445.003. COMPOSITION. (a) The commission is composed of nine private individuals appointed by the governor with the advice and consent of the senate.

(b) A member must be known for professional competence and experience in connection with the music industry.

(c) An appointment shall be made without regard to the race, creed, sex, religion, or national origin of the appointee. (V.A.C.S. Art. 6144i, Sec. 1(b).)

Sec. 445.004. TERM. Members of the commission serve for staggered six-year terms with the terms of three members expiring February 1 of each odd-numbered year. (V.A.C.S. Art. 6144i, Sec. 1(c) (part).)

Sec. 445.005. MEETINGS. (a) The commission shall meet at least once in each calendar quarter and at other times and places as called by the chairman.

(b) At its first meeting of each calendar year, the commission shall select a chairman from among its membership. (V.A.C.S. Art. 6144i, Sec. 1(c) (part).)

Sec. 445.006. COMPENSATION. A member of the commission is not entitled to compensation for services on the commission, but is entitled to reimbursement for actual and necessary expenses incurred in performing services under this chapter. (V.A.C.S. Art. 6144i, Sec. 1(d).)

Sec. 445.007. CONFLICT OF INTEREST. A person who is required to register as a lobbyist under Chapter 305 may not be a member of or act as general counsel to the commission. (V.A.C.S. Art. 6144i, Sec. 1(e).)

Sec. 445.008. POWERS AND DUTIES. (a) The commission shall promote the development of the music industry in the state by informing members of that industry and the general public about the resources available in the state for music production.

(b) The commission may:

- (1) contract and pay for the furnishing of goods and services as necessary to administer this chapter;
- (2) employ an executive director and other personnel as necessary to administer this chapter; and
- (3) apply for and receive gifts or grants from governmental or private sources for use in the administration of this chapter.
- (c) The commission may cooperate with other state agencies as provided by the Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes). The commission shall cooperate with the Texas Economic Development Commission and with other branches of state or local government that are involved in attracting industry to the state.
- (d) A member of the commission staff may travel inside or outside the state as necessary to perform functions under this chapter. (V.A.C.S. Art. 6144i, Secs. 1 (g) and 2(a)-(f).)

Sec. 445.009. **MUSIC COMMISSION FUND.** The music commission fund is a special fund in the state treasury. All gifts, grants, and other funds received by the commission shall be deposited to the credit of the fund and may be used only for the purposes of this chapter. (V.A.C.S. Art. 6144i, Sec. 2(g).)

#### CHAPTER 446. GOVERNOR'S COMMISSION ON PHYSICAL FITNESS

- Sec. 446.001. **DEFINITION**  
 Sec. 446.002. **COMMISSION; SUNSET ACT**  
 Sec. 446.003. **MEMBERSHIP**  
 Sec. 446.004. **TERM OF OFFICE; REAPPOINTMENT; VACANCIES**  
 Sec. 446.005. **COMPENSATION AND EXPENSES**  
 Sec. 446.006. **POWERS**  
 Sec. 446.007. **DUTIES**  
 Sec. 446.008. **REPORT**  
 Sec. 446.009. **DONATIONS; AUDIT**

#### CHAPTER 446. GOVERNOR'S COMMISSION ON PHYSICAL FITNESS

Sec. 446.001. **DEFINITION.** In this chapter, "commission" means the Governor's Commission on Physical Fitness. (V.A.C.S. Art. 4413(44), Sec. 2.)

Sec. 446.002. **COMMISSION; SUNSET ACT.** (a) The Governor's Commission on Physical Fitness is an agency of the state.

(b) The commission is subject to the Texas Sunset Act (Chapter 325). Unless the commission is continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 1989. (V.A.C.S. Art. 4413(44), Secs. 2(a), (b), (c).)

Sec. 446.003. **MEMBERSHIP.** (a) The commission consists of 15 members appointed by the governor with the advice and consent of the senate.

(b) The membership must be representative of all fields of physical fitness, including levels of fitness programs for youth and adults. The members should be recognized for their professional competence and experience in physical fitness. (V.A.C.S. Art. 4413(44), Sec. 3(a) (part).)

Sec. 446.004. **TERM OF OFFICE; REAPPOINTMENT; VACANCIES.** (a) The members of the commission serve staggered six-year terms, with the terms of five members expiring in each odd-numbered year.

(b) If a member of the commission dies, resigns, becomes disabled, refuses to serve, or is removed from office, the governor shall appoint another member to serve the remainder of the person's term. (V.A.C.S. Art. 4413(44), Sec. 3(b).)

Sec. 446.005. **COMPENSATION AND EXPENSES.** A member of the commission serves without compensation for service on the commission but is entitled to reimbursement for actual travel and other necessary expenses incurred in the performance of commission duties. (V.A.C.S. Art. 4413(44), Sec. 4.)

Sec. 446.006. **POWERS.** The commission may:

- (1) elect from among its membership a chairman and other officers the commission determines to be desirable;
- (2) hold meetings at times and places in this state designated by the commission;
- (3) conduct research, investigations, and inquiries that the commission determines are necessary to obtain information on the development of physical fitness in this state;
- (4) appoint committees from among its membership and prescribe the duties of those committees;
- (5) appoint consultants to the commission;
- (6) adopt rules for the operation of the commission and its committees;
- (7) prescribe the duties of officers, employees, and consultants of the commission and
- (8) employ a director and other clerical employees the commission determines to be necessary. (V.A.C.S. Art. 4413(44), Sec. 5.)

Sec. 446.007. **DUTIES.** The commission shall:

- (1) educate the public on the needs for and benefits of physical fitness;
- (2) help coordinate the efforts in physical fitness of the Central Education Agency, local school boards, private and parochial schools, private industries, and physical fitness commissions of the federal government, other states, and political subdivisions of this state;
- (3) disseminate information on physical fitness programs in this state through publications, conferences, workshops, programs, lectures, and other methods;
- (4) collect and assemble information and data regarding physical fitness from other agencies of this state;
- (5) encourage, promote, and assist in the development of physical fitness programs for persons of all ages;
- (6) evaluate existing physical fitness programs and recommend superior physical fitness programs;
- (7) provide for the exchange of ideas and research data regarding physical fitness programs; and
- (8) make an inventory of existing facilities for physical fitness programs and make recommendations regarding the best use of those facilities. (V.A.C.S. Art. 4413(44), Secs. 1, 6.)

Sec. 446.008. **REPORT.** On or before December 1 of each year, the commission shall present to the governor and the presiding officer of each house of the legislature a complete and detailed written report regarding the commission's activities. (V.A.C.S. Art. 4413(44), Sec. 7.)

Sec. 446.009. **DONATIONS; AUDIT.** The commission may accept on behalf of the state donations of money, property, and equipment that the commission determines will best further the orderly development of physical fitness in this state, including improving or developing good habits regarding or providing instruction in recreation, exercise, sports, and use of leisure time, and improving the physical fitness and health of the residents of this state. (V.A.C.S. Art. 4413(44), Sec. 9.)

[Chapters 447–460 reserved for expansion]

CHAPTER 461. TEXAS INDIAN COMMISSION

SUBCHAPTER A. ORGANIZATION AND ADMINISTRATION

- Sec. 461.001. COMMISSION
- Sec. 461.002. APPLICATION OF SUNSET ACT
- Sec. 461.003. MEMBERS
- Sec. 461.004. TERM
- Sec. 461.005. CHAIRMAN
- Sec. 461.006. COMPENSATION AND EXPENSES
- Sec. 461.007. MEETINGS
- Sec. 461.008. EXECUTIVE DIRECTOR

[Sections 461.009–461.020 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES

- Sec. 461.021. PROMOTING UNITY AND UNDERSTANDING
- Sec. 461.022. ASSISTANCE TO ALABAMA-COUSHATTA INDIAN TRIBE OF TEXAS AND TIGUA TRIBE OF TEXAS
- Sec. 461.023. ASSISTANCE TO TEXAS BAND OF KICKAPOO INDIANS
- Sec. 461.024. PLANNING AND DEVELOPMENT OF RESERVATIONS
- Sec. 461.025. GIFTS, GRANTS, AND PURCHASES
- Sec. 461.026. REPORT

[Sections 461.027–461.030 reserved for expansion]

SUBCHAPTER C. TRIBAL ORGANIZATION AND FINANCES

- Sec. 461.031. NONPROFIT STATUS AND PRIVILEGES
- Sec. 461.032. CONTRACTS
- Sec. 461.033. OIL AND GAS REVENUE
- Sec. 461.034. LEASES TO MEMBERS
- Sec. 461.035. ISSUANCE OF BONDS
- Sec. 461.036. BOND FORM; REDEMPTION
- Sec. 461.037. BOND SALE; TERMS
- Sec. 461.038. BOND EXPENSES; FEES
- Sec. 461.039. BONDS AS INVESTMENTS AND SECURITY
- Sec. 461.040. PLEDGE OF REVENUE AND INCOME TO BONDS
- Sec. 461.041. NOT DEBT OF STATE

CHAPTER 461. TEXAS INDIAN COMMISSION

SUBCHAPTER A. ORGANIZATION AND ADMINISTRATION

Sec. 461.001. COMMISSION. The Texas Indian Commission is an agency of the state (V.A.C.S. Art. 5421z, Sec. 1.)

Sec. 461.002. APPLICATION OF SUNSET ACT. The Texas Indian Commission subject to the Texas Sunset Act (Chapter 325). Unless continued in existence as provided by that Act, the commission is abolished and this chapter expires September 1, 1998 (V.A.C.S. Art. 5421z, Sec. 1a.)

Sec. 461.003. MEMBERS. The commission consists of three members appointed by the governor with the advice and consent of the senate. At least one member must be an Indian. (V.A.C.S. Art. 5421z, Sec. 2.)

Sec. 461.004. TERM. Commission members serve staggered six-year terms with the term of one member expiring January 31 of each odd-numbered year. (V.A.C.S. Art. 5421z, Sec. 3.)

Sec. 461.005. CHAIRMAN. (a) The commission shall elect a chairman from among its members. The chairman serves for two years or until the chairman's successor is elected

(b) The chairman shall:

- (1) preside at all meetings;
- (2) appoint committees;
- (3) make periodic reports to the governor and legislature;
- (4) represent the commission at ceremonies and public functions; and
- (5) make policy and budget recommendations to the legislature and other commission members. (V.A.C.S. Art. 5421z, Sec. 4.)

Sec. 461.006. **COMPENSATION AND EXPENSES.** (a) A member is entitled to receive per diem compensation for each day that the member attends a meeting, travels, or attends to commission business, as provided by the General Appropriations Act.

(b) A member is entitled to reimbursement for actual and necessary expenses incurred in attending meetings, as provided by the General Appropriations Act. (V.A.C.S. Art. 5421z, Sec. 6.)

Sec. 461.007. **MEETINGS.** The commission shall hold at least three public meetings a year at times and places fixed by commission rule. The chairman shall notify each member not later than two weeks before the date of a regular meeting and not later than three days before the date of a special meeting. (V.A.C.S. Art. 5421z, Sec. 5 (part).)

Sec. 461.008. **EXECUTIVE DIRECTOR.** The commission shall appoint an executive director, who serves at the will of the commission. The executive director shall:

- (1) manage, supervise, and implement the policies of the commission in carrying out its responsibilities under this chapter;
- (2) employ a superintendent for each reservation, who shall answer to the executive director and carry out the commission's programs and policies;
- (3) seek, at the commission's direction, all possible federal funds, grants, gifts, and other types of assistance available to help expedite the commission's expressed policy for development and responsibility as provided by this chapter. (V.A.C.S. Art. 5421z, Sec. 8.)

[Sections 461.009–461.020 reserved for expansion]

#### SUBCHAPTER B. POWERS AND DUTIES

Sec. 461.021. **PROMOTING UNITY AND UNDERSTANDING.** The commission shall promote unity and understanding among the American Indian people of this state and shall promote and enhance increased understanding by the general public of American Indian and Texas Indian culture and history. In performing those functions, the commission may:

- (1) appoint voluntary advisory committees that the commission considers necessary to promote its purposes and accomplish its work;
- (2) conduct research in cooperation with other state agencies relating to the social and economic conditions of American Indian citizens of Texas;
- (3) prepare and disseminate information relating to the social and economic conditions of American Indians; and
- (4) cooperate with state and federal agencies in all matters, programs, and legislation relating to American Indians and related issues at the state and national level, particularly as they affect or are affected by this state. (V.A.C.S. Art. 5421z, Sec. 7(c).)

Sec. 461.022. **ASSISTANCE TO ALABAMA-COUSHATTA INDIAN TRIBE OF TEXAS AND TIGUA TRIBE OF TEXAS.** The commission shall assist the Alabama-Coushatta Indian Tribe of Texas and the Tigua Tribe of Texas in:

- (1) developing the human and economic resources of the Alabama-Coushatta Indian Reservation and the Tigua Indian Reservation;
- (2) making the reservations self-sufficient; and

(3) improving the tribes' health, educational, agricultural, business, and industrial capacities. (V.A.C.S. Art. 5421z, Sec. 7(a).)

Sec. 461.023. ASSISTANCE TO TEXAS BAND OF KICKAPOO INDIANS. The commission, in a manner that does not conflict with the band's status as a federally recognized Indian tribe or its relationship with the United States government, shall assist the Texas Band of Kickapoo Indians in improving its health, educational, agricultural, business, and industrial capacities. The Texas Band of Kickapoo Indians is recognized as a Texas Indian tribe. (V.A.C.S. Art. 5421z, Secs. 7(b), 11A.)

Sec. 461.024. PLANNING AND DEVELOPMENT OF RESERVATIONS. The commission may cooperate, negotiate, and contract with state and local agencies and with private and public organizations and foundations concerned with the development of the human and economic resources of the reservations and other related programs to implement the planning and development of the reservations. A county or other local unit of government may cooperate with the commission and may allow use of equipment necessary in the development of the reservations. (V.A.C.S. Art. 5421z, Sec. 9.)

Sec. 461.025. GIFTS, GRANTS, AND PURCHASES. (a) The commission may accept gifts, grants, and donations of money and personal and real property for use in the development of the reservations and may acquire by gift or purchase additional land necessary for improvement of the reservations, their income, and their economic self-sufficiency.

(b) The commission may negotiate with any agency of the United States to obtain grants to assist in the development of the reservations and in any trust land of the Texas Band of Kickapoo Indians. (V.A.C.S. Art. 5421z, Secs. 10, 11.)

Sec. 461.026. REPORT. The commission annually shall submit to the governor and the legislature a report of its activities under this chapter. The report may include the commission's legislative recommendations. (V.A.C.S. Art. 5421z, Sec. 7(d).)

[Sections 461.027–461.030 reserved for expansion]

#### SUBCHAPTER C. TRIBAL ORGANIZATION AND FINANCES

Sec. 461.031. NONPROFIT STATUS AND PRIVILEGES. A tribal council or tribal business has the rights, privileges, benefits, and powers of a nonprofit corporation organized under the Texas Non-Profit Corporation Act (Article 1396–1.01 et seq., Vernon's Texas Civil Statutes), including the power to accept gifts, grants, and donations. (V.A.C.S. Art. 5421z, Sec. 10A.)

Sec. 461.032. CONTRACTS. (a) The tribal council of the Alabama-Coushatta Indian Tribe, the Tigua Indian Tribe, or the Texas Band of Kickapoo Indians may contract with local government, as that term is defined by The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes), in the same manner and for the same purposes that local governments may contract with each other under that Act.

(b) The tribal council may contract with the state or a state agency in the manner and for the purposes that are agreed to by the tribal council and the state or state agency. (V.A.C.S. Art. 5421z, Sec. 9A.)

Sec. 461.033. OIL AND GAS REVENUE. All revenues from leasing Indian reservation land shall be paid to the commissioner of the General Land Office. The commission shall immediately place the money in a depository designated by the appropriate tribal council and the commission in a special account called the Alabama-Coushatta mineral fund or the Tigua mineral fund, as appropriate. The money shall be expended for purposes recommended by the appropriate tribal council and approved by the commission. (V.A.C.S. Art. 5421z, Sec. 19.)

Sec. 461.034. LEASES TO MEMBERS. The tribal council, with the commission approval, may execute leases under which a member of the tribe, as lessee, may occupy

for residential purchase, for a term of not more than 50 years with the option to renew for a term of not more than 50 years, a designated lot or tract of land included in the 1,280-acre tract conveyed to the Alabama Indians under Chapter XLIV, Acts of the 5th Legislature, 1854. (V.A.C.S. Art. 5421z, Sec. 21.)

Sec. 461.035. **ISSUANCE OF BONDS.** A tribal council, with written approval of the commission, may issue revenue bonds or other evidences of indebtedness to finance the construction of improvements on the reservation and to purchase additional land necessary for the improvements or for improvement of the income and economic conditions of the reservation. The bonds or other evidences of indebtedness may be secured by the income from revenue-producing properties, interests, or facilities of the land that is held in trust by the state for the benefit of the Indians. (V.A.C.S. Art. 5421z, Sec. 13.)

Sec. 461.036. **BOND FORM; REDEMPTION.** (a) Bonds issued by a tribal council must mature serially or otherwise not more than 40 years after the date of issuance. The tribal council, with the commission's approval, may make the bonds redeemable before maturity at times and prices and under terms and conditions prescribed in the authorizing proceedings. The bonds may be refunded or otherwise refinanced if the tribal council with the commission's approval, considers it necessary or appropriate.

(b) Except as otherwise provided by this chapter, the tribal council and commission have complete discretion in fixing the form, conditions, and details of the bonds. (V.A.C.S. Art. 5421z, Secs. 13, 14.)

Sec. 461.037. **BOND SALE; TERMS.** The bonds may be sold at public or private sale at a price and under terms that the tribal council and commission determine to be the most advantageous reasonably obtainable. Interest on loans and bonds may not exceed the lesser of 10 percent a year or the limit approved by the tribal council and commission. (V.A.C.S. Art. 5421z, Sec. 15.)

Sec. 461.038. **BOND EXPENSES; FEES.** A tribal council, with the commission approval, may employ attorneys, fiscal agents, and financial advisors in connection with the issuance and sale of bonds. Proceeds from the sale of the bonds may be used to pay their fees and all other expenses of the issuance and sale of the bonds. (V.A.C.S. Art. 5421z, Sec. 16.)

Sec. 461.039. **BONDS AS INVESTMENTS AND SECURITY.** (a) The bonds are legal and authorized investments for:

- (1) a bank;
- (2) a savings bank;
- (3) a trust company;
- (4) a savings and loan association;
- (5) an insurance company;
- (6) a fiduciary;
- (7) a trustee;
- (8) a guardian; or
- (9) a sinking fund of a political subdivision or public agency of the state.

(b) The bonds are lawful and sufficient security for deposits up to their par value, if accompanied by all unmatured appurtenant coupons. (V.A.C.S. Art. 5421z, Sec. 17.)

Sec. 461.040. **PLEDGE OF REVENUE AND INCOME TO BONDS.** A tribal council with the commission's approval, may pledge the rents, royalties, revenue, and income from revenue-producing property and facilities of the state trust lands to the payment of the interest on and principal of the bonds and may enter into agreements relating to the imposition of sufficient charges and other revenues and their collection, pledge, and



disposition. In making a pledge the tribal council, with the commission's approval, may specifically reserve the right to issue additional bonds on a parity with or subordinate to the bonds being issued. (V.A.C.S. Art. 5421z, Sec. 18.)

Sec. 461.041. **NOT DEBT OF STATE.** An obligation created by a contract, bond, note, or other evidence of indebtedness issued by a tribal council under this chapter does not create a debt against the state. Each contract, bond, note, or other evidence of indebtedness must contain the statement: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation." (V.A.C.S. Art. 5421z, Sec. 20.)

**CHAPTER 462. TEXAS TOURIST DEVELOPMENT AGENCY**

- Sec. 462.001. **CONTROL AND MANAGEMENT BY TEXAS TOURIST DEVELOPMENT BOARD**  
 Sec. 462.002. **APPLICATION OF SUNSET ACT**  
 Sec. 462.003. **COMPOSITION OF BOARD**  
 Sec. 462.004. **QUALIFICATION FOR APPOINTMENT TO BOARD**  
 Sec. 462.005. **TERMS OF OFFICE**  
 Sec. 462.006. **VACANCY**  
 Sec. 462.007. **CHAIRMAN**  
 Sec. 462.008. **RULES**  
 Sec. 462.009. **COMPENSATION AND REIMBURSEMENT**  
 Sec. 462.010. **DUTIES**  
 Sec. 462.011. **EXECUTIVE DIRECTOR**  
 Sec. 462.012. **NAME AND PICTURE OF LIVING STATE OFFICIAL**

**CHAPTER 462. TEXAS TOURIST DEVELOPMENT AGENCY**

Sec. 462.001. **CONTROL AND MANAGEMENT BY TEXAS TOURIST DEVELOPMENT BOARD.** The Texas Tourist Development Agency is controlled and managed by the Texas Tourist Development Board. (V.A.C.S. Art. 6144f, Sec. 1(a) (part).)

Sec. 462.002. **APPLICATION OF SUNSET ACT.** The Texas Tourist Development Agency is subject to the Texas Sunset Act (Chapter 325 of this code). Unless continued in existence as provided by that Act, the agency is abolished and this chapter expires September 1, 1995. (V.A.C.S. Art. 6144f, Sec. 1(f).)

Sec. 462.003. **COMPOSITION OF BOARD.** (a) The Texas Tourist Development Board is composed of nine members who are appointed by the governor with the advice and consent of the senate.

(b) In making appointments to the board, the governor shall attempt to maintain a balanced geographical representation of all parts of the state. (V.A.C.S. Art. 6144f, Sec. 1(a) (part).)

Sec. 462.004. **QUALIFICATION FOR APPOINTMENT TO BOARD.** To be qualified for appointment to the board, a person must be:

- (1) a citizen of this state; and
- (2) knowledgeable in the field of advertising and promotion. (V.A.C.S. Art. 6144f, Sec. 1(b).)

Sec. 462.005. **TERMS OF OFFICE.** Members of the board serve six-year staggered terms. (V.A.C.S. Art. 6144f, Sec. 1(c) (part).)

Sec. 462.006. **VACANCY.** A vacancy on the board shall be filled by appointment for the unexpired portion of the term. (V.A.C.S. Art. 6144f, Sec. 1(c) (part).)

Sec. 462.007. **CHAIRMAN.** The board shall elect a new chairman every two years. (V.A.C.S. Art. 6144f, Sec. 1(d) (part).)

Sec. 462.008. RULES. The board shall adopt rules necessary for the successful management and operation of the Texas Tourist Development Agency. (V.A.C.S. Art. 6144f, Sec. 1(d) (part).)

Sec. 462.009. COMPENSATION AND REIMBURSEMENT. (a) A member of the board is not entitled to a salary for duties performed as a member of the board.

(b) A member of the board is entitled to:

(1) \$25, or the amount set by the General Appropriations Act under Chapter 428, Acts of the 67th Legislature, Regular Session, 1981 (Article 6813f, Vernon's Texas Civil Statutes), for each day the member is in attendance at a meeting or on authorized business of the board; and

(2) reimbursement for actual expenses incurred in performing official duties. (V.A. C.S. Art. 6144f, Sec. 1(e).)

Sec. 462.010. DUTIES. The Texas Tourist Development Agency shall administer funds appropriated to it in accordance with this chapter to:

(1) promote and advertise, by radio, television, newspaper, and other means considered appropriate, tourism to this state by non-Texans, including persons from foreign countries;

(2) promote travel by Texans to this state's scenic, historical, natural, agricultural, educational, recreational, and other attractions;

(3) coordinate and stimulate orderly and accelerated development of tourist attractions throughout this state;

(4) conduct a public relations campaign to create a responsible and accurate national and international image of this state;

(5) cooperate fully with the Parks and Wildlife Department in all matters relating to promotion of tourism;

(6) cooperate with the State Highway and Public Transportation Commission in the administration of the commission's collateral program of highway map distribution and operation of travel information bureaus and other tourist-related functions of the commission; and

(7) encourage communities, organizations, and individuals in this state to cooperate with its program by their activities and use of their own funds and to collaborate with these organizations and other governmental entities in the pursuit of the objectives of this chapter. (V.A.C.S. Art. 6144f, Sec. 2.)

Sec. 462.011. EXECUTIVE DIRECTOR. (a) The board shall employ an executive director as chief administrative officer of the Texas Tourist Development Agency.

(b) The executive director serves at the pleasure of the board.

(c) Subject to the approval of the board, the executive director may employ, on a fee or other basis, personnel and consultants that are necessary and may secure equipment that is necessary to accomplish the purposes of this chapter.

(d) The executive director shall keep full and accurate minutes of all transactions and proceedings of the board. The executive director is the custodian of the files and records of the board.

(e) With the consent of the board and in the name of the Texas Tourist Development Agency, the executive director may accept donations and gifts of property and money that are made to further the purposes of the agency. (V.A.C.S. Art. 6144f, Sec. 3.)

Sec. 462.012. NAME AND PICTURE OF LIVING STATE OFFICIAL. The name or the picture of a living state official may not be used for advertising purposes under this chapter. (V.A.C.S. Art. 6144f, Sec. 4.)

CHAPTER 463. AUTOMATED INFORMATION AND  
TELECOMMUNICATIONS COUNCIL

SUBCHAPTER A. GENERAL PROVISIONS AND ADMINISTRATION

- Sec. 463.001. DEFINITIONS
- Sec. 463.002. APPLICATION OF SUNSET ACT
- Sec. 463.003. EXCEPTION
- Sec. 463.004. COUNCIL
- Sec. 463.005. MEMBERSHIP
- Sec. 463.006. CONFLICT OF INTEREST
- Sec. 463.007. TERMS
- Sec. 463.008. OFFICERS; MEETINGS
- Sec. 463.009. COMPENSATION AND REIMBURSEMENT
- Sec. 463.010. STAFF
- Sec. 463.011. ADVISORY COMMITTEES

[Sections 463.012–463.020 reserved for expansion]

SUBCHAPTER B. AUTOMATED INFORMATION AND TELECOMMUNICATIONS

- Sec. 463.021. GUIDELINES
- Sec. 463.022. REVIEW OF ACTIONS OF GOVERNMENTAL BODIES
- Sec. 463.023. MANAGEMENT AUDIT
- Sec. 463.024. ADVICE AND ASSISTANCE
- Sec. 463.025. SOFTWARE CLEARINGHOUSE
- Sec. 463.026. RULES
- Sec. 463.027. REPORT
- Sec. 463.028. LONG-RANGE TELECOMMUNICATIONS PLAN

CHAPTER 463. AUTOMATED INFORMATION AND  
TELECOMMUNICATIONS COUNCIL

SUBCHAPTER A. GENERAL PROVISIONS AND ADMINISTRATION

Sec. 463.001. DEFINITIONS. In this chapter:

(1) "State governmental body" means:

(A) an agency, office, or institution, including an institution of higher education as defined by Section 61.003, Education Code, that is in the executive branch of state government; or

(B) the supreme court, the court of criminal appeals, a court of appeals, the State Bar of Texas, or another judicial agency.

(2) "Telecommunications" means the transmission of audible, written, printed, or video information by means of an electromagnetic or optic system. (V.A.C.S. Art. 4413(32h), Sec. 1.01(a).)

Sec. 463.002. APPLICATION OF SUNSET ACT. The Automated Information and Telecommunications Council is subject to the Texas Sunset Act (Chapter 325). Unless continued in existence as provided by that Act, the council is abolished and this chapter expires September 1, 1993. (V.A.C.S. Art. 4413(32h), Sec. 1.09.)

Sec. 463.003. EXCEPTION. The telecommunications provisions of this chapter do not apply to a single agency point-to-point radio system, a system of criminal justice information telecommunications, or a part of those systems. (V.A.C.S. Art. 4413(32h), Sec. 1.01(b).)

Sec. 463.004. COUNCIL. The Automated Information and Telecommunications Council is an agency of the state. (V.A.C.S. Art. 4413(32h), Sec. 1.02.)

Sec. 463.005. MEMBERSHIP. The council is composed of nine members appointed as follows:

(1) three persons appointed by the speaker of the house of representatives, one of whom must be a member or employee of the house or an employee of a legislative

agency, one of whom must be employed by a private corporation and be knowledgeable in the management of the corporation's automated information system or telecommunications system, and one of whom must be employed by a state governmental body and be knowledgeable in the management of automated information systems or telecommunications systems;

(2) three persons appointed by the lieutenant governor, one of whom must be a member or employee of the senate or an employee of a legislative agency, one of whom must be employed by a private corporation and be knowledgeable in the management of the corporation's automated information system or telecommunications system, and one of whom must be employed by a state governmental body and be knowledgeable in the management of automated information systems or telecommunications systems; and

(3) three persons appointed by the governor, one of whom must be knowledgeable in the management of automated information systems or telecommunications systems, one of whom must be employed by a state-supported institution of higher education in this state and be knowledgeable in the management of automated information systems or telecommunications systems, and one of whom must be an employee of a state governmental body other than an institution of higher education and be knowledgeable in the management of automated information systems or telecommunications systems. (V.A.C.S. Art. 4413(32h), Sec. 1.03(a).)

Sec. 463.006. CONFLICT OF INTEREST. (a) A member or employee of the council may not:

(1) be an officer, employee, or paid consultant of a business entity that has, or of a trade association for business entities that have, a substantial interest in the telecommunications or automated information industry;

(2) own, control, or have, directly or indirectly, more than a 10 percent interest in a business entity that has a substantial interest in the telecommunications or automated information industry;

(3) be interested in or connected with a contract or bid for furnishing a state governmental body with telecommunications devices, systems, or services or with automated information systems, the computers on which they are automated, or a service related to the automation of information systems or the computers on which they are automated;

(4) be employed by a state governmental body as a consultant on telecommunications matters or automated information systems, the computers on which they are automated, or a related service;

(5) accept or receive money or another thing of value from an individual, firm, or corporation to whom a contract may be awarded, directly or indirectly, by rebate, gift, or otherwise; or

(6) receive a promise, obligation, or contract for future reward or compensation from an individual, firm, or corporation described in Subdivision (5).

(b) It is a ground for removal of a member of the council or for dismissal of an employee of the council if the member or employee violates a prohibition under Subsection (a). The validity of an action of the council is not affected by the fact that it was taken when a ground for removal of a member existed. If the executive head of the council has knowledge that a potential ground for removal of a council member exists, the executive head shall notify the chairman of the ground. The chairman then shall notify the governor of the potential ground for removal. (V.A.C.S. Art. 4413(32h), Secs. 1.03(b), (c).)

Sec. 463.007. TERMS. Members of the council serve for staggered six-year terms with three members' terms expiring February 1 of each odd-numbered year. (V.A.C.S. Art. 4413(32h), Sec. 1.04.)

Sec. 463.008. OFFICERS; MEETINGS. (a) The governor shall designate the chairman of the council. The chairman serves at the will of the governor.

(b) The council shall meet at least once in each quarter of the state fiscal year and may meet at other times at the call of the chairman or as provided by council rule. (V.A.C.S. Art. 4413(32h), Sec. 1.05.)

Sec. 463.009. **COMPENSATION AND REIMBURSEMENT.** A member of the council serves without compensation for service on the council but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a council member. (V.A.C.S. Art. 4413(32h), Sec. 1.06.)

Sec. 463.010. **STAFF.** The council may employ persons necessary for the performance of its functions. (V.A.C.S. Art. 4413(32h), Sec. 1.07.)

Sec. 463.011. **ADVISORY COMMITTEES.** (a) The council may appoint advisory committees as the council considers necessary to provide expertise to the council. A member of an advisory committee serves at the will of the council.

(b) A member of an advisory committee serves without compensation for service on the committee but may receive reimbursement for actual and necessary expenses incurred in performing functions as a committee member. (V.A.C.S. Art. 4413(32h), Sec. 1.08.)

[Sections 463.012–463.020 reserved for expansion]

#### SUBCHAPTER B. AUTOMATED INFORMATION AND TELECOMMUNICATIONS

Sec. 463.021. **GUIDELINES.** (a) The council shall adopt guidelines to aid state governmental bodies in making economical and efficient use of telecommunication devices, systems, or services and of automated information systems, the computers on which they are automated, or related services.

(b) The guidelines relating to automated information matters must include the area of long-range planning, common data bases, networking, applications, shared software security, and disaster recovery. (V.A.C.S. Art. 4413(32h), Sec. 2.01.)

Sec. 463.022. **REVIEW OF ACTIONS OF GOVERNMENTAL BODIES.** (a) If a state governmental body proposes to take an action listed in Subsection (b), the body, at the time it files an acquisition request with the State Purchasing and General Service Commission, shall file with the council any information that the council considers necessary for it to prepare a report under Subsection (c).

(b) The state governmental body must file information under Subsection (a) if it proposes to:

(1) purchase, at a cost of more than \$20,000 or a greater amount prescribed by council rule, telecommunications devices, systems, or services or automated information systems, the computers on which they are automated, or a service related to the automation of information systems or the computers on which they are automated;

(2) lease, at a cost of more than \$1,000 a month or a greater amount prescribed by council rule, telecommunications devices or systems or automated information system or the computers on which they are automated; or

(3) undertake a major conversion of telecommunications devices or systems or automated information systems or the computers on which they are automated;

(c) The council shall review each action proposed by a state governmental body under Subsection (b). Not later than the 60th day after the date of receipt of the proposal and any supporting information, the council shall file a report with the governor, lieutenant governor, speaker of the house of representatives, State Purchasing and General Service Commission, and state auditor. The report must state whether the guidelines adopted under Section 463.021 would be fulfilled if the governmental body's action were taken. The council may designate, at the chairman's discretion or as provided by council rule, reports that may not be filed until they are reviewed and approved in writing by a majority of the council membership. Reports that are not designated shall be prepared and filed in the council's name by the council staff. The council may meet as provided by Section 463.008(b) to satisfy this subsection.

(d) A state governmental body may not take an action under Subsection (b) before the earlier of:

(1) the date the council files the report under Subsection (c); or

(2) the 60th day after the date the council receives the proposal and any supporting information.

(e) Failure of the council to timely file a report under Subsection (c) does not prohibit a state governmental body from taking the action after the expiration of the 60-day period. The council and the body may agree to extend the deadline for filing a report. (V.A.C.S. Art. 4413(32h), Sec. 2.02.)

Sec. 463.023. **MANAGEMENT AUDIT.** The council regularly shall review and evaluate the performance of each state governmental body in the use of telecommunications devices, systems, and services and in the use of automated information systems, the computers on which they are automated, and related services to determine if the body uses the items in the most efficient and economical manner. The council shall prepare a written report of each review and evaluation. (V.A.C.S. Art. 4413(32h), Sec. 2.03.)

Sec. 463.024. **ADVICE AND ASSISTANCE.** (a) The council shall advise state governmental bodies about ways in which the bodies may comply with the guidelines adopted under Section 463.021.

(b) The council shall provide technical assistance to state governmental bodies in planning, developing, acquiring, and using telecommunications devices, systems, and services or automated information systems, the computers on which they are automated, and related services.

(c) The council shall provide advice and staff support to the Legislative Budget Board as that agency reviews requests from state governmental bodies for appropriations for telecommunications devices, systems, or services or automated information systems, the computers on which they are automated, or related services. (V.A.C.S. Art. 4413(32h), Sec. 2.04.)

Sec. 463.025. **SOFTWARE CLEARINGHOUSE.** (a) The council shall maintain a central clearinghouse for automated information systems software developed or acquired by state governmental bodies.

(b) Each state governmental body shall file with the council an inventory record of the automated information systems software developed or acquired by the body. The body shall file the record and keep it current as the council requires. The council periodically shall distribute to other state governmental bodies information about the automated information systems software covered by the record. (V.A.C.S. Art. 4413(32h), Sec. 2.05.)

Sec. 463.026. **RULES.** The council shall adopt rules to administer this chapter. (V.A.C.S. Art. 4413(32h), Sec. 2.06.)

Sec. 463.027. **REPORT.** The council annually shall report to the legislature about the council's activities, the guidelines adopted under Section 463.021, and changes to state law or state governmental body procedures that the council considers necessary to promote the economical and efficient use by state governmental bodies of telecommunications devices and systems and of automated information systems and the computers on which they are automated. The report must include each audit report prepared under Section 463.023 for each governmental body reviewed and evaluated in the preceding year. (V.A.C.S. Art. 4413(32h), Sec. 2.07.)

Sec. 463.028. **LONG-RANGE TELECOMMUNICATIONS PLAN.** (a) The council shall prepare a plan containing:

(1) a description of the current telecommunications needs of state governmental bodies and of the facilities, operations, services, and level of funding used to meet those needs; and

(2) a projection of the telecommunications needs of state governmental bodies during the next 15 years and of the changes in facilities, operations, services, and level of funding that will be necessary to meet those needs.

(b) Before December 1 of each even-numbered year the council shall prepare and submit to the governor and legislature a new or updated plan. (V.A.C.S. Art. 4413(32h), Sec. 2.08.)

CHAPTER 464. BUILDING MATERIALS AND SYSTEMS TESTING LABORATOR

- Sec. 464.001. DEFINITIONS
- Sec. 464.002. LABORATORY AND COUNCIL
- Sec. 464.003. COMPOSITION OF LABORATORY
- Sec. 464.004. COMPOSITION AND CHAIRMAN OF COUNCIL
- Sec. 464.005. COUNCIL MANAGEMENT AND PERFORMANCE OF LABORATOR FUNCTIONS
- Sec. 464.006. TESTING AND EVALUATION OF MATERIALS, PRODUCTS, AND SYSTEMS
- Sec. 464.007. EVALUATION OF TESTS
- Sec. 464.008. FEES

CHAPTER 464. BUILDING MATERIALS AND SYSTEMS TESTING LABORATOR

Sec. 464.001. DEFINITIONS. In this chapter:

- (1) "Council" means the Technical Testing and Evaluation Council.
- (2) "Department" means the Texas Department of Community Affairs.
- (3) "Director" means the executive director of the department.
- (4) "Laboratory" means the State of Texas Building Materials and Systems Testing Laboratory. (V.A.C.S. Art. 4413(39), Secs. 2(1), (2), (3), (4).)

Sec. 464.002. LABORATORY AND COUNCIL. The State of Texas Building Materials and Systems Testing Laboratory is an agency of the state, and includes the Technical Testing and Evaluation Council. (V.A.C.S. Art. 4413(39), Sec. 3.)

Sec. 464.003. COMPOSITION OF LABORATORY. (a) The department may invite college or university with facilities to perform tests or make evaluations described by this chapter to participate in laboratory testing and evaluation and to appoint a representative to serve as a member of the council.

(b) A public college or university invited under this section may participate in the functions of the laboratory. (V.A.C.S. Art. 4413(39), Secs. 2(5), 4.)

Sec. 464.004. COMPOSITION AND CHAIRMAN OF COUNCIL. (a) The council composed of members who are the laboratory operations directors of the colleges and universities participating in the laboratory.

(b) The members of the council shall elect a chairman by a majority vote at a meeting called for that purpose. The chairman serves for a term of two years.

(c) A member of the council may not receive compensation for services on the council but is entitled to reimbursement, from funds of the laboratory, for travel and subsistence expenses incurred in performance of official duties and services for the laboratory. (V.A.C.S. Art. 4413(39), Secs. 5(a), (b), (e).)

Sec. 464.005. COUNCIL MANAGEMENT AND PERFORMANCE OF LABORATORY FUNCTIONS. (a) The council shall administer the business of the laboratory subject to the policies, controls, and direction of the department.

(b) The council is responsible for the conduct of all tests and evaluations provided for by this chapter. The council shall distribute test and evaluation responsibilities to member colleges and universities according to their abilities to perform the activities required. (V.A.C.S. Art. 4413(39), Secs. 5(c), (d).)

Sec. 464.006. TESTING AND EVALUATION OF MATERIALS, PRODUCTS, AND SYSTEMS. (a) The laboratory shall be responsible for the testing and evaluation of building materials, products, and systems to establish performance capability based on the established and generally acceptable test standards adopted by the council and approved by the department. The council shall report the results of these tests and evaluations to the department, which shall publish the test data and evaluations.

(b) On receipt of a report under this section, the department shall issue an official performance certification statement. The statement is a public record. (V.A.C.S. Art. 4413(39), Sec. 6(a).)

Sec. 464.007. EVALUATION OF TESTS. (a) The laboratory through its council may evaluate tests of building materials, products, and systems conducted by a public or private testing institution that is:

- (1) accredited or approved by the United States Department of Housing and Urban Development or the National Bureau of Standards; or
- (2) included on a list of testing laboratories formulated by the council and the department.

(b) On completion of an evaluation, the department shall review it and issue a performance certification statement. The statement must approve the test if it meets test standards established by the council and department or disapprove the test if it does not meet these standards. (V.A.C.S. Art. 4413(39), Sec. 6(b).)

Sec. 464.008. FEES. (a) The department, with the advice of the council, shall establish a schedule of fees.

(b) The fees shall be paid to the laboratory and deposited for the use of the laboratory in the administration, implementation, and enforcement of this chapter. (V.A.C.S. Art. 4413(39), Sec. 7.)

#### CHAPTER 465. TEXAS NATIONAL RESEARCH LABORATORY COMMISSION

- Sec. 465.001. COMMISSION
- Sec. 465.002. APPLICATION OF SUNSET ACT
- Sec. 465.003. COMPOSITION
- Sec. 465.004. TERMS
- Sec. 465.005. OFFICERS
- Sec. 465.006. COMPENSATION AND EXPENSES
- Sec. 465.007. EXECUTIVE DIRECTOR
- Sec. 465.008. POWERS AND DUTIES

#### CHAPTER 465. TEXAS NATIONAL RESEARCH LABORATORY COMMISSION

Sec. 465.001. COMMISSION. The Texas National Research Laboratory Commission is an agency of the state. (V.A.C.S. Art. 4413(47d), Sec. 2.)

Sec. 465.002. APPLICATION OF SUNSET ACT. The Texas National Research Laboratory Commission is subject to the Texas Sunset Act (Chapter 325). Unless continued in existence as provided by that Act, the commission is abolished and this chapter expires September 1, 1991. (V.A.C.S. Art. 4413(47d), Sec. 7.)

Sec. 465.003. COMPOSITION. (a) The commission is composed of nine members appointed by the governor with the advice and consent of the senate.

(b) A member must be a resident of the state at the time of appointment.

(c) At least two members must be scientists who are members of a nationally recognized scientific academy, board, or association. Not more than three members may be members of the faculty or administration of an institution of higher education in this state. To the extent possible, the members should represent all geographic areas of the state. (V.A.C.S. Art. 4413(47d), Sec. 3.)

Sec. 465.004. TERMS. (a) Members serve staggered six-year terms with the terms of three members expiring February 1 of each odd-numbered year.

(b) On the death, resignation, or other inability of a member to serve, the governor shall appoint a successor to serve the remainder of the unexpired term. (V.A.C.S. Art. 4413(47d), Sec. 4(a).)

Sec. 465.005. OFFICERS. The governor shall appoint a chairman, vice-chairman, and secretary, who serve at the will of the governor. (V.A.C.S. Art. 4413(47d), Sec. 4(b).)

Sec. 465.006. COMPENSATION AND EXPENSES. A member serves without compensation for service on the commission, but is entitled to reimbursement for actual and necessary expenses incurred for attendance at commission meetings or while performing other official commission duties. (V.A.C.S. Art. 4413(47d), Sec. 4(c).)



Sec. 465.007. EXECUTIVE DIRECTOR. (a) The commission shall appoint an executive director.

(b) The executive director is entitled to reimbursement for expenses and travel as provided by the General Appropriations Act. (V.A.C.S. Art. 4413(47d), Sec. 6.)

Sec. 465.008. POWERS AND DUTIES. (a) The commission is an authority in the state for formulation and presentation of the siting proposal on behalf of the state for the superconducting super collider research facility sponsored, authorized, and funded by the United States government. The commission shall coordinate the development of the plan or proposal with other state, federal, and local agencies and institutions of higher education charged with development of and interest in locating the facility in the state. State agencies and local governmental entities shall cooperate to the extent possible to accomplish the commission's duties.

(b) The commission may enter into a contract with another state agency or a private agency, college, university, corporation, partnership, or association for an appropriate purpose in connection with the performance of its duties, including a contract, study, investigation, or proposal necessary to conduct its duties.

(c) The commission has the power of eminent domain, as provided by Chapter 21, Property Code, to acquire in fee simple for the commission's use real property necessary and proper for carrying out its purposes.

(d) The commission may apply for, request, solicit, contract for, receive, and accept, from any public or private source, money and other assistance necessary to conduct its duties. (V.A.C.S. Art. 4413(47d), Secs. 1, 5.)

SECTION 2. CONFORMING AMENDMENT. Subchapter A, Chapter 316, Government Code, is amended by adding Section 316.009 to read as follows:

*Sec. 316.009. SUBMISSION OF BILL BY GOVERNOR. The governor may prepare a general appropriation bill and submit printed copies of it to the lieutenant governor, speaker of the house of representatives, and each member of the legislature. The bill must be submitted not later than the 30th day of the legislature's regular session, except that if a person is inaugurated as governor who was not governor preceding the inauguration, the bill must be submitted not later than the 20th day after the date of that inauguration.*

SECTION 3. CONFORMING AMENDMENT. Chapter 61, Human Resources Code, is amended by adding Section 61.094 to read as follows:

*Sec. 61.094. YOUTH DEVELOPMENT COUNCIL FUND. The youth development council fund exists in the treasury as a special fund for the purposes provided by law.*

SECTION 4. CONFORMING AMENDMENT. Subtitle C, Title 9, Property Code, is amended by adding Chapter 123 to read as follows:

**CHAPTER 123. ATTORNEY GENERAL PARTICIPATION IN  
PROCEEDINGS INVOLVING CHARITABLE TRUSTS**

*Sec. 123.001. DEFINITIONS. In this chapter:*

(1) "Charitable entity" means a corporation, trust, community chest, fund, foundation, or other entity organized for scientific, educational, philanthropic, or environmental purposes, social welfare, the arts and humanities, or another civic or public purpose described by Section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)).

(2) "Charitable trust" means a charitable entity, a trust the stated purpose of which is to benefit a charitable entity, or an inter vivos or testamentary gift to a charitable entity.

(3) "Proceeding involving a charitable trust" means a suit or other judicial proceeding the object of which is to:

(A) terminate a charitable trust or distribute its assets to other than charitable donees;

(B) depart from the objects of the charitable trust stated in the instrument creating the trust, including a proceeding in which the doctrine of cy-pres is invoked;

(C) construe, nullify, or impair the provisions of a testamentary or other instrument creating or affecting a charitable trust;

(D) contest or set aside the probate of an alleged will under which money, property, or another thing of value is given for charitable purposes;

(E) allow a charitable trust to contest or set aside the probate of an alleged will;

(F) determine matters relating to the probate and administration of an estate involving a charitable trust; or

(G) obtain a declaratory judgment involving a charitable trust.

**Sec. 123.002. ATTORNEY GENERAL'S PARTICIPATION.** For and on behalf of the interest of the general public of this state in charitable trusts, the attorney general is a proper party and may intervene in a proceeding involving a charitable trust. The attorney general may join and enter into a compromise, settlement agreement, contract, or judgment relating to a proceeding involving a charitable trust.

**Sec. 123.003. NOTICE.** (a) An interested party or the party's attorney in a proceeding involving a charitable trust shall give notice of the proceeding to the attorney general by sending to the attorney general, by registered or certified mail, a certified copy of the petition or other instrument initiating the party's involvement in the proceeding.

(b) The party or the party's attorney shall execute and file in the proceeding an affidavit stating the facts of the notice and shall attach to the affidavit the customary postal receipts signed by the attorney general or an assistant attorney general.

**Sec. 123.004. VOIDABLE JUDGMENT OR AGREEMENT.** (a) A judgment in a proceeding involving a charitable trust is voidable if the attorney general is not given notice of the proceeding as required by this chapter. On motion of the attorney general after the judgment is rendered, the judgment shall be set aside.

(b) A compromise, settlement agreement, contract, or judgment relating to a proceeding involving a charitable trust is voidable on motion of the attorney general if the attorney general is not given notice as required by this chapter unless the attorney general has:

(1) declined in writing to be a party to the proceeding; or

(2) approved and joined in the compromise, settlement agreement, contract, or judgment.

**Sec. 123.005. BREACH OF FIDUCIARY DUTY.** (a) Venue in a proceeding brought by the attorney general alleging breach of a fiduciary duty by the trustee of a charitable trust is in a court of competent jurisdiction in Travis County.

(b) The attorney general, if successful in the proceeding, is entitled to recover from the trustee actual costs incurred in bringing the suit and may recover reasonable attorney's fees.

**SECTION 5. CONFORMING AMENDMENT.** The Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes) is amended by adding Section 88A to read as follows:

**Sec. 88A.** The commission may serve as a resource center to assist school districts in developing energy efficient facilities. As such, the commission may:

(1) present to school districts programs relating to managing energy, training school-plant operators, and designing energy efficient buildings;

(2) provide school districts with technical assistance in managing energy;

(3) collect and distribute information relating to energy management in school facilities; and

(4) offer to educators energy resource workshops and may make available to educators a film library on energy-related matters and energy education lesson packages.

SECTION 6. REPEALER. (a) The following articles and acts, as compiled in Vernon's Texas Civil Statutes, are repealed: 250, 251, 252, 253, 253a, 254, 255, 256, 257, 258, 259, 260, 678m-2-1/2, 689a-7, 1270, 1271, 1272, 1273, 3914, 3915, 3916, 3916A, 3916B (as enacted by Section 33, Chapter 297, Acts of the 67th Legislature, Regular Session, 1981), 3916B (as enacted by Chapter 404, Acts of the 67th Legislature, Regular Session, 1981), 3917, 3945, 4330, 4330a, 4331, 4331b, 4332, 4333, 4334, 4335, 4336, 4337, 4338, 4339, 4340, 4341, 4342, 4343, 4344, 4344a, 4344b, 4344c, 4344d, 4344e, 4344f, 4345, 4346, 4346a, 4347, 4348a, 4348b, 4348c, 4349, 4350, 4351, 4351-1/2, 4351a, 4351b, 4351c, 4352, 4353, 4354, 4355, 4357, 4359, 4359a, 4360, 4361, 4362, 4363, 4364, 4364a, 4365, 4366, 4366a, 4366b, 4366c, 4366d, 4366e, 4393-1, 4394, 4395, 4396, 4397, 4399, 4400, 4401, 4402, 4403, 4406, 4407, 4408, 4409, 4410, 4411, 4412, 4412a, 4412b, 4413, 4413a, 4413(1), 4413(1a), 4413(2), 4413(3), 4413(4), 4413(4a), 4413(5), 4413(6), 4413(7), 4413(8), 4413(9), 4413(10), 4413(11), 4413(12), 4413(12A), 4413(13), 4413(14), 4413(15), 4413(16), 4413(17), 4413(17a), 4413(18), 4413(18a), 4413(19), 4413(20), 4413(21), 4413(22), 4413(23), 4413(24), 4413(25), 4413(26), 4413(27), 4413(28), 4413(29), 4413(29a), 4413(29b), 4413(29aa), except Section 6(b), 4413(29aa-1), 4413(29aa-2), 4413(32f), 4413(32h), 4413(35), 4413(39), 4413(44), 4413(47c), 4413(47d), 4413(49), 4413(50), 5421z, 5434, 5434a, 5434b, 5435, 5435a, 5435b, 5436, 5436a, 5437, 5438, 5438a, 5438b, 5438c, 5439, 5439a, 5441, 5441a, 5441b, 5441c, 5441d, 5441e, 5442a, 5442b, 5442c, 5443, 5445, 5446, 5446a, 5765, 5766, 5768, 5780, 5781, 5782, 5783, 5784, 5785, 5786, 5787, 5788, 5789, 5890e, 5931-1, 5931-1a, 5931-2, 5931-3, 5931-4, 5931-5, 5931-6, 5931-7, 5931-8, 5931-9, 5931-10, 5931-11, 5931-12, 5931-13, 5949, 5954, 5955, 5956, 5957, 5958, 5959, 5960, 5960a, 5988, 6144f, 6144g, 6144i, 6145, 6145-6, 6145-12, 6145-14, 6252-10, 6816, 6817, and 6889-7.

(b) Subsection (a), Article 4348, Revised Statutes, is repealed.

(c) Articles 1.09A, 5.43, 5.44, and 5.45, Insurance Code, are repealed.

(d) Section 6(b), Chapter 546, Acts of the 59th Legislature, Regular Session, 1965 (Article 4413(29aa), Vernon's Texas Civil Statutes), is repealed September 1, 1989.

SECTION 7. LEGISLATIVE INTENT. This Act is enacted pursuant to Article III, Section 43, of the Texas Constitution. This Act is intended as a recodification only, and no substantive change in the law is intended by this Act.

SECTION 8. EFFECTIVE DATE. This Act takes effect September 1, 1987.

SECTION 9. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on March 18, 1987, by a viva-voce vote. Passed the House on April 30, 1987, by a non-record vote.

Approved May 21, 1987.

Effective Sept. 1, 1987.