SECTION V

LEGAL AUTHORITY

V - LEGAL AUTHORITY

A. GENERAL

The format of this section is designed to show that the State agency, the Texas Air Control Board, has legal authority to implement a plan for enforcement of national air quality standards.

The first air pollution control act, known as the Clean Air Act of Texas, was passed by the Texas Legislature in 1965. In 1967, the Clean Air Act of Texas was superseded by a more comprehensive statute, the Texas Clean Air Act (Attachment 1). The Legislature amended the Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes) in 1969, 1971 and 1973.

Section 1.05 states that the Texas Air Control Board is the state air pollution control agency and is the principal authority in the state on matters relating to the quality of air resources and for setting standards, criteria levels, and emission limits for air content and pollution control. The powers and duties of the Board are summarized in Subchapter C, Sections 3.01 to 3.28, in which the Board is authorized to develop a state air control plan; to require emission inventories; to conduct research and investigations; to enter property and examine records and to prescribe monitoring requirements; to institute enforcement proceedings; to enter into contracts and execute instruments; to formulate rules and regulations; to issue orders taking into consideration factors bearing upon health, welfare, social and economic factors, and practicability and reasonableness; to implement action when emergency conditions arise; to conduct hearings; to establish air quality control regions; to encourage cooperation with citizens' groups and other agencies and political subdivisions of the state as well as with industries and the Federal Government; to grant variances; and to establish and operate a system of permits for construction or modification of facilities.

The authority of local governments is delineated in Subchapter E in Section 5.01 through 5.05. Local governments have the same power as the Board to enter property and make inspections. They also may make recommendations to the Board concerning any action of the Board that affects their territorial jurisdiction, may bring enforcement actions, and may execute cooperative agreements with the Board or other local governments. In addition, a city or town may enact and enforce ordinances for the control and abatement of air pollution not inconsistent with the provisions of the Act or the rules, regulations or orders of the Board.

B. APPLICABLE LAWS

The following statutes and regulations provide necessary authority and are submitted with the plan:

1.	Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes, as amended)	September 1, 1967 (Amended effective September 1, 1969, August 30, 1971, and August 27, 1973)
2.	Article 698d Air Pollution, Penal Code of Texas, 1925, as amended. (Attachment 2)	September 1, 1969
3.	General Rules of the Texas Air Control Board	March 5, 1972 amended August 31, 1972 amended May 12, 1973 amended December 1, 1973
4.	Ambient Air Quality Standards of the Texas Air Control Board	March 5, 1972
5.	Regulation I - Control of Air Pollution from Smoke, Visible Emissions, and Particulate Matter	March 5, 1972 amended January 19, 1974 amended December 5, 1975
6.	Regulation II - Control of Air Pollution from Sulfur Compounds	March 5, 1972 amended January 19, 1974 amended March 5, 1975
7.	Regulation IV - Control of Air Pollution from Motor Vehicles	December 1, 1973
8.	Regulation V - Control of Air Pollution from Volatile Carbon Compounds	May 12, 1973
9.	Regulation VI - Control of Air Pollution by Source Registration or Permits for New Construction or Modification	April 12, 1975
10.	Regulation VII - Control of Air Pollution from Oxides of Nitrogen	August 31, 1972
11.	Regulation VIII - Control of Air Pollution Emergency Episodes	March 5, 1975

C. FURTHER DESCRIPTION OF LEGAL AUTHORITY

1. The legal authority to adopt emission standards and limitations is contained in Sections 3.02, 3.09, 3.10, and 3.18 of the Texas Clean Air Act, Article 4477-5, Vernon's Texas Civil Statutes; and in Regulations I through VIII of the Texas Air Control Board.

2. The legal authority to enforce applicable laws, regulations, and standards, and to seek injunctive relief is contained in Sections 3.07, 4.01-4.05, 5.01-5.05 of the Texas Clean Air Act, Article 4477-5, Vernon's Texas Civil Statutes; and in Article 698d, Vernon's Annotated Penal Code.

3. The legal authority to abate pollutant emissions on an emergency basis is contained in Sections 3.14 (a) and (b) of the Texas Clean Air Act, Article 4477-5, Vernon's Civil Statutes and in Regulation VIII of the Texas Air Control Board.

4. The legal authority to prevent construction, modification, or operation of any stationary source at any location where emissions will prevent the attainment or maintenance of a national standard is contained in Sections 3.27 and 3.28 of the Texas Clean Air Act, Article 4477-5, Vernon's Texas Civil Statutes; and in the registration and permit requirements of Regulations VI of the Texas Air Control Board.

5. The legal authority to obtain information, including authority to require record keeping necessary to determine whether air pollution sources are in compliance, is contained in Sections 3.04, 3.05, 3.06, and 3.20 (a) of the Texas Clean Air Act, Article 4477-5, Vernon's Texas Civil Statues and Rules 9 and 11.

6. The legal authority to require owners or operators of stationary sources to install, maintain, and use emissions monitoring devices and to make periodic reports to the State is contained in Sections 3.03, 3.06, and 2.13 of the Texas Clean Air Act, Article 4477-5, Vernon's Texas Civil Statutes and Rule 9.

7. Motor Vehicle Authority

   The legal authority to prescribe requirements for the control of motor vehicle emissions is contained in Section 3.10 (d) of the Texas Clean Air Act, Article 4477-5, Vernon's Texas Civil Statutes; and in Regulation IV of the Texas Air Control Board. However, this legal authority does not lend itself to easy enforcement, as a civil suit would have to be brought in district court, as is done with industrial polluters.

8. The legal requirements for public hearings are prescribed in Sections 3.09, 3.14 and 3.17 of the Texas Clean Air Act, Article 4477-5, Vernon's Texas Civil Statutes. Although the Act only requires a twenty (20) day notice for public hearings, the Texas Air Control Board provides for at least a thirty (30) day notice for all hearings in those instances where action will be taken on any subject matter that will be submitted to the Environmental Protection Agency (EPA) as a revision to the State Implementation Plan. This is in conformance with federal regulations on notice requirements.

D. PUBLIC HEARINGS

Recent developments in the administrative law area in Texas will have significant effects on the public hearing and Board order process of this agency. The 64th Legislature in the State of Texas adopted the Administrative Procedure and Texas Register Act setting forth certain minimum uniform procedures for practice before state agencies. As a result, the Texas Air Control Board adopted Procedural Rules to govern practice before this agency.

Among the innovations resulting from the new Act and Procedural Rules are the following:

1. Any person may petition the Texas Air Control Board for the adoption of a rule.

2. Any person may petition the Texas Air Control Board for an explanation of a rule that has been adopted.

3. Any person may petition the Executive Director to call and hold a public hearing.

4. The Legal Division has been reorganized to provide an independent Hearing Examiner with no prosecutorial functions.

5. The Rules of Evidence in non-jury cases in district courts of Texas shall apply to most adjudicative hearings.

6. All parties to adjudicative hearings have the right to present evidence, examine and cross-examine witnesses, and present oral argument on all issues.

7. At least one prehearing conference will be held prior to each adjudicative hearing.

8. Appeals to district court of all final decisions of the Board in most, if not all, adjudicative hearings will be based on the record before the agency.

TEXAS CLEAN AIR ACT

Chapter 727, Acts of the 60th Legislature, Regular Session, 1967, as amended by Chapter 273, Acts of the 61st Legislature, Regular Session, 1969, and Chapter 619, Acts of the 62nd Legislature, Regular Session, 1971, and Chapter 469, Acts of the 63rd Legislature, Regular Session (Article 4477-5, Vernon's Texas Civil Statutes, as amended). 1973

"SUBCHAPTER A. GENERAL PROVISIONS"

Short title

"Section 1.01. This Act may be cited as the Texas Clean Air Act.

Policy and purpose

"Section 1.02. It is the policy of this state and the purpose of this Act to safeguard the air resources of the state from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of health, general welfare, and physical property of the people, including the esthetic enjoyment of the air resources by the people and the maintenance of adequate visibility.

Definitions

"Section 1.03. As used in this Act, unless the context requires a different definition:

"(1)'air contaminant' means particulate matter, dust, fumes, gas, mist, smoke, vapor or odor, or any combination thereof produced by processes other than natural;

"(2)'source' means a point of origin of air contaminants, whether privately or publicly owned or operated;

"(3)'air pollution' means the presence in the atmosphere of one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation or property, or as to interfere with the normal use and enjoyment of animal life, vegetation or property;

"(4)'board' means the Texas Air Control Board;

"(5)'executive director' means the executive director of the Texas Air Control Board;

"(6)'person' means individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity; and

"(7)'local government' means a county, an incorporated city or town; or a health district established under authority of Chapter 63, Acts of the 51st Legislature, 1949, as amended by Chapter 239, Acts of the 56th Legislature, 1959 (Article 4447a, Vernon's Texas Civil Statutes);

"(8)'new source' means any stationary source, the construction or modification of which is commenced after the effective date of this statute;

"(9)'modification' means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source

into the atmosphere or which results in the emission of any air pollutant not previously emitted. Insignificant increases in the amount of any air pollutant emitted are not intended to be included, nor is maintenance or replacement of equipment components which do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted to the atmosphere."

Prior actions of Air Control Board validated

"Section 1.04. All orders, determinations, rules, regulations and other actions issued, taken and performed by the Texas Air Control Board under Chapter 687, Acts of the 59th Legislature, Regular Session, 1965 (Article 4477-4, Vernon's Texas Civil Statutes), are validated and remain in effect unless and until amended or superseded by order of the Texas Air Control Board under this Act and are administered by and under the jurisdiction of the Texas Air Control Board under this Act.

Board as principal authority

"Section 1.05. The Texas Air Control Board is the state air pollution control agency. The Board is the principal authority in the state on matters relating to the quality of the air resources in the state and for setting standards, criteria, levels and emission limits for air content and pollution control.

Effect on private remedies

"Section 1.06. Nothing in this Act affects the right of any private person to pursue all common law remedies available to abate a condition of pollution or other nuisance or recover damages therefor, or both.

Confidential information

"Section 1.07. Information submitted to the board relating to secret processes or methods of manufacture or production which is identified as confidential when submitted shall not be disclosed by any member, employee, or agent of the board.

"SUBCHAPTER B. ADMINISTRATIVE PROVISIONS"

Texas Air Control Board

"Section 2.01. The Texas Air Control Board is an agency of the state.

Members of the board

"Section 2.02. The board is composed of nine members, chosen as follows:

"(1) Nine members are appointed by the governor with the advice and consent of the Senate. Of the nine members appointed by the governor, one shall be a professional engineer with at least ten years experience in the actual practice of his profession which experience shall include work in air control; one shall be a physician licensed to practice in this state, currently engaged in general practice in this state, with experience in the field of industrial medicine; one shall be a person who has been actively engaged in the management of a private manufacturing or industrial concern for at least ten years immediately prior to his appointment; one shall be experienced in the field of municipal government; one shall be an agricultural engineer with at least ten years experience in his profession; and four shall be chosen from the general public.

Terms of board members

"Section 2.03. The members of the board hold office for staggered terms of six years, with the term of three members expiring on the 1st day of September in each odd-numbered year. Each member holds office until his successor is appointed and has qualified.

Qualification by members; vacancies; records

"Section 2.04. (a) A member appointed by the governor while the Senate is in session is qualified to serve on the board after his nomination has been confirmed by the Senate and upon taking the Constitutional oath of office. A member appointed by the governor while the Senate is not in session is qualified to serve upon taking the Constitutional oath of office and serves until the expiration of his term or until his nomination is rejected by the Senate.

"(b) If a vacancy occurs in the office of a member of the board, the position shall be filled by a person appointed by the governor in the same manner as for a regular appointment, and the person so appointed shall serve only to the end of the unexpired term and until his successor is appointed and has qualified.

"(c) The official records of the board shall reflect the date each member's certificate of appointment was issued by the secretary of state, the date he took the oath of office, the person who administered the oath, the date the appointive term began, and the date the term expires.

Per diem; expenses

"Section 2.05. A member of the board is not entitled to a salary for duties performed as a member of the board. However, a member is entitled to $25.00 for each day he is in attendance at meetings or hearings or on authorized business of the board, including time spent in traveling to and from the place of the meeting, hearing or other authorized business, and is entitled to reimbursement for travel and other necessary expenses incurred in performing official duties, as evidenced by vouchers approved by the executive secretary.

Board officers

"Section 2.06. The board shall elect a chairman and a vice-chairman to serve two-year terms beginning on February 1 of each odd-numbered year.

Board meetings

"Section 2.07. (a) The chairman, or in his absence the vice-chairman, shall preside at all meetings of the board. In the absence of both the chairman and the vice-chairman from any meeting of the board, the members of the board present may select one of their number to serve as chairman for the meeting.

"(b) The board shall have regular meetings at times specified by a majority vote of the board.

"(c) The chairman may call special meetings at any time. He shall call a special meeting on written request signed by at least two members of the board.

"(d) A majority of the board constitutes a quorum to transact business.

Executive Director

"Section 2.08. (a) The executive director shall be an employee of, and shall be designated by the board.

"(b) The executive director shall be the administrator of air pollution control activities for the board. In addition to his other duties prescribed in this Act and by the board, the executive director shall:

"(1) keep full and accurate minutes of all transactions and proceedings of the board;

"(2) be the custodian of all of the files and records of the board;

"(3) prepare and recommend to the board plans and procedures necessary to effectuate the purposes and objectives of this Act, including but not limited to rules and regulations, and proposals on administrative procedures not inconsistent with this Act;

"(4) exercise general supervision over all persons employed by the board; and

"(5) be responsible for the investigation of complaints and for the presentation of formal complaints.

"(c) The executive director, or his authorized representative, shall:

"(1) attend all meetings of the board but shall not be entitled to a vote; and

"(2) handle or arrange for the handling of such correspondence, make or arrange for such inspections and investigations, and obtain, assemble or prepare such reports and data as the board may direct or authorize.

Staff Services

"Section 2.09. The basic personnel and necessary laboratory and other facilities as may be required to carry out the provisions of this Act shall be the personnel, laboratory, and other facilities of the Texas Air Control Board. The board may by agreement secure such services as it may deem necessary from any other departments and agencies of the state government and may arrange for compensation for such services, and may employ and compensate, within appropriations available therefor, such professional consultants, technical assistants, and employees on a full or part-time basis as may be necessary to carry out the provisions of this Act and prescribe their powers and duties. The board may request, and upon request shall receive, the assistance of any state educational institution, experimental station, or other state agency.

Funds and Equipment from The State Department of Health

"Section 2.10. Any legislative appropriation made or to be made to the State Department of Health for air pollution control and all federal grants, loans or other federal monies received as matching funds to these appropriations or any other federal funds for air pollution control purposes received or to be received by the State Department of Health and all previous or presently pending equipment purchases from any State Department of Health appropriation for air pollution control shall be transferred to the board.

Gifts and grants

"Section 2.11. The board may apply for, request, solicit, contract for, receive, and accept money and other assistance from any source to carry out its duties. The board shall show in its records the source of all moneys or other things of value received by the board under this section from sources other than public sources.

Special fund

"Section 2.12. Money received by the board under Section 2.10 or Section 2.11 of this code shall be deposited in the state treasury and credited to a special fund. The board may use this fund for salaries, wages, professional and consulting fees, travel expenses, equipment, and other necessary expenses incurred in carrying out its duties under this Act, as provided by legislative appropriation.

Documents, etc., public property

"Section 2.13. All information, documents and data collected by the board in the performance of its duties are the property of the state. Subject to the limitations of Section 1.07 of this Act, all records of the board are public records open to inspection by any person during regular office hours.

Copies of documents, proceedings, etc.

"Section 2.14. Subject to the limitations of Section 1.07 of this Act, on the application of any person, the board shall furnish certified or other copies of any proceeding or other official act of record, or of any map, paper, or document filed with the board. A certified copy with the seal of the board and the signature of the chairman of the board or the executive secretary is admissible as evidence in any court or administrative proceeding. The board shall prescribe in its rules the fees which shall be charged for copies and is authorized to furnish copies, certified or otherwise, to a person without charge when the furnishing of the copies serves a public purpose. Any other Acts concerning fees for copies of records do not apply to the board except that the fees set by the board for copies prepared by the board shall not exceed those prescribed in Article 3913, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 446, Acts of the 59th Legislature, Regular Session, 1965.

Biennial reports

"Section 2.15. The board shall make biennial written reports to the governor and to the Legislature and shall include in each report a statement of its activities

Fees

"Section 2.16. Except as specifically authorized in this Act, no fees may be charged by the executive secretary or the board for the performance of any of their duties and functions under this Act.

Seal

"Section 2.17. The board shall adopt a seal.

"SUBCHAPTER C. POWERS AND DUTIES OF THE BOARD"

In general

"Section 3.01. The board shall administer the provisions of this Act and shall establish the level of quality to be maintained in, and shall control the quality of, the air resources in this state as provided in this Act. The board shall seek the accomplishment of the purposes of this Act through the control of air contaminants by all practical and economically feasible methods consistent with the powers and duties of the board. The board has the powers and duties specifically prescribed in this Act and all other powers necessary or convenient to carry out its responsibilities.

State air control plan

"Sec. 3.02. The board shall prepare and develop a general, comprehensive plan for the proper control of the air resources of the state.

Emission inventory

"Sec. 3.03. The board is authorized to require the submission of information by persons whose activities cause emissions of air contaminants to enable the board to develop an inventory of the emissions of air contaminants in the state.

Research, investigations

"Sec. 3.04. The board shall conduct, or have conducted, any research and investigations it considers advisable and necessary for the discharge of its duties under this Act.

Power to enter property

"Sec. 3.05. The members, employees and agents of the board have the right to enter any public or private property at any reasonable time, other than property designed for and used exclusively as a private residence housing not more than three families, for the purpose of inspecting and investigating conditions relating to emissions of air contaminants to or the concentration of air contaminants in the atmosphere. Any member, employee or agent who, acting under the authority in this section, enters private property which has management in residence shall notify management, or the person then in charge, of his presence and exhibit proper credentials. Members, employees, or agents entering private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection. Should any member, employee or agent of the board be refused the right to enter in or upon such public or private property, the board may have the remedies authorized in Section 4.02 of this Act.

Monitoring requirements; power to examine records

"Sec. 3.06. The board may prescribe reasonable requirements for the measurement and monitoring of the emissions of air contaminants from any source or from any activity causing or resulting in the emission of air contaminants subject to the jurisdiction of the board under this Act; the board may also prescribe reasonable requirements for the owner or operator of the source to make and maintain records on the measurement and monitoring of emissions. The members, employees and agents of the board may examine during regular business hours any records or memoranda pertaining to the operation of any air pollution or emission control equipment or facility, or pertaining to any emission of air contaminants. This authority does not extend to the records or memoranda pertaining to the operation of such equipment or facility on a property designed for and used exclusively as a private residence housing not more than three families.

Enforcement proceedings

"Sec. 3.07. The board, or the executive secretary when authorized by the board, may cause legal proceedings to be instituted in courts of competent jurisdiction to compel compliance with the provisions of this Act or the rules, regulations, orders, variances or other decisions of the board.

Contracts, instruments

"Sec. 3.08. The board may make contracts and execute instruments that are necessary or convenient to the exercise of its powers or the performance of its duties.

Rule-making

"Sec. 3.09. (a) The board has the power, in accordance with the procedures in this section, to make rules and regulations consistent with the general intent and purposes of this Act and to amend any rule or regulation it makes.

"(b) Before adopting any rules and regulations, or any amendment or repeal thereof, the board shall hold a public hearing. If the rule or regulation, or amendment or repeal thereof, will have state-wide effect, notice of the date, time, place, and purpose of the hearing shall be published one time at least 20 days prior to the scheduled date of the hearing in at least three newspapers whose combined circulation will, in the judgment of the board, give reasonable circulation throughout the state; if the rule or regulation, or amendment or repeal thereof, will have effect in only a part of the state, the notice shall be published one time at least 20 days prior to the scheduled date of the hearing in a newspaper or newspapers having general circulation in the area or areas to be affected. The board shall also comply, as appropriate, with the requirements of Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6252-13, Vernon's Texas Civil Statutes).

"(c) Any person may appear and be heard at the hearing on any rules or regulations. A record of the names and addresses of the persons appearing shall be made by the executive secretary. Any person heard or represented at the hearing, or requesting notice of the action taken by the board, shall be sent written notice by mail of the action taken by the board.

"(d) Before it becomes effective, any rule or regulation, or amendment or repeal thereof, shall be approved in writing by at least five members of the board, and a certified copy filed with the secretary of state for the time specified in Article 6252-13, Vernon's Texas Civil Statutes.

Content of rules

"Sec. 3.10. (a) A rule or regulation, or any amendment thereof, adopted by the board may differ in its terms and provisions as between particular conditions, particular sources, and particular areas of the state. In adopting rules and regulations, the board shall give due recognition to the fact that the quantity or characteristic of air contaminants or the duration of their presence in the atmosphere, which may cause a need for air control in one area of the state, may not cause need for air control in another area of the state, and the board shall take into consideration, in this connection, all factors found by it to be proper and just including existing physical conditions, topography, population, and prevailing wind directions and

velocities, and the fact that a rule or regulation and the degrees of conformance therewith which may be proper as to an essentially residential area of the state may not be proper either as to a highly developed industrial area of the state or as to a relatively unpopulated area of the state.

"(b) Except as provided in Subsections (c), (d), (e) and (f) of this section, the rules and regulations may not specify any particular method to be used to control or abate air pollution, nor the type, design or method of installation of any equipment to be used to control or abate air pollution, nor the type, design, or method of installation or type of construction of any manufacturing processes or other kinds of equipment.

"(c) The board is authorized to adopt rules and regulations to control and prohibit the outdoor burning of waste and combustible material. The board may include in the rules and regulations requirements as to the particular method to be used to control or abate the emission of air contaminants resulting from the outdoor burning of waste or combustible material.

"(d) The board may include in the rules and regulation requirements as to the particular method to be used to control and reduce emissions from motors and engines used in propelling land vehicles. Any rules or regulations pursuant to this paragraph shall be consistent with provisions of federal law, if any, relating to the control of emissions from the vehicles concerned. The board shall not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment the inspection, certification or other approval of any feature or equipment designed for the control of emissions from motor vehicles, if that feature or equipment has been certified, approved or otherwise authorized pursuant to federal law.

"(e) The board, when it deems control of air pollution is necessary, shall establish rules and regulations concerning the control of emissions of particulate matter from plants handling, loading and unloading, drying, manufacturing, and processing the following agricultural products: grain, seed, legumes and vegetable fibers, according to a formula derived from the process weight of the materials entering the process. Any person affected by a rule or regulation issued under the authority of this subsection may use the process weight method for controlling and measuring the emission from the plant, or any other method selected by that person which the board or the executive secretary, when so authorized by the board, finds will provide adequate emission control efficiency and measurement.

"(f) The board is authorized to prescribe the sampling methods and procedures which shall be used in determining violations of and compliance with the rules, regulations, variances, and other orders of the board. The board may prescribe ambient air sampling, stack-sampling, visual observation, or any other sampling method or procedure generally recognized in the field of air pollution control. The board may also prescribe new sampling methods and procedures when, in the judgment of the board, existing methods or procedures are not adequate to meet the needs and objectives of the rules, regulation, variances and other orders of the board, and where the scientific applicability of the new methods or procedures can be satisfactorily demonstrated to the board.

Limitations on board actions

"Sec. 3.11. (a) The board may not make any rule, regulation, determination or order with respect to air conditions existing solely within buildings and structures used for commercial and industrial plants, works or shops when the source of the offending air contaminants is under the control of the person who owns or operates the plant, works or shops, or which affects the relations between employers and their employees with respect to or arising out of any air condition from such a source. This provision does not and is not intended to limit or restrict in any way the authority or powers granted to the board under the provisions of Subsections (c) and (f) of Section 3.10 of this Act.

"(b) Nothing in this Act vests in the board any power with respect to any matter subject to the jurisdiction of the Texas Radiation Control Agency, as provided in Chapter 72, Acts of the 57th Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas Civil Statutes), or over any source licensed by the atomic energy commission under the Atomic Energy Act of 1954, 42 U.S.C. 2011-2281.

Orders

"Sec. 3.12. (a) The board is authorized to enter orders and determinations as may be necessary to effectuate the purposes of this Act. Except where otherwise specifically authorized in this Act, all orders shall be made by the board.

"(b) If the board determines that air pollution exists, it may order such action as is indicated by the circumstances to control the condition. The board shall grant such time for the owner or operator of a source to comply with its order as is provided for in the rules and regulations of the board,which shall make provisions for such time gauged to such general situations as the hearings on any proposed rules and regulations may indicate are necessary.

Factors to be considered

"Sec. 3.13. In making orders and determinations, the board shall consider all of the facts and circumstances bearing upon the reasonableness of any emissions being made, including:

"(1) the character and degree of injury to, or interference with, the health and physical property of the people;

"(2) the social and economic value of the source;

"(3) the question of priority of location in the area involved; and

"(4) the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the source.

Emergency conditions

"Sec. 3.14. (a) Whenever it appears to the board or the executive secretary that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the board or the executive secretary shall, with the concurrence of the governor, order any persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants. The order shall fix a time and place for a hearing to be held before the board, which shall be held as soon after the order is issued as is practicable. The requirements of Section 3.17 as to the time for notice, newspaper notice, and method of giving a person notice do not apply to such a hearing, but such general notice of the hearing shall be given as in the judgment of the board or the executive secretary is practicable under the circumstances. Not more than twenty-four hours after the commencement of the hearing, and without adjournment of the hearing, the board shall affirm, modify or set aside the order.

"(b) Whenever the board or the executive secretary finds that emissions from one or more air contaminant sources is causing imminent danger to human health or safety, but that there is not a generalized condition of air pollution of the type referred to in Subsection (a) of this section, the board or the executive secretary may order the person or persons responsible for the emissions to reduce or discontinue the emissions immediately. In such event, the provisions in Subsection (a) of this section pertaining to a hearing before the board, notice, and affirmance, modification or setting aside of orders shall apply.

"(c) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and to act on the basis of that declaration, if the power is conferred by statute or constitutional provision, or inheres in the office.

Hearing powers

"Sec. 3.15. The board may call and hold hearings, administer oaths, receive evidence at the hearing, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to the hearing, and make findings of fact and decisions with respect to administering the provisions of this Act or the rules, regulations, orders or other actions of the board.

Delegation of hearing powers

"Sec. 3.16. (a) The board may delegate the authority to hold hearings called by the board to:

"(1) one or more members;

"(2) the executive secretary;

"(3) one or more employees of the board; or

"(4) with the concurrence of the state commissioner of health, one or more employees of the State Department of Health.

"(b) Except for those hearings required to be held before the board under Section 3.14 of this Act, the board may authorize the executive secretary to call and hold hearings on any subject on which the board may hold a hearing. The board also may authorize the executive secretary to delegate the authority to hold any hearing called by the executive secretary to one or more employees of the board or, with the concurrence of the state commissioner of health, to one or more employees of the State Department of Health.

"(c) The board may establish the qualifications required of the individuals who may be delegated the authority by the board or the executive secretary to hold hearings.

"(d) Any individual or individuals holding a hearing under authority of this section are empowered to administer oaths and receive evidence at the hearing and shall report the hearing in the manner prescribed by the board.

Notice of hearings; continuance

"Sec. 3.17. (a) Except as otherwise specified in Subsection (b) of Section 3.09 and in Section 3.14 of this Act, the provisions of this section apply to all hearings conducted pursuant to this Act.

"(b) Notice of the hearing shall describe briefly and in summary form the purpose of the hearing and the date, time, and place of the hearing.

"(c) Notice of the hearing shall be published at least once in a newspaper regularly published or having general circulation in each county where by virtue of the county's geographical relation to the subject matter of the hearing, the board has reason to believe persons reside who may be affected by the action that may be taken as a result of the hearing. The date of the publication shall be not less than 20 days before the date set for the hearing.

"(d) If notice of the hearing is required by this Act to be given to a person, the notice shall be served personally or mailed to the person at his last address known to the board, not less than 20 days before the date set for the hearing. If the party is not an individual, the notice may be given to any officer, agent or legal representative of the party.

"(e) The individual or individuals holding the hearing (hereafter in this subsection called the hearing body) shall conduct the hearing at the time and place stated in the notice. The hearing body may continue the hearing from time to time and from place to place without the necessity of publishing, serving, mailing or otherwise issuing new notice. If a hearing is continued and a time and place for the hearing to reconvene are not publicly announced by the hearing body at the hearing before it is recessed, a notice of any further setting of the hearing shall be served personally or mailed in the manner prescribed in Subsection (d) of this section at a reasonable time prior to the new setting, but it is not necessary to publish a newspaper notice of the new setting.

Air quality control regions

"Sec. 3.18. The board is authorized to designate air quality control regions based on jurisdictional boundaries, urban-industrial concentrations, and other factors, including atmospheric areas, necessary to provide adequate implementation of air quality standards.

Cooperation and assistance; compacts

"Sec. 3.19. The board shall:

"(1) encourage voluntary cooperation by persons, or affected groups in the restoration and preservation of the purity of the air resources within this state;

"(2) encourage and conduct studies, investigations and research concerning air control;

"(3) collect and disseminate information on air control;

"(4) advise, consult and cooperate with other agencies of the state, political subdivisions of the state, industries, other states and the federal government, and with interested persons or groups in regard to matters of common interest in air control; and

"(5) represent the State of Texas in any and all matters pertaining to plans, procedures or negotiations for interstate compacts.

Investigations; action on violations

"Sec. 3.20. (a) The executive secretary is authorized to make or cause to have made investigations as he may deem advisable in administering the provisions of this Act and the

rules, regulations, orders and determinations of the board, including without limitation investigations of violations and general air pollution problems or conditions. The executive secretary shall make or cause to have made such investigations as may be requested or directed by the board.

"(b)Whenever it appears that any provision of this Act or any rule, regulation, determination or order of the board is being violated, the board, or the executive secretary when authorized by the board or this Act, may proceed under Section 4.02 of this Act, or hold a public hearing and enter orders on the alleged violation, or take any other action authorized in this Act as the facts may warrant.

"(c) If a public hearing is held on an alleged violation, the board or the executive secretary shall give notice of the hearing to the person complained against and to such other interested persons as the board or executive secretary may designate. The executive secretary, on behalf of the board, at the request of the person complained against, shall subpoena and compel the attendance of those witnesses, and shall require the production for examination of any book or paper relating to the matter under investigation at the hearing, as that person may reasonably designate.

Board may grant variances

"Sec. 3.21. The board may grant individual variances beyond the limitations prescribed in this Act or in the rules and regulations of the board whenever it is found, upon presentation of adequate proof, that compliance with any provision of this Act, or any rule or regulation of the board, will result in an arbitrary and unreasonable taking of property, or in the practical closing and elimination of any lawful business, occupation or activity, in either case without sufficient corresponding benefit or advantage to the people. Any person seeking a variance or to amend a variance shall submit a petition to the executive secretary containing all information reasonably required by the board or the executive secretary.

Action on petition

"Sec. 3.22. (a) The executive secretary shall mail a copy of the variance petition or a summary of its contents to the mayor and health authorities of the city or town, and the county judge and health authorities of the county, in which the source or sources are or will be located, and to the same officials of other counties, cities and towns which, in the judgment of the executive secretary or the board, may be affected. The information shall be sent not less than 20 days before the date on which the petition is to be considered by the board.

"(b) The executive secretary shall also proceed promptly to investigate the petition and to make a recommendation to the board on the disposition to be made of it.

"(c) Any person may file with the board his comments or recommendations on the requested variance.

"(d) Upon receiving the recommendation of the executive secretary, the board may, if the recommendation is for the granting of a variance, do so without hearing. If the executive secretary recommends against the granting of the variance, if a local government requests a hearing, or if the board in its discretion concludes that a hearing would be advisable, then a hearing shall be held before the board acts on the petition for variance.

Conditions of variance

"Sec. 3.23. (a) In determining under what conditions and to what extent a variance from this Act or from a rule or regulation of the board may be granted, the board shall give due recognition to the progress which the person requesting the variance has made in controlling or preventing air pollution.

"(b) In each variance, the board, in conformity with the intent and purpose of this Act to protect health and property, shall prescribe the conditions with which the holder of the variance shall comply, including:

"(1) the duration of the variance;

"(2) the extent of the abatement of emissions of air contaminants to be accomplished over a stated period of time, which shall be the time the board considers reasonable under the circumstances;

"(3) any requirements as to the submission of periodic reports on the progress which the holder of the variance makes toward compliance with the Act or any rule or regulation as to which the variance has been granted; and

"(4) the character and level of the emissions of air contaminants which may be made under the variance.

"(c) After a public hearing, notice of which shall be given to the holder of the variance, the board may require the holder of a variance, from time to time, for good cause, to conform to new or additional conditions. The board shall allow the holder a reasonable time to conform to the new or additional conditions and, on application of the holder, the board may grant additional time.

"(d) A variance does not become a vested right in the holder, and it may be revoked or suspended for good cause, after a public hearing, notice of which shall be given to the holder of the variance, on any of the following grounds:

"(1) the holder has failed or is failing to comply with the conditions of the variance;

"(2) the variance or operations under the variance have been abandoned; or

"(3) the variance is no longer needed by the holder.

"(e) The notice required by Subsections (c) and (d) of this section shall be sent to the holder of the variance at his last known address as shown by the records of the board.

Extensions of variances

"Sec. 3.24. The holder of a variance may request the board for an extension of the term of the variance. Notice of the request shall be mailed to the public officials as specified in Subsection (a) of Section 3.22 of this Act at least 10 days before the board acts on the request. Except as to the time for notice as specified in this section, the procedure which the board shall follow on a request for an extension of a variance shall be the same as in the case of an original petition for variance.

Failure of board to act on variance

"Sec. 3.25. Upon the failure of the board to take action within 120 days after receipt in proper form of a petition for variance or to amend a variance,or of a request to extend a variance, the petitioner shall be entitled to assume that his petition has been denied, and he may perfect an appeal on this basis in the manner provided in Section 6.01 of this Act. However, until such time as the petitioner files his appeal in the manner provided in Section 6.01 of this Act, the board shall continue to have jurisdiction to act on the petition.

"Sec. 3.26. The filing of a petition for variance or to amend a variance, or of a request to extend a variance, does not serve to abate any suit, whether by the board or a local government, or any hearing, investigation, or other proceeding which the board or a local government may then have in process or may thereafter initiate. The granting of a variance or amendment to a variance, or of an extension of a variance, shall operate to authorize emissions of air contaminants or other activities beyond the limitations prescribed in this Act or in the rules and regulations of the board from the effective date of the board's action, but only for the period and to the extent specified in the board's order.

Construction Permit

"Section 3.27. (a) Any person who plans to construct any new facility or to engage in the modification of any existing facility which may emit air contaminants into the air of this State shall apply for and obtain a construction permit from the board before any actual work is begun on the facility. The board may exempt certain facilities or types of facilities from the requirements of Section 3.27 and Section 3.28 if it is found upon investigation that such facilities or types of facilities will not make a significant contribution of air contaminants to the atmosphere.

"(b) Along with the application for the permit, the person shall submit copies of all plans and specifications necessary for determining whether the proposed construction will comply with applicable air control standards and the intent of the Texas Clean Air Act, together with any other information which the board considers necessary.

"(c) If, from the information submitted under subsection (b) of this section, the board finds no indication that the proposed facility will contravene the intent of the Texas Clean Air Act, including proper consideration of land use, the board shall grant within a reasonable time a permit to construct or modify the facility. If the board finds that the emissions from the proposed facility will contravene these standards or will contravene the intent of the Texas Clean Air Act, it shall not grant the permit and shall set out in a report to the applicant its specific objections to the submitted plans of the proposed facility.

"(d) If the person applying for a permit makes the alterations in his plans and specifications to meet the specific objections of the board, the board shall grant the permit, but the board may refuse to accept new applications by a person until all previous objections of the board to the previously submitted plans of that person are rectified. If the person fails or refuses to alter the plans and specifications, the board shall refuse to grant the permit.

"(e) A permit granted under this section may be revoked by the board if the board later determines that any of the terms of the permit are being violated or that emissions from the proposed facility will contravene air pollution control standards set by the board or will contravene the intent of the Texas Clean Air Act.

"(f) The board or the executive director may seek an injunction in a court of competent jurisdiction to halt work on a facility which is being done without a permit issued under this section or is in violation of the terms of a permit issued under this section.

"(g) The powers and duties set out in Section 3.27 and Section 3.28 may be delegated by the board to the executive director. The applicant may appeal to the board any decision made by the executive director under these sections.

"(h) Provided, however, that at the time this Act becomes effective no provision of this Act shall apply where any person, firm, partnership or corporation has let any contract, or begun any construction for any addition, alteration or modification to any new or existing facility. Any contracts under this subsection shall have a beginning construction date no later than six months after the effective date of this Act to qualify for this exemption."

Operating Permit

Section 3.28. (a) If a permit to construct is issued, then within sixty days after the facility has begun operation, the person in charge of the facility shall apply for an operating permit. The board may require the submission of monitoring data to demonstrate compliance with applicable rules and regulations and with the Texas Clean Air Act in support of the application for an operating permit. If start-up or testing requires more than sixty days, this period may be extended by the board.

"(b) When all stipulations of the construction permit are met and the operation of the facility will not contravene air pollution control standards set by the board or will not contravene the intent of the Texas Clean Air Act, the board shall issue within a reasonable time the operating permit

"(c) If the board determines that the operation of such a facility will contravene the air pollution control standards set by the board or will contravene the intent of the Texas Clean Air Act it shall set out in a report to the applicant the specific objections which it finds to the facility and shall not grant the permit.

"(d) The board shall refuse to accept new applications by a person for an operating permit until all the previous objections to that facility submitted by the board are rectified.

"(e) A permit issued under this section may be revoked by the board if the board later determines that any of the terms of the permit are being violated or that emissions from the facility contravene air pollution control standards set by the board or contravene the intent of the Texas Clean Air Act.

"(f) The board or the executive director may seek an injunction in a court of competent jurisdiction to halt the operation of any facility which is operating without a permit issued under this section or which is operating in violation of the terms of a permit issued under this section."

"SUBCHAPTER D. PROHIBITION AGAINST AIR POLLUTION; ENFORCEMENT

Unauthorized emissions prohibited

"Section 4.01. (a) Except as authorized by a rule, regulation, variance or other order of the board, no person may cause, suffer, allow or permit the emission of any air contaminant or the performance of any activity which causes or contributes to, or which will cause or contribute to, a condition of air pollution.

"(b) No person may cause, suffer, allow or permit the emission of any air contaminant or the performance of any activity in violation of this Act or of any rule, regulation, variance, or other order of the board.

"(c) Any person who violates any provision of this Act or of any rule, regulation, variance, or other order of the board is subject to a civil penalty of not less than $50 nor more than $1,000 for each day of violation and for each act of violation, as the court may deem proper, to be recovered in the manner provided in this Subchapter.

Enforcement by board

"Sec. 4.02. (a) Whenever it appears that a person has violated or is violating, or is threatening to violate any provision of this Act or of any rule, regulation, variance or other order of the board, then the board, or the executive secretary when authorized by the board, may cause a civil suit to be instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than $50 nor more then $1,000 for each day of violation and for each act of violation, as the court may deem proper, or for both injunctive relief and civil penalty. Upon application for injunctive relief and a finding that a person is

violating or threatening to violate any provision of this Act or of any rule, regulation, variance or other order of the board, the district court shall grant the injunctive relief the facts may warrant.

"(b) At the request of the board, or the executive secretary when authorized by the board, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both injunctive relief and penalty, as authorized in Subsection (a) of this section.

Enforcement by local governments

"Sec. 4.03. Whenever it appears that a violation or threat of violation of any provision of Section 4.01 of this Act, or of any rule, regulation, variance or other order of the board has occurred or is occurring within the jurisdiction of a local government, exclusive of its extra-territorial jurisdiction, the local government, in the same manner as the board, may cause to be instituted through its own attorney a suit for the injunctive relief or civil penalties, or both, as authorized in Subsection (a) of Section 4.02 of this Act against the person who committed, or is committing or threatening to commit, the violation. This power may not be exercised by a local government unless its governing body adopts a resolution authorizing the exercise of the power. In a suit brought by a local government under this section, the board is a necessary and indispensable party.

Venue and procedure

"Sec. 4.04. (a) A suit for injunctive relief or for recovery of a civil penalty, or for both injunctive relief and penalty, may be brought either in the county where the defendant resides or in the county where the violation or threat of violation occurs.

"(b) In any suit brought to enjoin a violation or threat of violation of this Act or of any rule, regulation, variance or other order of the board, the court may grant the board or the local government, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant including temporary restraining orders after notice and hearing, temporary injunctions, and permanent injunctions.

"(c) A suit brought under this Act shall be given precedence over all other cases of a different nature on the docket of the trail or appellate court.

"(d) Either party may appeal from a final judgment of the court as in other civil cases.

"(e) All civil penalties recovered in suits instituted by the State of Texas under this Act shall be paid to the general revenue fund of the State of Texas.

"(f) All civil penalties recovered in suits instituted by a local government or governments under this Act shall be equally divided between the State of Texas on the one hand and the local government or governments first instituting the suit on the other, with fifty percent of the recovery to be paid to the general revenue fund of the State of Texas and the other fifty percent equally to the local government or governments first instituting the suit.

Act of God, war, etc.

"Sec. 4.05. The liabilities which would otherwise be imposed by this Act upon persons violating any provision of this Act or of any rule, regulation, variance, determination or order issued under this Act shall not be imposed due to any violation caused by an act of God, war, strike, riot, or other catastrophe.

"SUBCHAPTER E. AUTHORITY OF LOCAL GOVERNMENTS

Inspections; power to enter property

"Section 5.01. (a) A local government has the same power as the board has under Section 3.05 of this Act to inspect the air and to enter public and private property within its territorial jurisdiction to determine whether or not:

"(1) the level of air contaminants in any area within its territorial jurisdiction meets the level set by the board or, in the case of a city or town, the level set by the governing body of that city or town under the authority of Section 5.05 of this Act;

"(2) the emissions from any source meet the level set for that source by the board or, in the case of a city or town, by the governing body of that city or town under the authority of Section 5.05 of this Act; or

"(3) a person is complying with this Act or any rule, regulation, variance or other order issued by the board.

"(b) The local government in exercising the powers granted in this section is subject to the same provisions and restrictions as the board.

"(c) When requested by the board, a local government shall transmit the results of its inspections to the board.

Recommendations to board

"Sec. 5.02. A local government may make recommendations to the board concerning any rule, regulation, determination, variance or other order of the board that affects any area within its territorial jurisdiction. The board shall give maximum consideration to the recommendations of a local government.

Enforcement action

"Sec. 5.03. A local government may bring an enforcement action under this Act in the manner provided in Subchapter D of this Act for local governments.

Cooperative agreements

"Sec. 5.04. A local government may executive cooperative agreements with the board or other local governments:

"(1) to provide for the performance of air quality management, inspection, and enforcement functions and to provide technical aid and educational services to any party to the agreement; and

"(2) for the transfer of money or property from any party to the agreement to another party to the agreement for the purpose of air quality management, inspection, enforcement, technical aid and education.

Authority of cities and towns

"Sec. 5.05. (a) Subject to the provisions of Section 1.05 of this Act, an incorporated city or town has such powers and rights as are otherwise vested by law in the city or town to:

"(1) abate a nuisance; and

"(2) enact and enforce any ordinance for the control and abatement of air pollution, or any other ordinance, not inconsistent with the provisions of this Act or the rules, regulations or orders of the board.

"(b) Any ordinance enacted by an incorporated city or town shall be consistent with the provisions of this Act and the rules, regulations and orders of the board, and shall not make unlawful any condition or act approved or otherwise authorized pursuant to this Act or the rules, regulations or orders of the board.

"SUBCHAPTER F. JUDICIAL REVIEW

Appeal of board action

"Section 6.01. (a) A person affected by any ruling, order, decision, or other act of the board may appeal by filing a petition in a district court of Travis County.

"(b) The petition must be filed within thirty days after the date of the board's action, or, in case of a ruling, order or decision, within thirty days after its effective date.

"(c) Service of citation on the board must be accomplished within thirty days after the date the petition is filed. Citation may be served on the executive secretary or any member of the board.

"(d) The plaintiff shall pursue his action with reasonable diligence. If the plaintiff does not prosecute his action within one year after the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the attorney general unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay.

"(e) In an appeal of a board action other than cancellation or suspension of a variance, the issue is whether the action is invalid, arbitrary, or unreasonable.

"(f) An appeal of the cancellation or suspension of a variance shall be tried in the same manner as appeals from the justice court to the county court."

Caption of S. B. No. 5 - Air Pollution

"An Act amending the Penal Code of Texas, 1925, by adding a new Article 698d defining the offense of air pollution and providing for the criminal prosecution of individuals and private corporations who pollute the air in the State of Texas or violate air contaminant emission variances or orders; providing for penalties for violations of this Act; declaring the effect of this Act on certain other laws as they pertain to air pollution; providing for severability; and declaring an emergency."

The Penal Code water and air pollution provisions are enforced by District and County Attorneys in Texas. The Attorney General can advise and assist where requested by a District or County Attorney in criminal cases.

Art. 698d. AIR POLLUTION*

Definitions

Section 1. In this article:

(1) "Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke, vapor, or odor, or any combination thereof, produced by processes other than natural.
(2) "Person" means an individual or a private corporation.
(3) "Air pollution" means the presence in the atmosphere of one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect humans, animal life, vegetation or property, or as to interfere with the normal use and enjoyment of animal life, vegetation or property.
(4) "source" means any point of origin of an air contaminant, whether privately or publicly owned or operated.

Emission of air contaminants

Sec. 2. No person may cause or permit the emission of any air contaminant which causes or which will cause air pollution unless the emission is made in compliance with a variance or other order issued by the Texas Air Control Board.

Violation of variance order

Sec. 3. No person to whom the Texas Air Control Board has issued a variance or other order authorizing the emission of any air contaminant from a source may cause or permit the emission of the air contaminant in violation of the requirements of the variance or order.

Punishment

Sec. 4. Any person who violates any of the provisions of Sections 2 or 3 of this article is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $10 nor more than $1,000. Each day that a violation occurs constitutes a separate offense.

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* Vernon's Annotated Penal Code (V.A.P.C.)

Exceptions

Sec. 5. The emission of any air contaminant otherwise punishable under this article which is caused by an Act of God, war, riot, or other castastrophe, is not a violation of this article.

Venue

Sec. 6. Venue for prosecution of any alleged violation is in the county court, the county criminal court, or the county court-at-law of the county in which the violation is alleged to have occurred.

Complaint against private corporation; allegation of name

Sec. 7. In alleging the name of a defendant private corporation, it is sufficient to state in the complaint, indictment, or information, the corporate name, or to state any name or designation by which the corporation is known or may be identified. It is not necessary to allege that the defendant was lawfully incorporated.

Complaint against private corporation; issuance and form of summons; arrest of individuals

Sec. 8. (a) When a complaint is filed or an indictment or information presented against a private corporation under the provisions of this article, the court or clerk shall issue a summons to the corporation. The summons shall be in the same form as a capias except that:

(1) it shall summon the corporation to appear before the court named at the place stated in the summons;
(2) it shall be accompanied by a certified copy of the complaint, indictment, or information; and
(3) it shall provide that the corporation appear before the court named at or before 10 a.m. of the Monday next after the expiration of 20 days after it is served with summons, except when service is made upon the Secretary of State, in which instance the summons shall provide that the corporation appear before the court named at or before 10 a.m. of the Monday next after the expiration of 30 days after the Secretary of State is served with summons.

(b) No individual may be arrested upon a complaint, indictment, or information against a private corporation.

Service of summons on private corporation

Sec. 9. (a) A peace officer shall serve a summons on a private corporation by personally delivering a copy of it to the corporation's registered agent for service. However, if a registered agent has not been designated, or cannot with reasonable diligence be found at the registered office, then the peace officer shall serve the summons by personally delivering a copy of it to the president or vice-president of the corporation.

(b) If the peace officer certified on the return that he diligently but unsuccessfully attempted to effect service under Subsection (a) of this section, or if the corporation is a foreign corporation that has no certificate of authority, then he shall serve the summons on the Secretary of State by personally delivering a copy of it to him, or to the assistant Secretary of State, or to any clerk in charge of the corporation department of his office. On receipt of the summons copy, the Secretary of State shall immediately forward it by certified or registered mail, return receipt requested, addressed to the defendant corporation at its registered office or, if it is a foreign corporation, at its principal office in the state or country under whose law it was incorporated.

(c) The Secretary of State shall keep a permanent record of the date and time of receipt and his disposition of each summons served under Subsection (b) of this section together with the return receipt.

Criminal actions against private corporation; arraignment; time for pleadings

Sec. 10. In all criminal actions instituted against a private corporation under the provisions of this article,

(1) appearance is for the purpose of arraignment; and
(2) the corporation has 10 full days after the day the arraignment takes place and before the day the trial begins to file written pleadings.

Appearance of private corporation; failure to appear or plead, or absence from proceedings; effect

Sec. 11. (a) A defendant private corporation appears through counsel or its representative.

(b) If a private corporation does not appear in response to

summons, or appears but fails or refuses to plead,

(1) it is deemed to be present in person for all purposes;
(2) the court shall enter a plea of not guilty in its behalf; and
(3) the court may proceed with trial, judgment, and sentencing.

(c) If, having appeared and entered a plea in response to summons, a private corporation is absent without good cause at any time during later proceedings,

(1) it is deemed to be present in person for all purposes; and
(2) the court may proceed with trial, judgment, or sentencing.

Conviction of private corporation; enforcement of fine as civil judgment

Sec. 12. If a private corporation shall be found guilty of a violation of this article and a fine imposed, the fine shall be entered and docketed by the clerk of the court as a judgment against the corporation, and it shall be of the same force and effect and be enforced against the corporation in the same manner as if the judgment were recovered in a civil action.

Partial repealer

Sec. 13. To the extent that any other general or special law, including Article 695, Penal Code of Texas, 1925, makes an act or omission a criminal offense, which act or omission also constitutes a criminal offense under this article, such other general or special law is repealed, but only to that extent.

Cumulative effect; Clean Air Act

Sec. 14. Nothing in this article repeals or amends nor shall be construed to repeal or amend, either expressly or impliedly, any of the provisions of the Clean Air Act of Texas, 1967 (Article 4477-5, Vernon's Texas Civil Statutes), but this article is cumulative of that Act, which remains in full force and effect.

Added by Acts 1969, 61st Leg., p. 480, ch. 153, § 1 eff. Sept. 1 1969.