

ESDs: The Basics

The Fundamentals of Emergency Services Districts

What is an ESD?

- Emergency Services Districts are *independent local governments* with the power to levy a tax to provide fire protection and/or emergency medical service
- Special Districts – Political Subdivisions of the State of Texas, similar to School Districts, Hospital Districts, and Library Districts
- Grassroots Entities

Why ESDs?

- Ensure adequate funding for local fire, EMS, rescue, and other emergency services
- Spread funding responsibility for emergency services among everyone that might receive those services

A Brief History

- 1949 – Rural Fire Prevention Districts
 - Farm bloc and insurance companies spearheaded the effort
 - Tax cap of \$0.03 per \$100 of property value
 - Enabling statute – 1957
- 1987 – Emergency Services District
 - Tax cap of \$0.10 per \$100 of property value
 - Enabling statute – same year

A Brief History, cont.

- 2003 – RFPD Conversion
 - All Rural Fire Prevention Districts converted to ESDs by the legislature
 - Still capped at \$0.03 unless changed by election
- 2011 – Senate Bill 917
 - ESD omnibus bill
 - Increased accountability and oversight
 - Consolidated all ESDs under one set of laws

ESDs and the Law

- Authorized by the Texas Constitution
 - Article 3, Section 48-e
 - Sets forth general purposes
 - Establishes \$0.10 tax cap
- Enabled by Statute – Texas Health and Safety Code Chapter 775
 - “Bylaws” – how ESDs operate
 - What ESDs can/can’t do

Other Laws

- Texas Government Code, Chapter 551 - Open Meetings Act
- Texas Government Code, Chapter 552 - Public Information Act (Open Records)
- Truth-in-Taxation Requirements
- Election Laws
- Local Government Code

Creating an ESD – The Basics

- Petition
 - Beginning of the Process
 - Originates with the Citizens (100 Qualified Voters)
 - Registered to vote
 - Own real, taxable property within proposed District
 - Name/Boundaries of District are established here
 - Services to be performed
 - Fire
 - EMS
 - Both
 - Municipal Consent if city limits or ETJ are included
 - Process is detailed in law
- Presented to County Commissioners Court

Creating an ESD – The Basics

- Next Step – on to the County Commissioners Court
 - Petition is received by County Judge and filed with the County Clerk
 - Must have a public hearing on the petition
 - At next regular or special meeting after petition is filed
 - Hearing is subject to notice requirements
- County Commissioners Court holds the hearing

Creating an ESD – The Basics

- The Hearing...
 - Commissioners Court is tasked with approval or rejection of petition
 - Court must find:
 - Creation of the District is feasible
 - District will benefit the proposed territory
 - District will secure the public safety, welfare, and convenience *and*
 - District will aid in conserving real property or natural resources in the area
- If satisfied, County Commissioners Court grants the petition, fixes the boundaries, and...

Creating an ESD – The Basics

- Orders an election
 - Public gets to vote
 - Notice requirements – same as petition
 - Election on next Uniform Election Date
 - May and November
 - NOTE: County cannot hold elections in May of even-numbered years (due to primaries)
- And now you have to count the votes

Creating an ESD – The Basics

- District is created if majority of votes in favor BUT...
 - If there's a City or a City's ETJ included – must of a majority of voters in those areas as well
 - Ballots must all be kept separate
 - Can be excluded if vote fails within those areas but passes overall UNLESS
 - City/ETJ is deemed "essential" to be included for ESD to be feasible
 - This can all get confusing
- If election fails, must wait one year to try again

Creating an ESD – The Basics

- Election canvassed and order creating District is issued
 - Form of order is prescribed in statute
 - Should be filed with the County along with all other documentation
 - This is the “Birth Certificate” of the ESD – like Articles of Incorporation for a business
- And so you’re created...now what?

Getting Started – ESD Governance

- ESDs are governed by a Board of 5 “Commissioners”
 - Appointed by County Commissioners Court OR
 - Elected in Harris, Orange, Smith Counties and ESDs existing in more than one county
- Appointed commissioners
 - Serve 2 year, staggered terms
 - Health and Safety Code 775.034(g) - The commissioners court shall consider relevant factors in determining the individuals to appoint as emergency services commissioners, including **whether the individuals have knowledge that relates to fire prevention or emergency medical services and that is relevant to the common policies and practices of the board**
 - SAFE-D has created a guide
 - Some disqualifiers – dual office holding, nepotism

ESD Governance – Other issues

- Conflicts of interest
 - Real Property/Business Entity
 - Dangers of “self-dealing”
- Oaths of office
- OMA/PIA Training
 - Must be taken (one time) within 90 days of taking office
 - Can be taken online through AG’s office
- Must elect officers: President, VP, Secretary, Treasurer, Asst. Treasurer

ESD Governance – Accountability

- Effective June 17, 2011, ESD Commissioners must obtain **at least six hours of certified continuing education at least once in a two-year period** and may carry forward not more than three hours from one period to the next
 - Training must be certified by institute of higher learning (as defined by statute)
 - Result of SB 917

ESD Governance – Accountability

- What Kind of Training?
 - HB 1619 (filed as companion to SB 917)
 - Provided specific topics for training:
 - District Responsibilities
 - Board Responsibilities
 - Government Administration
 - Ethics laws relating to public officers
 - Governance and management of emergency services
- HB 1619 did not pass, but SAFE-D uses proposed topics as guidance

ESD Governance – Accountability

- Removal of ESD Commissioners.
 - Can be removed for: incompetency, misconduct, official misconduct
 - All terms defined by law
 - Appointed Commissioners removed by County Commissioners Court, Elected Commissioners must be removed by the DA
- Failure to maintain training requirements counts as “incompetency”

ESD Governance – Accountability

- The Audit
 - By June 1st of each year an independent professional audit must be filed with County Commissioners Court
 - If not submitted by Sept. 1 and County Auditor not ordered to prepare, ESD President and Treasurer automatically removed
 - Audit Exception – may only be required to prepare and file compiled financial statements IF certain criteria are met
- Important accountability requirement added by SB 917

Other Reports and Requirements

- Must submit an Annual Report to the Texas Department of Agriculture by Jan 1 of each year
- Obtain Federal Tax EIN for the District
- Comptroller will assign a taxing unit ID number

Getting Started – More Basics

- Must meet once a month
 - Set a regular meeting time, date, and location
 - Keep minutes and records
- Publish notice of location of District Administrative Office within 60 days of Commissioner qualification
- Set Rules of Order for running the ESD Board meeting
- Fiscal concerns
 - Need to establish District Fiscal Year
 - Select District Depository, open District bank account and investment account (if nec.)
 - Which leads us to...

Where does the \$\$\$ come from (and how does the ESD get it)?

- Ad Valorem Property Tax
 - MUST set a budget and tax rate for the District
- Will need to become familiar with Truth-in-Taxation requirements
- Budget must be adopted by Sept. 30
- Tax rate must be adopted by Sept. 30 OR 60 days after the tax rolls are certified
- Well defined process – KNOW THE STEPS

Where does the \$\$\$ come from (and how does the ESD get it)?

- Sales Tax
 - Capped at 8.25%
 - 6.25% goes to the State of Texas
 - 2% available to local governments (*many* local governments)
 - Must hold an election in order to levy
 - Large range of issues
- Fees – may establish an Order for the collection of fees for services

What does the ESD actually do?

- Provide services (exclusive responsibility)
 - Contract for services with independent entity (VFD, ambulance)
 - DIY model
- Contract for administration of the District
 - Bookkeeping/Audit
 - Legal
 - Tax assessment/collection
 - Other services as the Board sees fit
- Capital Expenditures

Agreements

- Mutual Aid
- Dispatch
- Co-op Purchasing
- HIPAA Association agreements (EMS and first responders)

Broader ESD Powers

- Fire Code
 - ESDs may adopt a fire code
- Can consider contracting/performing Fire Marshal services if no County Fire Marshal

General ESD Responsibilities

- Insurance
 - District insurance
 - Directors and Officers liability for the Board
- Must post a bond with the County for the District's Treasurer (County Judge determines amount)
- Recordkeeping
 - Need to establish a sound records management program
 - File with State Library and Archives Commission

Common ESD Issues

- Asset Ownership (Who Owns What?)
 - HB 3798 - Clarifies ESD Ownership of property (real or personal) purchased wholly or partially with ESD funds until the property is disposed of in accordance with the law
- Multiple Service Providers
- Conflict with municipalities/EDCs
 - Especially apparent when sales tax is involved

ESD Statistics

- Approximately 315 known ESDs in Texas
- 1/3 have a tax rate > \$0.09/\$100, 1/3 have a tax rate of \$0.03/\$100 or below
- Approximately 60 ESDs collect sales tax
- Average taxable property value is around \$1.5 billion. Median value is near \$600 million
- Average property tax levy is around \$1 million. Median levy is near \$370,000
- Annual property tax collections range from \$11,000 to \$17.5 million

The Common Refrain

*“If you’ve seen one ESD,
you’ve seen one ESD.”*

*- Don Grogg or John Carlton (Depending on who
you talk to)*

SAFE-D

- Texas State Association of Fire and Emergency Districts
 - Non-profit 501(c)(6) professional association
 - Began as information exchange
 - Dedicated to helping ESDs across the State
- Training - Annual Conference, Regional workshops, remote webcasts
- Legislative advocacy

Questions?

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