

## **BILL ANALYSIS**

Senate Research Center  
82R29038 JXC-D

C.S.H.B. 1619  
By: Orr et al. (Patrick)  
Intergovernmental Relations  
5/19/2011  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

C.S.H.B. 1619 amends current law relating to emergency service districts.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 775.018, Health and Safety Code, by adding Subsections (f) and (g), as follows:

(f) Requires the commissioners court of each county in which the proposed district is located, if a territory of a district proposed under this chapter overlaps with the boundaries of another district created under this chapter, to send to the board of directors of the existing district (board) a copy of the petition for creation of the proposed district. Provides that this subsection does not apply to a proposed district located wholly in a county with a population of more than three million.

(g) Requires the board to adopt a statement before the date of the election required by this section that specifies the types of emergency services the existing district will provide or continue to provide in the overlapping territory if the proposed district is created. Provides that this subsection does not apply to a proposed district located wholly in a county with a population of more than three million.

SECTION 2. Amends Section 775.0205, Health and Safety Code, by amending Subsection (a) and adding Subsections (d-1), (d-2), and (d-3), as follows:

(a) Prohibits the most recently created district, if the territory in a district created under this chapter overlaps with the boundaries of another district created under this chapter, rather than under this chapter or a district created under Chapter 776 (Emergency Services Districts in Counties of 125,000 or Less), from providing services in the overlapping territory that duplicate the services described in the statement required by Section 775.018(g), rather than that duplicate the services provided by the other district at the time the overlapping district was created.

(d-1) Provides that the legislature finds that the performance of non-duplicative emergency services in the overlapping territory of emergency service districts is complementary to and not in conflict with the powers and duties of the respective districts.

(d-2) Authorizes a person to serve as an emergency services commissioner of a district created under this chapter at the same time that the person serves as an emergency services commissioner of another district with overlapping territory created under this chapter.

(d-3) Provides that a person serving as a commissioner of more than one district under this section:

(1) may receive compensation for serving on only one board; and

(2) is entitled to reimbursement for reasonable and necessary expenses incurred in performing official duties for both boards.

SECTION 3. Amends Section 775.024, Health and Safety Code, as follows:

Sec. 775.024. New heading: CONSOLIDATION OF EMERGENCY SERVICES DISTRICTS. (a) Authorizes two or more emergency services districts to consolidate into a single emergency services district as provided by this section. Requires the board of each district, before consolidating, to:

(1) determine that consolidation would allow the districts to provide services more economically and efficiently; and

(2) adopt a joint order of consolidation that includes:

(A) the name and proposed territory of the consolidated district;

(B) the proposed date on which the existing districts dissolve and the consolidated district is created and will start offering services;

(C) if the maximum ad valorem tax rates in the districts are different, a statement that the districts will consolidate only if voters approve an equalized ad valorem tax rate at the election required by Section 775.0241; and

(D) a statement that the district will be consolidate only if the residents of the district and the residents of at least one other district approve the consolidation in an election held for that purpose.

Deletes existing text authorizing two or more emergency services districts to merge into a single emergency services district as provided by this section if the board of each of the districts votes in favor of the merger and the residents of each district approve the merger in an election held for that purpose.

(b) Requires the boards to agree on a name for the proposed consolidated district and choose five commissioners from among the membership of the boards to serve on the initial board for the proposed district. Requires the boards to agree to stagger the terms appropriately. Makes a conforming change.

(c) Provides that if the boards do not make the appointments before the 31st day after the date the boards adopted the joint order:

(1) for a consolidated district to which Section 775.0345 or 775.035 does not apply, the commissioners court shall appoint five commissioners to the board of the consolidated district; or

(2) for a consolidated district to which Section 775.0345 or 775.035 does apply, the board of the consolidated district is initially composed of the two commissioners from each existing board who have served the longest terms.

(c-1) Provides that the number of initial emergency services commissioners on a board described by Subsection (c)(2) is not required to be five.

(d) Creates this subsection from existing text. Requires that the ballot for the election to approve a consolidation be printed to permit voting for or against the proposition. Sets forth the language for the proposition. Requires that the ballot include a proposition for an election required under Section 775.0241, if applicable.

(e) Redesignates existing Subsection (d) as Subsection (e). Provides that if a majority of the voters in at least two of the districts proposed to be consolidated favor the consolidation, the consolidated district is created and is composed of the districts that favored the consolidation. Provides that if less than a majority of the voters voting in any of the districts are in favor of the consolidation, that district is not part of any consolidated district, rather than provides that if less than a majority of the voters voting in any of the districts are in favor of the merger, the vote fails and the districts are not merged.

(f) Provides that the consolidated district is created on the latest of:

(1) the date stated in the joint order;

(2) the date the consolidation is approved in an election described by Subsection (d); or

(3) the date the maximum ad valorem tax rate the consolidated district may impose under Section 775.0241 is established, if necessary.

(g) Redesignates existing Subsection (f) as Subsection (g). Provides that the consolidated district assumes all powers, rights, duties, assets, and liabilities of the former districts without a change in status. Provides that the consolidation does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or obligations of the district. Makes conforming changes.

(h) Provides that for a consolidated district to which Section 775.0345 or 775.035 applies, the initial commissioners of the consolidate district serve until the next available uniform election date after the date the joint order is adopted and that allows sufficient time to comply with other requirements of law. Provides that after an election is held under Section 775.0345 or 775.035:

(1) the two commissioners who receive the fewest votes of the elected commissioners serve terms ending on December 31 of the second year following the year in which the election is held; and

(2) the remaining elected commissioners serve terms ending on December 31 of the fourth year following the year in which the election is held.

Deletes existing Subsection (e) prohibiting the maximum tax rate that may be imposed by the merged district from exceeding the maximum tax rate authorized for any of the precious districts.

SECTION 4. Amends Subchapter B, Chapter 775, Health and Safety Code, by adding Section 775.0241, as follows:

Sec. 775.0241. TAXES FOR CONSOLIDATED DISTRICT. (a) Requires the board of the district with the lower maximum ad valorem tax rate, if two districts that want to consolidate under Section 775.024 have different maximum ad valorem tax rates, to order an election in its district under Section 775.0745 to authorize the imposition of taxes in the territory of that district at a maximum rate that equals the maximum rate authorized in the district with the higher maximum rate.

(b) Prohibits the districts, if a majority of the voters do not favor the increase in the maximum ad valorem tax rate under Subsection (a), from proceeding with the consolidation.

(c) Requires the board of the consolidated district, if the districts have different sales and use tax rates, to:

(1) designate the territory of the former districts as subdistricts;

(2) continue to impose the sales and use tax in each subdistrict at the rate the tax was imposed by the former district; and

(3) send to the comptroller of public accounts by registered or certified mail a copy of the joint order described by Section 775.024(a)(2), and a map of the consolidated district that clearly shows the territory of each subdistrict.

(d) Provides that Subsection (c) does not limit the authority of the board of the consolidated district to order an election under Section 775.0752 in a subdistrict or in the entire district.

SECTION 5. Amends Subchapter C, Chapter 775, Health and Safety Code, by adding Section 775.0362, as follows:

Sec. 775.0362. **LIMIT ON REGULATION OF FIREWORKS.** (a) Prohibits the board, except as provided by Subsection (b), from regulating the sale, use, or transportation of fireworks.

(b) Authorizes the board to adopt a rule relating to fireworks that is the same as or less stringent than a rule adopted or enforced by the commissioner of insurance and the state fire marshal under Chapter 2154 (Regulation of Fireworks and Fireworks Displays), Occupations Code, relating to retail fireworks stands, fireworks bulk manufacturing and storage facilities, fireworks sales buildings, or any other structure used in public pyrotechnic displays to which the rules adopted under Chapter 2154, Occupations Code, apply.

SECTION 6. Amends Subchapter C, Chapter 775, Health and Safety Code, by adding Sections 775.0365 and 775.0366, as follows:

Sec. 775.0365. **BOARD TRAINING.** (a) Requires an emergency services commissioner to complete at least six hours of continuing education relating to the performance of the duties of an emergency services commissioner at least once in a two-year period.

(b) Requires that continuing education instruction required by Subsection (a) be certified by an institution of higher education as defined by Section 61.003 (Definitions), Education Code.

(c) Authorizes an emergency services commissioner, for purposes of Subsection (a), to carry forward from one two-year period to the next two-year period not more than three continuing education hours that the commissioner completes in excess of the required six hours.

(d) Provides that, for purposes of removal under Section 775.0422 or 775.0423, "incompetency" includes the failure of an emergency services commissioner to comply with Subsection (a).

Sec. 775.0366. **SERVICE CONTRACTS.** (a) Defines, in this section, "local government."

(b) Authorizes the board to contract with a local government, including another district, to provide staff, facilities, equipment, programs, or services the board considers necessary to provide or obtain emergency services that the district or the local government is authorized to provide.

(c) Provides that a person acting under a contract under this section, including an emergency services commissioner, does not, because of that action, hold more than one civil office of emolument or more than one office of honor, trust, or profit.

(d) Provides that, except as provided by Subsection (e), if a district contracts with a local government under this section to provide or obtain emergency services, the district is responsible for any civil liability that arises from furnishing those services if the district would have been responsible for furnishing the services in the absence of the contract.

(e) Authorizes the parties to a contract between governmental entities under this section to agree to assign responsibility for civil liability that arises from services provided under the contract in any manner agreed to by the parties. Requires the parties to assign that responsibility in a written provision of the contract that specifically refers to this subsection and states that the assignment of liability is intended to be different from liability otherwise assigned under Subsection (d).

(f) Provides that this section does not change the liability limits and immunities for a governmental unit under Chapter 101 (Tort Claims), Civil Practice and Remedies Code, or other law.

(g) Provides that a contract under this section is not a joint enterprise for liability purposes.

SECTION 7. Amends the heading to Section 775.0422, Health and Safety Code, to read as follows:

Sec. 775.0422. REMOVAL OF APPOINTED BOARD MEMBER BY COMMISSIONERS COURT.

SECTION 8. Amends Section 775.0422, Health and Safety Code, by amending Subsections (a), (b), and (c) and adding Subsections (a-1) and (b-1), as follows:

(a) Provides that this section does not apply to an emergency services district (district) unless the commissioners court of the county in which the district is located adopts this section by resolution.

(a-1) Creates this subsection from existing Subsection (a). Makes no further changes.

(b) Authorizes the commissioners court of the county in which a district is located, by an order adopted by a majority vote after a hearing, to remove a board of emergency services commissioners (board) member for incompetency, as defined by Section 87.011 (Definitions), Local Government Code; official misconduct, as defined by Section 87.011, Local Government Code; or misconduct, as defined by Section 178.001 (Definitions), Local Government Code. Deletes existing text authorizing the commissioners court of the county in which a district is located, by an order adopted by a majority vote after a hearing, to remove one or more board members if the board failed to give the report required by Section 775.036(a)(4) (relating to requiring the board to give a written report to the commissioners court regarding the district's budget, tax rate, and debt service for the preceding fiscal year by February 1) to the commissioners court before the 91st day after the date on which the report was due under that section.

(b-1) Provides that Section 551.0745 (Personnel Matters Affecting County Advisory Body; Closed Meeting), Government Code, applies to a deliberation regarding a removal

of a board member in the same manner as that section applies to a deliberation regarding a dismissal of a member of an advisory body.

(c) Requires a commissioners court seeking removal under this section, not later than the 30th day before the date on which the hearing is held, to notify the board members that it is considering that action, and provide the board member with an opportunity to show cause why the board member should not be removed. Deletes existing text requiring each commissioners court seeking removal under this section, before the 60th day after the date on which the report was due, to notify the board members that it is considering that action.

SECTION 9. Amends Subchapter C, Chapter 775, Health and Safety Code, by adding Section 775.0423, as follows:

Sec. 775.0423. REMOVAL OF ELECTED BOARD MEMBER. (a) Provides that this section applies only to a board member who is elected, or is appointed to fill a vacancy in an elected board member position.

(b) Authorizes a board member to be removed using the procedures provided by Chapter 87 (Removal of County Officers from Office; Filling of Vacancies), Local Government Code, for: incompetency, as defined by Section 87.011, Local Government Code; official misconduct, as defined by Section 87.011, Local Government Code; intoxication, as described by Section 87.013 (General Grounds for Removal), Local Government Code; or misconduct, as defined by Section 178.001, Local Government Code.

(c) Provides that the validity of a board action is not affected because it is taken when a ground for removal of a board member exists.

SECTION 10. Amends Section 775.056(a), Health and Safety Code, to authorize a district, after a hearing, to make mutually agreeable changes in boundaries with another district, rather than with another district or a district created under Chapter 776, provided that the maximum tax rate authorized for such a district does not exceed the maximum tax rate previously authorized for any territory added to that district. Requires the districts to agree on an effective date for the changes in boundaries.

SECTION 11. Amends Section 775.074, Health and Safety Code, by adding Subsection (d-1), to prohibit the board from setting the tax rate for a fiscal year before the date the board adopts a budget for that fiscal year.

SECTION 12. Amends Section 775.082, Health and Safety Code, by adding Subsection (e-1), to provide that when a district located wholly in one county fails to complete and file the audit report by September 1 of each year and a county auditor is not ordered to prepare the report, the president and treasurer of the board are removed from the board and the commissioners court is required to fill the vacancies as provided by Section 775.034 (Appointment of Board in District Located Wholly in One County).

SECTION 13. Amends Section 775.085, Health and Safety Code, by adding Section (d), to provide that Section 775.077 does not apply to a loan secured under this section, including a loan made before the effective date of this subsection.

SECTION 14. Amends Section 344.051(c), Local Government Code, to authorize a district, except as provided by Subsection (f), to be created inside the boundaries of an emergency services district operating under Chapter 775 (Emergency Services Districts), rather than Chapter 775 or Chapter 776, Health and Safety Code, only if the governing body of the emergency services district gives its written consent by order or resolution not later than the 60th day after the date the governing body receives a request for its consent.

SECTION 15. Amends Section 323.101(f), Tax Code, as follows:

(f) Provides that the provisions of this chapter govern the application, collection, and administration of a sales and use tax imposed under Chapter 285 (Special Provisions Relating to Hospital Districts) or 775 (Emergency Services Districts), Health and Safety Code, rather than Chapters 285, 775, or 776, Health and Safety Code, to the extent not inconsistent with the provisions of those chapters. Prohibits, however, Subsection (b) from applying to a tax authorized under those chapters.

SECTION 16. Repealer: Chapter 776 (Emergency Services Districts in Counties of 125,000 or Less), Health and Safety Code.

SECTION 17. (a) Provides that on the effective date of this Act, a district created under Chapter 776, Health and Safety Code, is converted into a district operated under Chapter 775, Health and Safety Code. Provides that a district converted under this section continues in existence and is subject to Chapter 775, Health and Safety Code.

(b) Requires an emergency commissioner of a district created under Chapter 776, Health and Safety Code, is an emergency services commissioner of the converted district under Chapter 775, Health and Safety Code, and is required to serve on the board of the converted district as an emergency services commissioner until the term for which the commissioner was appointed or elected expires.

SECTION 18. Effective date: upon passage or September 1, 2011.