

How An ESD Works: “Nuts and Bolts of ESD Operations”

SAFE-D

Fall Event

September 2021



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What is an ESD?



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What is an ESD?

- ESDs are local political subdivisions that may provide fire, rescue, EMS and other emergency services
 - Governed by 5 commissioners appointed by County Commissioners Court - except in Harris, Orange and Smith Counties and multi-county ESDs, where they are elected
 - Primarily funded by property taxes not to exceed \$0.10 per \$100 in valuation



Board

- Offices are: President, Vice President, Secretary, Treasurer and Asst. Treasurer.
- Offices of Secretary and Treasurer can be combined.
- Treasurer files bond with County Clerk.
- Commissioners can receive a fee of office.



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ESD Facts

- About 340 ESDs in the State
 - Approximately 10 of these are multi-county
- Approximately one-third levy an *ad valorem* tax of \$0.09/\$100 up to the constitutional maximum
- Approximately one-third collect less than \$250K per year in *ad valorem* tax revenue
- Approximately 30% collect some sales tax (and this percentage is increasing)
- Approximately 5 of the 340 do not levy an *ad valorem* tax and exist on sales tax



Topics

- Local Governmental Entity
 - Taxation
 - Open Meetings
 - Open Records
 - Fiscal Accountability (Audit)
 - Buying or Building Stuff (Bidding and Exceptions)
 - ESD Structure and Contracts
 - Limits on Authority (the Statutes)



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Ad Valorem Taxes

- Constitutional Cap of 10 Cents for each ESD
 - Harris County/Former RFPD/Former 776 ESD - may be less
- Truth-in-Taxation Process
 - Senate Bill 2 (2019 Legislature) changed the process
 - www.comptroller.texas.gov



Open Meetings



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Open Meetings Act

- Chapter 551, Texas Government Code
- Commissioners Required to Have Attorney General-Approved Training
- Open Meetings Act Handbook
- www.texasattorneygeneral.gov



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Open Meetings

- 72 hours notice of meeting (unless emergency)
- Notice (agenda) must state time, date and place of meeting
 - ESDs post agenda on ESD website and at ESD administrative office (can also still post with county clerk)
- Notice must describe matters to be discussed sufficiently
- Public has right to attend, and now has the right to speak on every agenda item



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Open Meetings: Closed Sessions

- Examples:
 - Consult with District's Attorney
 - Real Property Acquisition
 - Personnel Matters
 - Gifts to District



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Public Information Act

(formerly known as the
Open Records Act)



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Public Information Act – “Open Records”

- Chapter 552, Texas Government Code
– formerly the Open Records Act
- Commissioners Must Take Required Training – within 90 days after taking oath/assuming duties
- Public Information Act Handbook (340 pages; updated in 2020)
- PIA Officer to Post PIA Notice Poster at Administrative Office
- www.texasattorneygeneral.gov



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Public Information

- Districts and “the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds” are subject to the Act.
- Unless excluded, all public information is subject to disclosure under the Act.
- VFD records can be subject to the Act.



Public Information

- Member of the Public Makes a Request
 - A written request for records or information triggers the Act.
- Creating Records to Respond to Request
 - The Act does not require a governmental body to create new information, to do legal research, or to answer questions.



Public Information

- “Do we have to produce this?”
 - The governmental body generally must, within 10 business days of receiving the open records request, refer the matter to the Office of the Attorney General (the OAG) for a ruling.
- Amount of Charges
 - All charges for records must comply with the AG’s rules. (1 TAC §70.3)



Audits and Financial Statements



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Audit

- June 1 each year – Deadline for ESDs to have prepared and filed an audit report of the district's fiscal accounts and records with the commissioners court of the county (or counties, if multi-county district).
 - Harris County - July 1 deadline and file within 30 days after receipt
- Auditor must be an independent certified public accountant or firm of certified public accountants licensed in this state.



Audit Exemption for Certain Districts

- Compiled Financial Statement allowed for ESDs having:
 - No bonds; and
 - Not more than a total of \$250,000 in receipts for operations, loans, taxes or contributions in the last fiscal year; and
 - No more than \$250,000 in cash or temporary investments.
- Filing must be accompanied by an affidavit “attesting to the accuracy and authenticity of the statements.”
- Same filing deadlines and consequences apply.
- If ESD has a website, last 3 years of financial statements posted online (SB2 requires most recent information to be posted)
- Most basic level of financial statement review that a CPA can provide.
- Exemption does not apply to Harris County ESDs.



Audits

- If ESD fails to complete and file the required audit report (or compiled financial statement) by September 1 and a county auditor is not ordered to prepare the report, the board president and treasurer are *automatically removed* and the commissioners' court is required to fill the vacancies.
- Only applies to ESDs in a single county, and not in Harris County.



Bidding and Exceptions



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Bidding

- A district must submit to competitive bids an expenditure of more than \$50,000 for one item or service or more than one of the same or a similar type of item or service in a fiscal year.
 - A district may solicit bids for lesser amounts as well.
 - “lowest responsible bidder”



Bidding - Exceptions

- the purchase or lease of real property
- an item or service that the board determines can be obtained from only one source
- **a contract for fire extinguishment and suppression services, emergency rescue services, or ambulance services**
- **purchase of bunker gear**
- purchase of vehicle fuel
- the purchase of insurance



Bidding - Exceptions

- an emergency expenditure
- contract with state to participate in general services commission state purchasing program
- purchases made pursuant to local government co-op purchasing program
- purchases made under federal supply schedules of the United States General Services Administration



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Bidding Exceptions – Buying Equipment/Supplies

- Local Government Purchasing Cooperatives
 - BuyBoard
 - HGAC
 - State of Texas Co-Op

Co-ops require application and/or resolution of the Board to join. No fee to join.



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Bidding Exceptions – Building Things

- Competitive Sealed Proposals
- Design-Build Contracts
- Construction Manager as Agent
- Construction Manager at Risk

All are very distinct options and are defined in the Government Code.



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Miscellaneous Things that Don't Fit Neatly in a Category



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District Website

- SB2 addition – 2019, effective January 1, 2020
 - Name of each Commissioner
 - Mailing address, email address and phone number of the ESD
 - Official contact information for each commissioner
 - ESD's budget for the previous 2 years
 - ESD's proposed or adopted budget for the current FY



More Web Requirements

- Additional SB2 web requirements:
 - Budget change from last FY to current FY, in both \$ and %
 - Amount of property tax revenue budgeted for M&O expenses for current FY and previous 2 FYs
 - M&O tax rate adopted for current FY and previous 2 FYs
 - Debt tax rate for same time periods
 - Most recent financial audit



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But Wait, More Web Requirements!

- HB 305 (2019) applies to political subdivisions that impose a tax and “maintained a publicly accessible website at any time on or after **January 1, 2019**”:
 - ESD contact information (mailing/email/phone)
 - Each elected officer
 - Date and location of the next election
 - Requirements and deadline for filing for candidacy (posted at least one year before election day)
 - Each notice of meeting (i.e. agendas) from Sept 1, 2019 forward
 - Each record of meeting (i.e. minutes) from Sept 1, 2019 forward



And A Few More for 2021

- HB 1154 (effective September 1, 2021) – additional law on information for websites for a District with \$250,000 or more in revenue/investments/loans or bonds of any amount and a population of 500 or more.
 - Name of District
 - Name and Term of Office of Each Commissioner
 - Contact Info – incl. Mailing and Physical Addresses and Phone
 - Official Contact info for each Commissioner
 - Exec. Director/General Manager identity, if one is employed by District
 - Name and Contact info for Tax Assessor/Collector
 - Ad Valorem Tax Rate



2021 continued....

- Sales and Use Tax Rate
- “Any” Notice Required by the Tax Code
- Location and Schedule of Meetings
- Each Notice (i.e. agenda) of a Meeting for Current *Calendar* Year and Immediately Preceding Calendar Year
- Minutes for Meetings in the Current *Calendar* Year and the Immediately Preceding Calendar Year
- Most Recent Audit



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Paperwork to Have

- Records Retention Policy
- Investment Policy
- Policy for Public Participation
- Employee Manual – for paid staff
 - New as of September 2021 – COVID policy (“Paid Quarantine Leave”)
 - “shall develop and implement a paid quarantine policy for fire fighters...and emergency medical technicians who are employed by a [District] and ordered to quarantine or isolate due to a possible or known exposure to a communicable disease while on duty.”



Form 1295

- Required for all contracts with (private) business entities approved by the Board, or a contract over \$1 million.
- Electronic form; entity contracting with ESD fills out form electronically and forwards with proposed contract (no longer has to be notarized)
- ESD electronically accepts Form 1295 within 30 days of contract acceptance
- Texas Ethics Commission maintains database
www.ethics.state.tx.us



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Cybersecurity Training

- Local government (i.e. ESD) *elected officials and employees* who have access to an ESD's computer system or database must complete cybersecurity training
- Annual training and is reported to Dept. of Information Resources



Employers of First Responders Notice

- Worker's Compensation Dispute Notice from the Office of Injured Employee Counsel
- An employer who employs first responders or who supervises volunteer first responders posts notice per HB 2082 (2017).
- Notice is posted in administrative office and in the places where each first responder employee (or volunteer) “will regularly see the notice.”
- Post in English and Spanish, and any other language common to the first responder employee (or volunteer)
- www.oiec.texas.gov//resources/employernotice.html



Infection Control Officer

- ESD with employees or the ESD Service Provider designates ICO.
- “uses emergency response employees or volunteers”
– key term
- ICO must be a licensed health care professional or have training in infection control.
- ICO is liaison between the ESD/Service Provider and the destination hospital.
- ICO gives/receives information regarding exposure to a laundry list of “reportable diseases.”



Surplus and Salvage Property

- Cannot give away government property (an ESD is a local government)
- Surplus Property - has value
- Salvage Property – typically has no value, or may be old/no longer suited for its use
- Texas Forest Service program



Fees of Office

- Commissioner may receive fees of office up to \$150/day for performing duties as defined
- \$7,200 annual cap – Board may set lower cap
- Fees not allowed unless Board adopts resolution
- Reimbursements allowed



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Annual Financial Reporting

- Special Purpose District Financial and Tax Report
 - Required of any ESD that had outstanding bonds or gross receipts in excess of \$250,000 or cash or temporary investments in excess of \$250,000 in the previous fiscal year.
 - Information required on this report is similar to that required to complete the annual report to the Division of Emergency Management.
 - 90 day submission period began January 1.
 - Civil penalty up to \$1000 for failure to report.
 - www.comptroller.texas.gov/transparency



ESD Operations

“If you have seen one ESD, you have
seen one ESD.”



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Types of ESD Operations

- Volunteer Departments
 - Volunteers have other jobs in local community
- Combined Departments
 - Paid staff to cover shifts when volunteers are out of community at work
- Employee Departments
 - Insufficient volunteer manpower to meet call volume demands of service area



One Thing in Common

- When it comes to decisions....



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What Structure Will Work?

- Things to consider:
 - Attitude of Community
 - Existing Structure
 - Future City Annexation?
 - Regulatory Impacts
 - Access to Grants and Loans



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Considerations

- Attitude of Community
 - Volunteer Fire Department History and Support
 - Desire for Government Involvement
 - Political Concerns



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Considerations

- Existing Structure
 - Volunteer Fire Department
 - Organization
 - Effectiveness



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Considerations

- Future City Annexation?
 - City Removal of Territory from District
 - Potential loss of tax revenues
 - Ability to secure revenues to pay share of debt
 - City within District
 - Conflicts over control of services
 - Conflicts over access to tax revenues



Considerations

- Regulatory Impacts:
Employment Law Considerations

Texas Commission on Fire Protection Regulation

- Of Department
- Of Fire Fighters



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Considerations

- Access to Grants and Loans
 - Some available to Volunteer Fire Departments only
 - Some available to political subdivisions only



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Organizational Structure – ESD Contracts for Services

- Contracted Service Providers
 - ESD serves as financing and contract manager for 3rd party service providers, which can be:
 - Volunteer Fire Departments;
 - Volunteer EMS Organizations;
 - For-Profit EMS Organizations; and
 - Other Local Governmental Entities.



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Organizational Structure – ESD as Employer

- District Personnel
 - ESD employs its own personnel to provide services to the community



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Service Providers

- Volunteer Departments/Organizations
 - Usually helped create the ESD
 - Generally have long history of serving the Community
 - Many volunteers who invest time and energy in service
 - Have had to rely upon donations and County funding, if any
 - Historically make decisions without oversight
 - Sometimes conflicts between multiple service providers
- Transitioning to a Contract Relationship with ESD can be challenging for the volunteer department.



Service Providers

- Contract Negotiations
 - Service Standards
 - service area
 - services provided
 - regulatory compliance/operations standards
 - response time (how to measure, etc.)



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Service Providers

- Contract Negotiations
 - Service Standards (cont.)
 - personnel (training, number of people, etc.)
 - compliance with ESD policies and state laws
 - ownership and maintenance of assets
 - records and reporting to ESD and others



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Service Providers

- Contract Negotiations
 - Other Provisions
 - Audit requirements
 - Purchasing limitations/requirements
 - Insurance
 - Budgeting



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Service Providers

- Contract Negotiations
 - Other Provisions (cont.)
 - Term of Contract
 - Payments – timing and amount
 - Termination
 - Assignment



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Oversight and Assistance



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State Agencies with Oversight

- Texas Commission on Fire Protection
 - for entities with paid fire fighting staff
- Texas Department of State Health Services
 - for entities providing EMS services
- Texas Attorney General
 - for Open Government and Open Records Issues



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Additional Organizations / Agencies

- SFFMA (Volunteer Departments)
- Texas Forest Service (Grants, Helping Hands Program)
- Texas Division of Emergency Management (Annual Report)
- State Library and Archives Commission (Records)
- Texas Comptroller (T-N-T, Sales Tax, Annual Report)
- Texas Secretary of State (Elections)



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Helpful Websites

- Texas State Assoc. of Fire & Emergency Districts
 - www.safe-d.org
- Texas Attorney General
 - www.texasattorneygeneral.gov
- Texas Comptroller of Public Accounts
 - www.comptroller.texas.gov
- Texas Secretary of State
 - www.sos.state.tx.us
- Texas Division of Emergency Management
 - www.dps.texas.gov/dem



Laws that Apply to ESDs – The Top 6

- Texas Constitution, Art. 3, Section 48-e
- Health and Safety Code, Chapter 775
- Government Code, Chapters 551 & 552 (open meetings/open records)
- Government Code, Chapter 2269 (competitive bidding and alternative bidding procedures)
- Tax Code
- Election Code



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Questions?

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