

SUBCHAPTER C. MUNICIPAL DRAINAGE UTILITY SYSTEMS

Sec. 552.041. SHORT TITLE. This subchapter may be cited as the Municipal Drainage Utility Systems Act.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991.

Renumbered from Local Government Code, Section 402.041 by Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.042. LEGISLATIVE FINDING. (a) The legislature finds that authority is needed to:

(1) permit municipalities to establish a municipal drainage utility system within the established service area;

(2) provide rules for the use, operation, and financing of the system;

(3) protect the public health and safety in municipalities from loss of life and property caused by surface water overflows, surface water stagnation, and pollution arising from nonpoint source runoff within the boundaries of the established service area;

(4) delegate to municipalities the power to declare, after a public hearing, a drainage system created under this subchapter to be a public utility;

(5) prescribe bases on which a municipal drainage utility system may be funded and fees in support of the system may be assessed, levied, and collected;

(6) provide exemptions of certain persons from this subchapter; and

(7) prescribe other rules related to the subject of municipal drainage.

(b) This subchapter is remedial.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1989, 71st Leg., ch. 1230, Sec. 1(b), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991.

Renumbered from Local Government Code, Section 402.042 by Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 3.76(a) (2), eff. April 1, 2009.

Sec. 552.043. APPLICATION OF SUBCHAPTER TO MUNICIPALITIES. This subchapter applies to any municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1989, 71st Leg., ch. 1230, Sec. 1(c), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991.

Renumbered from Local Government Code, Section 402.043 by Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 3.76(a) (2), eff. April 1, 2009.

Sec. 552.044. DEFINITIONS. In this subchapter:

(1) (A) "Benefitted property" means an improved lot or tract to which drainage service is made available under this subchapter.

(B) "Benefitted property," in a municipality with a population of more than 1.18 million which is operating a drainage utility system under this chapter, means a lot or tract, but does not include land appraised for agricultural use, to which drainage service is made available under this subchapter and which discharges into a creek, river, slough, culvert, or other channel that is part of the municipality's drainage utility system. Sections 552.053(c) (2) and (c) (3) do not apply to a municipality described in this subdivision.

(2) "Cost of service" as applied to a drainage system service to any benefitted property means:

(A) the prorated cost of the acquisition, whether by eminent domain or otherwise, of land, rights-of-way, options to purchase land, easements, and interests in land relating to structures, equipment, and facilities used in draining the benefitted property;

(B) the prorated cost of the acquisition, construction, repair, and maintenance of structures, equipment, and facilities used in draining the benefitted property;

(C) the prorated cost of architectural, engineering, legal, and related services, plans and specifications, studies, surveys, estimates of cost and of revenue, and all other expenses necessary or incident to planning, providing, or determining the feasibility and practicability of structures, equipment, and facilities used in draining the benefitted property;

(D) the prorated cost of all machinery, equipment, furniture, and facilities necessary or incident to the provision and operation of draining the benefitted property;

(E) the prorated cost of funding and financing charges and interest arising from construction projects and the start-up cost of a drainage facility used in draining the benefitted property;

(F) the prorated cost of debt service and reserve requirements of structures, equipment, and facilities provided by revenue bonds or other drainage revenue-pledge securities or obligations issued by the municipality; and

(G) the administrative costs of a drainage utility system.

(3) "Drainage" means bridges, catch basins, channels, conduits, creeks, culverts, detention ponds, ditches, draws, flumes, pipes, pumps, sloughs, treatment works, and appurtenances to those items, whether natural or artificial, or using force or gravity, that are used to draw off surface water from land, carry the water away, collect, store, or treat the water, or divert the water into natural or artificial watercourses.

(4) "Drainage charge" means:

(A) the levy imposed to recover the cost of the service of the municipality in furnishing drainage for any benefitted property; and

(B) if specifically provided by the governing body of the municipality by ordinance, an amount made in contribution to funding of future drainage system construction by the municipality.

(5) "Drainage system" means the drainage owned or controlled in whole or in part by the municipality and dedicated to the service of benefitted property, including provisions for additions to the system.

(6) "Facilities" means the property, either real, personal, or mixed, that is used in providing drainage and included in the system.

(7) "Public utility" means a drainage service that is regularly provided by the municipality through municipal property dedicated to that service to the users of benefitted property within the service area and that is based on:

(A) an established schedule of charges;

(B) the use of the police power to implement the service; and

(C) nondiscriminatory, reasonable, and equitable terms as declared under this subchapter.

(8) "Service area" means the municipal boundaries and any other land areas outside the municipal boundaries which, as a result of topography or hydraulics, contribute overland flow into the watersheds served by the drainage system of a municipality; provided, however, that in no event may a service area extend farther than the boundaries of a municipality's current extraterritorial jurisdiction, nor, except as provided by Section 552.0451, may a service area of one municipality extend into the boundaries of another municipality. The service area is to be established in the ordinance establishing the drainage utility. Provided, that no municipality shall extend a service area outside of its municipal boundaries except:

(A) a municipality of more than 500,000 population located within 50 miles of an international border;

(B) a municipality all or part of which is located over or within the Edwards Aquifer recharge zone or the Edwards Aquifer transition zone, as designated by the Texas Natural Resource Conservation Commission; or

(C) as provided by Section 552.0451.

(9) "User" means the person or entity who owns or occupies a benefitted property.

(10) "Improved lot or tract" means a lot or tract that has a structure or other improvement on it that causes an impervious coverage of the soil under the structure or improvement.

(11) "Wholly sufficient and privately owned drainage system" means land owned and operated by a person other than a municipal drainage utility system the drainage of which does not discharge into a creek, river, slough, culvert, or other channel that is part of a municipal drainage utility system.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1230, Sec. 1(d), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991; Acts 1993, 73rd Leg., ch. 674, Sec. 1, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 773, Sec. 1, eff. June 18, 1993; Acts 1995, 74th Leg., ch. 35, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 76, Sec. 11.258, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 633, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 13.22, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 669, Sec. 108, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 520, Sec. 1, eff. June 16, 2007.

Renumbered from Local Government Code, Section 402.044 by Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 3.76(a)(2), eff. April 1, 2009.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 3.77(5), eff. April 1, 2009.

Sec. 552.045. ADOPTION OF SYSTEM; RULES. (a) Subject to the requirements in Subsections (b) and (c), the governing body of the municipality, by a majority vote of its entire membership, may adopt this subchapter by an ordinance that declares the adoption and that declares the drainage of the municipality to be a public utility.

(b) Before adopting the ordinance, the governing body must find that:

(1) the municipality will establish a schedule of drainage charges against all real property in the proposed service area subject to charges under this subchapter;

(2) the municipality will provide drainage for all real property in the proposed service area on payment of drainage charges, except real property exempted under this subchapter; and

(3) the municipality will offer drainage service on nondiscriminatory, reasonable, and equitable terms.

(c) Before adopting the ordinance, the governing body must publish a notice in a newspaper of general circulation in the municipality stating the time and place of a public hearing to consider the proposed ordinance. The proposed ordinance must be published in full in the notice. The governing body shall publish the notice three times before the date of the hearing. The first publication must occur on or before the 30th day before the date of the hearing.

(d) After passage of the ordinance adopting this subchapter, the municipality may levy a schedule of drainage charges. The municipality must hold a public hearing on the charges before levying the charges. The municipality must give notice of the hearing in the manner provided by Subsection (c). The proposed schedule of drainage charges, as originally adopted or as revised, must be published in the notice.

(e) The municipality by ordinance may adopt and enforce rules as it considers appropriate to operate the drainage utility system. Provided, however, that the prohibitions contained in Section 212.003(a) of the Local Government Code relating to quasi-zoning and other land use regulations in the extraterritorial jurisdiction of a municipality shall apply to any rule or ordinance adopted or enacted by the municipality under this Act, except that rates may be established using impervious cover measurements relating to land use and building size.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1230, Sec. 1(e), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991.

Renumbered from Local Government Code, Section 402.045 by Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.0451. EXTENSION OF SERVICE AREA BY CERTAIN MUNICIPALITIES. (a) A municipality with a population of more than 900,000 located in one or more counties with a population of less than 1.5 million as of the 1990 federal census may extend its service area:

- (1) into the boundaries of another municipality if:
 - (A) before the extension water from the municipality to which the service area is to be extended regularly drains into the drainage system of the municipality extending its service area; and
 - (B) the extension is provided for by an interlocal agreement between the municipalities; or
- (2) beyond its municipal boundaries into an unincorporated area of its extraterritorial jurisdiction if:
 - (A) before the extension water from the area to which the service area is to be extended regularly drains into

the drainage system of the municipality extending its service area; and

(B) the extension is provided for by an interlocal agreement between the municipality extending its service area and the county containing the area to which the service area is to be extended.

(b) An interlocal agreement under Subsection (a) may:

(1) contain provisions necessary for the operation of a drainage system within the area to which the service area is extended; and

(2) provide for charges for treatment of drainage water and methods of assessment of the charges to an owner of a lot or tract of benefitted property in the area to which the service area is extended.

(c) Charges and methods of assessment agreed to under Subsection (b) (2) must comply with Section 552.047.

Added by Acts 1993, 73rd Leg., ch. 773, Sec. 2, eff. June 18, 1993.

Renumbered from Local Government Code, Section 402.0451 by Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 3.76(a) (2), eff. April 1, 2009.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 3.77(6), eff. April 1, 2009.

Sec. 552.046. INCORPORATION OF EXISTING FACILITIES. The municipality may incorporate existing drainage facilities, materials, and supplies into the drainage utility system.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991.

Renumbered from Local Government Code, Section 402.046 by Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 3.76(a) (2), eff. April 1, 2009.

Sec. 552.047. DRAINAGE CHARGES. (a) The governing body of the municipality may charge a lot or tract of benefitted property for drainage service on any basis other than the value of the property, but the basis must be directly related to drainage and the terms of the levy, and any classification of the benefitted properties in the municipality must be nondiscriminatory, equitable, and reasonable.

(b) In setting the schedule of charges for drainage service, the governing body must base its calculations on an inventory of the lots and tracts within the service area. The governing body may use approved tax plats and assessment rolls for that purpose. The governing body may also consider the land use made of the benefitted property. The governing body may consider the size, in area, the number of water meters, and topography of a parcel of benefitted property, in assessing the drainage charge to the property.

(c) The governing body may fix rates for drainage charges in advance and may change, adjust, and readjust the rates and charges for drainage service from time to time. The rates must be equitable for similar services in all areas of the service area.

(d) Unless a person's lot or tract is exempted under this subchapter, the person may not use the drainage system for the lot or tract unless the person pays the full, established, drainage charge.

(e) Users residing within the established service area, but outside the municipality's boundaries, may appeal rates established for drainage charges to the Texas Natural Resource Conservation Commission as authorized by Section 13.043(b) of the Water Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.259, eff. Sept. 1,

1995; Acts 1997, 75th Leg., ch. 633, Sec. 2, eff. Sept. 1, 1997.

Renumbered from Local Government Code, Section 402.047 by Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.048. BILLINGS; DEPOSIT NOT REQUIRED. (a) The municipality may bill drainage charges, identified separately, with the municipality's other public utility billings. Any delinquent billings may be collected on the benefitted property under the procedure prescribed by this subchapter.

(b) The municipality may not require a deposit for drainage service as a precondition to accepting surface flow in the drainage utility system.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991.

Renumbered from Local Government Code, Section 402.048 by Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.049. SEGREGATION OF INCOME. The income of a drainage utility system must be segregated and completely identifiable in municipal accounts. If drainage charges are solely for the cost of service, the municipality may transfer the charges in whole or in part to the municipal general fund, except for any part collected outside municipal boundaries and except for any part pledged to retire any outstanding indebtedness or obligation incurred, or as a reserve for future construction, repair, or maintenance of the drainage system. If the governing body has levied, in the drainage charge, an amount in contribution to the funding of future system improvements, including replacement, new construction, or extension, that amount is not transferable to the general fund.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1989, 71st Leg., ch. 1230, Sec. 1(f), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991.

Renumbered from Local Government Code, Section 402.049 by Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.050. DELINQUENT CHARGES. (a) Any charge due hereunder which is not paid when due may be recovered in an action at law by the municipality. In addition to any other remedies or penalties provided at law or in this subchapter, failure of a user of the municipal utilities within the service area to pay the charges promptly when due shall subject such user to discontinuance of any utility services provided by the municipality, and municipalities are hereby empowered to enforce this provision against delinquent users. The employees of the utility established in accordance with this subchapter shall have access, at all reasonable times, to any benefitted properties served by the drainage utility for inspection or repair or for the enforcement of the provisions of this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991.

Renumbered from Local Government Code, Section 402.050 by Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.051. DRAINAGE REVENUE BONDS. By majority vote of the governing body, the municipality may issue drainage revenue bonds. The municipality may use Chapter 1201, Government Code. In addition, the municipality may pledge income received by contracts for the provision of drainage to other governments or

governmental subdivisions located inside or outside the service area.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991; Acts 2001, 77th Leg., ch. 1420, Sec. 8.350, eff. Sept. 1, 2001.

Renumbered from Local Government Code, Section 402.051 by Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.052. DISCONTINUATION OF DRAINAGE SYSTEM.

(a) If, after at least five years of substantially continuous operation of a municipal drainage system, the governing body of the municipality determines that the system should be discontinued, that the powers under this subchapter should be revoked, and that provision for municipal drainage should be made by other revenues, the governing body may adopt an ordinance to that effect after providing notice and a public hearing as provided by Section 552.045.

(b) If the municipality discontinues a system under Subsection (a), it may not adopt a system under this subchapter for at least five years after the discontinuation.

(c) A discontinuation does not affect a written obligation incurred by the municipality for funding or for the purchase of equipment, materials, or labor for the drainage system that is not then fully paid or otherwise discharged.

(d) A claim for damages based on an alleged failure of the drainage system that is filed with the municipality before the adoption of the ordinance discontinuing the drainage system is not abated by the discontinuation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1989, 71st Leg., ch. 1230, Sec. 1(g), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991.

Renumbered from Local Government Code, Section 402.052 by Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 3.76(a)(2), eff. April 1, 2009.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 3.77(7), eff. April 1, 2009.

Sec. 552.053. EXEMPTIONS. (a) A governmental entity or person described by Subsection (b) and a lot or tract in which the governmental entity or person holds a freehold interest may be exempt from this subchapter and all ordinances, resolutions, and rules adopted under this subchapter.

(b) The following may be exempt:

- (1) this state;
- (2) a county;
- (3) a municipality;
- (4) a school district.

(c) The following shall be exempt from the provisions of any rules or ordinances adopted by a municipality pursuant to this Act:

(1) property with proper construction and maintenance of a wholly sufficient and privately owned drainage system;

(2) property held and maintained in its natural state, until such time that the property is developed and all of the public infrastructure constructed has been accepted by the municipality in which the property is located for maintenance; and

(3) a subdivided lot, until a structure has been built on the lot and a certificate of occupancy has been issued by the municipality in which the property is located.

(d) A municipality may exempt property owned by a religious organization that is exempt from taxation pursuant to Section 11.20, Tax Code, from drainage charges under this subchapter.

Text of subsection as added by Acts 2009, 81st Leg., R.S., Ch. [278](#), Sec. 1

(e) Property owned by a county in which a municipality described by Section 552.044(8)(A) is located is exempt from drainage charges under Section 552.047 and all ordinances, resolutions, and rules adopted under this subchapter.

Text of subsection as added by Acts 2009, 81st Leg., R.S., Ch. [539](#), Sec. 1

(e) Property owned by a school district located wholly or partly in a municipality described by Section 552.044(8)(A) is exempt from drainage charges under Section 552.047 and all ordinances, resolutions, and rules adopted under this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991; Acts 1993, 73rd Leg., ch. 674, Sec. 2, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 773, Sec. 3, eff. June 18, 1993.

Renumbered from Local Government Code, Section 402.053 by Acts 2007, 80th Leg., R.S., Ch. [885](#), Sec. 3.76(a)(2), eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [278](#), Sec. 1, eff. May 30, 2009.

Acts 2009, 81st Leg., R.S., Ch. [539](#), Sec. 1, eff. June 19, 2009.

Sec. 552.054. EFFECT OF SUBCHAPTER. This subchapter does not:

(1) enhance or diminish the authority of a home-rule municipality to establish a drainage utility under Article XI, Section 5, of the Texas Constitution;

(2) preclude a municipality from utilizing revenues, other than drainage utility revenues, for drainage purposes; or

(3) preclude a municipality from imposing impact fees or other charges for drainage authorized by law.

Added by Acts 1989, 71st Leg., ch. 1230, Sec. 1(h), eff. Aug. 28, 1989. Amended by Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991.

Renumbered from Local Government Code, Section 402.054 by Acts 2007, 80th Leg., R.S.,