



# SAFE-D

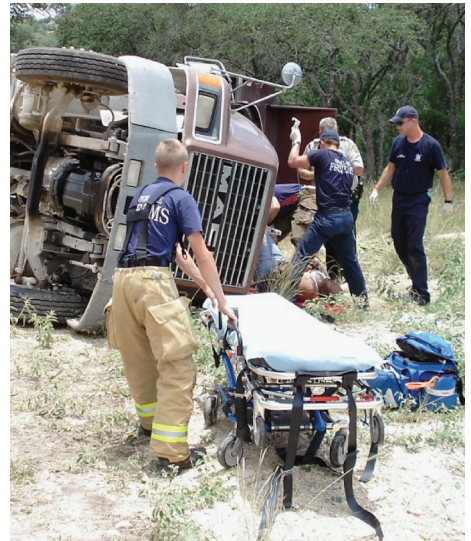
Texas State Association of Fire and Emergency Districts



SAFE-D

# ESD HANDBOOK

*A guide for the administration  
and operation of emergency  
services districts in Texas*



*1st Edition 2017*

TABLE OF CONTENTS

**Chapter 1: ESD History & Overview ..... 1**  
**Local Governments in Texas ..... 1**  
    Counties..... 1  
    Cities ..... 1  
    Special Districts ..... 1  
    Emergency Services Districts ..... 2  
    History & Purpose..... 2  
**Enabling Laws ..... 3**  
    Constitutional Provisions ..... 3  
    Enabling Statutes ..... 3  
**ESD Creation ..... 4**  
    First Steps..... 4  
    Process Overview (separate booklet)..... 4  
**Conversion from RFPDs..... 5**

**Chapter 2: Powers and Duties of ESDs ..... 6**  
**Authority over Emergency Services Issues ..... 6**  
**Provision of Emergency Services ..... 6**  
**Governing Body ..... 6**  
    Committees ..... 6  
**Taxing Authority ..... 7**  
    Ad Valorem (Property) Tax ..... 7  
    Sales Tax..... 7  
**Service Contracts ..... 7**  
**Police Powers ..... 7**  
    Fire Code ..... 7  
    Fire Marshal..... 8  
    Penalties and Fines..... 8  
**Fees ..... 8**  
**Litigation..... 8**  
**Donation of Funds..... 8**  
**Construction of Public Facilities ..... 8**  
**Employees ..... 8**  
**Purchasing ..... 9**  
**Bonds and Loans – Borrowing Funds..... 9**  
**Investing - PFIA..... 9**  
**Disposal of Property ..... 9**  
**Hazardous Materials..... 9**  
**Territorial Issues/District Boundary Changes ..... 9**  
    Annexation ..... 9  
    Municipal Removal of District Territory (Deannexation) ..... 10  
    Dissolution ..... 10  
    Division..... 10  
**ESD Reports/Designations ..... 11**  
    Annual Report ..... 11

## TABLE OF CONTENTS

Special Note: County Reports .....	11
Audit .....	11
Depository.....	11
<b>Delegation of Powers.....</b>	<b>12</b>
<b>Chapter 3: Roles and Responsibilities of the ESD Commissioner .....</b>	<b>13</b>
<b>Appointed Commissioners .....</b>	<b>13</b>
Qualifications .....	13
<b>Elected Commissioners.....</b>	<b>13</b>
Qualifications .....	13
<b>Oaths .....</b>	<b>14</b>
<b>Term of Office.....</b>	<b>14</b>
<b>Compensation .....</b>	<b>15</b>
Expense Reimbursement.....	15
<b>Offices and Roles of Officers of the Board.....</b>	<b>15</b>
<b>Establishing Policies and Strategic Planning .....</b>	<b>15</b>
Strategic Planning.....	15
<b>Bonding Requirement.....</b>	<b>16</b>
<b>Training Requirements .....</b>	<b>16</b>
Open Government.....	16
ESD Commissioner Education .....	16
<b>Removal of an ESD Commissioner.....</b>	<b>17</b>
Removal of a member by the ESD Board .....	17
Removal of an appointed ESD Commissioner by the County Commissioners Court .....	17
Removal of an elected Commissioner .....	18
<b>Vacancies .....</b>	<b>18</b>
Appointed Commissioners.....	18
Elected Commissioners – Multi-County Districts .....	18
Elected Commissioners – Harris, Smith, and Orange Counties.....	18
<b>Liability of Board Members.....</b>	<b>18</b>
<b>Chapter 4: ESD Board Meetings.....</b>	<b>20</b>
<b>Required Meetings .....</b>	<b>20</b>
<b>Open Meetings Act.....</b>	<b>20</b>
Notices .....	20
<b>Public Information Act.....</b>	<b>20</b>
Requesting Public Information .....	21
Exceptions.....	21
<b>Notice of District Office .....</b>	<b>21</b>
<b>Agenda.....</b>	<b>21</b>
<b>Rules of Procedure .....</b>	<b>22</b>
<b>Motions.....</b>	<b>22</b>
<b>Debate.....</b>	<b>22</b>
<b>Citizen Participation .....</b>	<b>22</b>
<b>Types of meetings .....</b>	<b>23</b>
Regular Meetings.....	23

## TABLE OF CONTENTS

Special Meetings .....	23
Emergency Meetings .....	23
<b>Agenda Issues - Streamlining Meetings.....</b>	<b>24</b>
Consent Agenda .....	24
Agenda Distribution.....	25
Meeting Process.....	25
Mechanical Aids.....	26
<b>Video and Teleconference Calls .....</b>	<b>27</b>
<b>Executive (Closed) Sessions .....</b>	<b>27</b>
Process for Executive Session.....	27
Special Note on Executive Sessions/Closed Meetings .....	28
<b>Chapter 5: ESD Budget and Financial Administration.....</b>	<b>29</b>
<b>Sources of Revenue .....</b>	<b>29</b>
Setting a Property Tax Rate .....	29
Maximum Property Tax Rate .....	29
Sales Tax.....	30
Sales Tax Carve-Out .....	30
Fees .....	30
<b>Adopting a budget.....</b>	<b>30</b>
Budget Basics.....	31
Developing the Budget.....	31
Budget Preparation, Review and Adoption .....	32
Budget Calendar/Truth-in-Taxation .....	34
<b>Fiscal Year .....</b>	<b>35</b>
<b>District Depository .....</b>	<b>35</b>
<b>Audit Requirement.....</b>	<b>36</b>
Deadline .....	36
Auditor.....	36
Removal for Failure to Comply .....	36
Audit Exemption – Compiled Financial Statements.....	36
<b>Purchasing/Selling Property .....</b>	<b>37</b>
Bidding - Generally.....	37
Bidding – Exceptions .....	37
Bidding – Prohibitions .....	38
Bidding – Process.....	38
<b>Borrowing and Financing.....</b>	<b>38</b>
Loans .....	39
Bonds.....	39
Lease Purchases.....	39
<b>Disposition of Property .....</b>	<b>39</b>
Generally.....	39
Real Property.....	40
Surplus and Salvage Property .....	40
Internet Auction Sites .....	40
<b>Financial Reports.....</b>	<b>40</b>

## TABLE OF CONTENTS

Audit .....	40
Internal Reports .....	41
<b>Investments .....</b>	<b>41</b>
<b>Financial Warning Signs .....</b>	<b>42</b>
<b>Chapter 6: Providing Services.....</b>	<b>43</b>
<b>Different Models.....</b>	<b>43</b>
Contracting for Services.....	43
Special Issues .....	43
Employing Service Providers.....	44
Combination Departments.....	45
<b>Ownership of Assets.....</b>	<b>45</b>
<b>Licensing Requirements.....</b>	<b>45</b>
EMS.....	45
Firefighting .....	46
<b>Contracts.....</b>	<b>46</b>
Important Terms .....	46
Financial Oversight/Transparency .....	47
Independent Contractor or Agency Status.....	47
Liability/Immunity/Indemnification .....	47
Service Standards.....	48
Ownership of Assets .....	48
<b>Employee Issues .....</b>	<b>48</b>
Employee Policies.....	48
Employment Contracts.....	49
Employer/Employee Tax Issues.....	49
Fair Labor Issues .....	50
Civil Rights Issues .....	50
<b>Chapter 7: Ethics, Conflicts of Interest, and Accountability.....</b>	<b>51</b>
<b>Conflicts of Interest .....</b>	<b>51</b>
<b>Dual Office Holding/Incompatibility.....</b>	<b>52</b>
Dual Office Holding.....	52
Incompatibility .....	52
<b>Nepotism.....</b>	<b>53</b>
Exemption (related to Nepotism prohibitions) .....	53
Penalty .....	53
<b>Education Requirements.....</b>	<b>53</b>
<b>Removal .....</b>	<b>54</b>
<b>Chapter 8: Elections .....</b>	<b>55</b>
<b>Creation.....</b>	<b>55</b>
County Election.....	55
<b>Elections for Commissioners .....</b>	<b>56</b>
<b>Annexation Election.....</b>	<b>56</b>
<b>Sales Tax Elections .....</b>	<b>56</b>
<b>Election to Increase an ESD’s Maximum Property Tax Rate .....</b>	<b>57</b>

## TABLE OF CONTENTS

<b>Bond Elections .....</b>	<b>57</b>
<b>Election Process .....</b>	<b>57</b>
<b>Political Advertising vs. Public Education.....</b>	<b>57</b>
<b>Chapter 9: Interacting with Constituents and Media .....</b>	<b>59</b>
<b>Developing Your Message .....</b>	<b>59</b>
Mission Statement .....	59
<b>Community Outreach.....</b>	<b>59</b>
Public Education.....	59
Newsletters.....	59
Websites/Social Media .....	60
Press Releases .....	60
<b>Working with Media .....</b>	<b>60</b>
Developing Positive Relations.....	61

## **Chapter 1: ESD History & Overview**

### **Local Governments in Texas**

An introduction to Emergency Services Districts (“ESD”) requires basic knowledge of the structures of local government within the State of Texas. Understanding the existence and interconnectivity of local governments is a vital factor in operating an efficient ESD.

#### Counties

Texas is divided into 254 counties that serve as “general purpose” governments for their residents. As the primary type of local government below the state level, counties provide both general services for their residents (such as road and bridge construction/maintenance, jails, welfare, and law enforcement) as well administrative services for the State (such as vehicle registration and licensing and voter registration). The nature of ESDs requires close work and communication with the county government. A County Judge (who is elected by county-wide vote) and four County Commissioners (elected to individual precincts) are responsible for governing the county. These individuals serve on the County Commissioners Court, which can be thought of as a “Council” or “Board” for the County. There will be multiple references to the Commissioners Court throughout this document.

#### Cities

Cities, sometimes referred to as municipalities, are essentially formalized organizations created by the people who live in one area and want to share certain governmental services. This is called “incorporation.” When a city incorporates, it pledges to provide its residents with certain municipal services, such as law enforcement, sanitation, transportation, and street maintenance. Indeed, some cities offer fire and emergency services, though many do not. There are two types of cities in Texas: Home Rule and General Law. The different rules and governing structures that accompany that distinction are beyond the scope of this document.

There were 1,209 cities in Texas according to the 2010 census and that number has been growing slowly each year as resident areas decide to incorporate. As you will see, ESDs can serve both incorporated portions of cities as well as unincorporated areas of counties. There are special rules that govern ESD-city interaction and cooperation between the two governmental units is essential in many circumstances.

#### Special Districts

Texas is rife with various “special districts” (more than 3,000 – including school districts – according to the 2010 census) that exist throughout the state. Generally, these districts are governmental or quasi-governmental entities established to provide specific services to residents that would otherwise be unable to obtain those services elsewhere. Emergency Services Districts are but one type of special district. The most familiar type of special districts are probably School Districts, but there are a wide variety of special districts in the state, including: Municipal Utility Districts, Water Control & Improvement Districts, Hospi-

tal Districts, Library Districts, Crime Control and Prevention Districts, Public Improvement Districts, Municipal Management Districts, and Limited Districts, to name just a few.

Every type of special district has a different set of laws and regulations that it must abide by. As an ESD Commissioner, it is important to be familiar with at least the existence of any special districts that are near or possibly even overlap your ESD. Occasionally, as will be explored later, different governmental entities in an area may encounter issues that present the need for cooperation.

### Emergency Services Districts

Emergency Services Districts are local political subdivisions of the State of Texas that may provide fire, rescue, EMS and other emergency services. ESDs are governed by a Board of five Commissioners. These Commissioners are generally appointed by the County Commissioners Court that they reside in. In Harris, Smith, and Orange counties, as well as ESDs that encompass more than one county, ESD Commissioners are elected by the residents of the ESD. ESDs are primarily funded by an ad valorem (property) tax that, under the State Constitution, cannot exceed \$0.10 per \$100 of property valuation. ESDs may also levy a sales and use tax for additional funding.

### History & Purpose

The origination of the idea for a special governmental entity to provide fire protection and emergency medical service began in 1949 at the behest of farmers and local property insurers that hoped to provide adequate funding for rural areas against the devastating effects of fire damage. In response, the Texas Legislature created Rural Fire Prevention Districts ("RFPD"). These special districts would levy a property tax capped at \$0.03 per \$100 of property valuation and serve as the precursors to ESDs.

As time passed and the Texas population grew, more areas looked to the legislature to create a better funded form of the existing RFPD. In 1987, the Legislature created, with voter approval, Emergency Services Districts that were equipped with broader powers and responsibilities than RFPDs and possess the capability to tax at the higher rate of \$0.10/\$100. ESDs were originally divided into two classifications with a different set of laws pertaining to each based on the population of the District. In 2003 and 2011, the various laws were refined by first converting all RFPDs into ESDs and later uniting all ESDs under one set of laws.

ESDs are designed to ensure adequate funding of local fire, EMS, rescue, and other emergency services. An important principle behind ESDs is to spread the funding for vital emergency services amongst everyone within the district that might depend on those services. Simply put, ESDs are an answer to fundraising efforts such as bake sales and barbecues that typically take time and effort away from service provision and can still leave the service provider in difficult financial straits.

Tax revenues may be used by the ESD to hire full-time emergency personnel, contract with other entities that have full-time fire and emergency medical departments, and/or purchase new equipment and facilities. More importantly for some areas, ESDs can contract



with volunteer fire departments and emergency medical services organizations and provide a stable funding source for these entities. ESD tax revenues mean more time to focus on training and the provision of emergency services rather than fundraising and other activities. Through stable funding, many established ESDs have considerably reduced fire and medical response times and allowed local entities to provide enhanced services, thus saving lives, property, and funds for local citizens.

The establishment of an ESD may result in a better Insurance Services Office (ISO) rating within the ESD service area, and lower insurance premiums for businesses and homeowners. The result is fair, evenly shared support from all the citizens who get fire response and emergency medical care from their local emergency services organization or the ESD itself.

## **Enabling Laws**

### Constitutional Provisions

The Texas Constitution authorizes the creation and existence of ESDs through enabling legislation passed by the Texas Legislature. ESDs do not have any powers except those expressly provided by statute. Article 3, Section 48-d was the original provision authorizing the creation of Rural Fire Prevention Districts. Creation of ESDs was subsequently authorized in Article 3, Section 48-e. There are three crucially important aspects to the constitutional provision:

- Authorization of creation
- Authorization and limitation of taxing authority
- Authorization of service provision

### Enabling Statutes

Texas Health and Safety Code Chapter 775 is the enabling statute for all Texas Emergency Services Districts. Chapter 775 contains what are essentially the legal prescriptions for operating and conducting business as an ESD. When confronting a question surrounding the powers, legal requirements, or constraints for an ESD, Chapter 775 should be the primary source of authority.

Prior to June of 2011 and the passage of Senate Bill 917, Texas Health and Safety Code Chapter 776 was available to serve as the enabling statute for ESDs in counties with populations less than 125,000 persons. In 2011, the Legislature decided that ESDs should be subject to one set of laws as opposed to two, sometimes very different, statutes and thus repealed Chapter 776.

For the sake of historical accuracy, Rural Fire Prevention Districts were organized under Chapter 794 of the Texas Health and Safety Code, which was repealed in 2003.

## **ESD Creation**

### First Steps

It is vitally important to conduct important information gathering and analysis when beginning the ESD creation process. The first questions that should be asked when considering the decision to create an ESD are:

- What is the purpose of creating an ESD in this area?
- What specific powers and responsibilities will this ESD have?
- Is there support for an ESD in the community?

The last question is possibly the most important, as ESDs are, at their core, grassroots organizations. The citizens, at their discretion, create ESDs. Following the decision to move forward with the creation of an ESD, there are a few preliminary steps that need to be addressed:

- The precise area of the District should be determined and rendered in a legal definition.
- Other political subdivisions that share boundaries or overlap with the proposed ESD area should be identified and consulted.
- The county's Central Appraisal District and Tax Assessor-Collector should be notified and the proposed ESD's tax base and potential revenue should be formulated.
- The projected revenues should be compared with the likely expenditures for providing service in the ESD.
- Local officials and leaders such as the County Judge and Commissioners, the County Clerk, the Mayor and Councilmembers of any adjacent or overlapping incorporated cities, any affected service providers (existing fire and EMS providers), and, in some areas, any civically minded and prominently involved residents should be consulted and included in the process.
- Any organized support or opposition groups should be identified.
- An attorney with experience with ESDs and local government matters should be contacted for, at the very least, a consultation.

Only after these preliminary steps have been conducted should the organizing parties proceed to the actual first step of the ESD creation process, which is to file a valid petition with the County Commissioners Court.

### Process Overview (separate booklet)

The full process for creating an ESD is covered in a separate document that will delve more deeply into the issues surrounding ESD creation. As this document is meant to be a handbook for Commissioners and stakeholders of already established ESDs, a brief overview of the creation process is provided below:

- Petition by Qualified Voters (including municipal consent)
- Acceptance by County Commissioners Court
- County Orders Election

- County Conducts the Election
- County Canvasses the Election
- County Orders Creation of the District

There are potential pitfalls throughout the creation process as well as essential steps that must be taken to successfully create an ESD. The advice of legal counsel is highly recommended during this process.

### **Conversion from RFPDs**

In 2003, the Legislature passed a law converting all remaining RFPDs into ESDs. The statutory provision relating to the conversion (Texas Health and Safety Code Section 775.026) has three main characteristics:

- Changing the name. This could be confusing as, in many counties, “Rural Fire Prevention District No. 1” did not necessarily become “Emergency Services District No. 1,” and so on.
- The ESD assumed all obligations and outstanding indebtedness of the old RFPD.
- A Commissioner on the RFPD simply became a Commissioner of the newly converted ESD.

This conversion process resulted in RFPDs being granted more powers and access to higher taxing authority under the broader ESD statute. However, **the conversion did not automatically raise the RFPD authorized tax rate of three cents per every \$100 of property valuation.** A converted RFPD was, and still is, required to have an election if it desires to take advantage of the ten-cent cap now available to it as an ESD.

## **Chapter 2: Powers and Duties of ESDs**

This chapter is intended to answer the basic question: What can ESDs do? Some of these powers are in fact responsibilities that every ESD must exercise, while others are optional powers that an ESD may undertake at its discretion. This list is not all-inclusive. For more detailed questions about specific actions an ESD may take, consult Chapter 775 of the Texas Health and Safety Code or an experienced ESD attorney.

### **Authority over Emergency Services Issues**

It is important to remember the basic concept behind the creation of ESDs. The creation process is initiated and conducted by the citizens of an area, making ESDs truly grassroots governmental entities. The “grassroots” concept is essential to understanding that ESDs have primary authority over service provision in the areas they cover. In essence, if an ESD is authorized to provide a certain service in an area, the ESD is the ultimate authority over provision of that service in the area. The Texas Legislature has stated that ESDs are the preferred method for emergency services provision in rural areas.

### **Provision of Emergency Services**

ESDs may provide the emergency services enumerated in Section 48-e of the Texas Constitution. The services to be provided (i.e. fire prevention and control, emergency ambulance service, etc.) must be clearly identified in the creation petition.

### **Governing Body**

A Board of five commissioners governs an ESD. In most counties across the state, these Commissioners are appointed to two-year terms by the County Commissioners Court. In Harris County and ESDs that cover territory in more than one county, commissioners are elected at-large for four-year terms. Commissioners in Orange and Smith counties are elected in single member districts to terms of four years.

The ESD Board of Commissioners is the source of authority and governance for the District and has final say over all matters affecting the ESD. The specifics of the ESD Board and its functions are covered more extensively in Chapter 3.

### **Committees**

The ESD Board may choose to create and appoint committees to handle various business matters. Committees can help the Board save meeting time and provide more focused attention on specific ESD issues. If an ESD Board creates a committee, no more than two ESD commissioners may meet as a committee without posting notice of the committee meetings as required by the Texas Open Meetings Act.

## **Taxing Authority**

As a governmental entity, the primary source of funds for an ESD is tax revenue. An ESD has two primary methods of securing this revenue:

### Ad Valorem (Property) Tax

An ESD may impose an ad valorem tax on all real and personal property within the District that is subject to taxation. The current maximum allowable rate of taxation is ten cents per \$100 of valuation. However, ESDs across the state have various maximum ad valorem rates. ESDs that were formerly RFPDs may have rates capped at three cents per \$100 of valuation or lower, given that RFPDs were originally capped at three cents in the State Constitution. Other ESDs may have tax rates lower than ten cents based on a decision made during the creation process to have a lower rate or other statutory restrictions that existed when they were created.

If an ESD has a maximum ad valorem tax rate below \$0.10/\$100 and the Board wishes to increase that maximum, voters within the ESD must approve any increase in the maximum ad valorem tax rate. The voters of an ESD with a maximum ad valorem tax rate lower than ten cents can vote to approve an increase in that maximum ad valorem tax rate up to the constitutional limit of ten cents per \$100.00 valuation. If approved by the voters, the maximum ad valorem tax rate may be increased to the rate authorized by the election for the following tax year. ESDs wishing to conduct an election to increase the maximum authorized ad valorem tax rate should seek the advice of qualified legal counsel.

### Sales Tax

ESDs are one of a select group of local political subdivisions that are eligible to levy a local sales and use tax, subject to voter approval. A more detailed discussion of this topic can be found in Chapter 5 of this handbook.

## **Service Contracts**

An ESD may enter into and perform necessary contracts. An ESD may contract with other entities for firefighting facilities, fire extinguishment services, or emergency rescue and ambulance services, or for reciprocal operation of services (mutual aid). The contracting process is subject to certain statutory requirements imposed by the state.

## **Police Powers**

As a governmental entity, an ESD is afforded certain police powers to exercise as it sees fit:

### Fire Code

ESDs have the power under statute to adopt and enforce a fire code. An ESD may require building inspections to aid in fire prevention, require and may promote educational programs to help carry out its purposes. ESD fire codes may not conflict with a fire code adopted by the county and may not be enforced within the boundaries of the city that has adopted a fire code.

### Fire Marshal

If the county does not have a county fire marshal, the ESD may create a district fire marshal position and bill for such services. An ESD may commission a peace officer or employ a person who holds a permanent peace officer license to inspect for fire hazards in structures, appurtenances, fixtures, or other real property located in the ESD and adopt procedures to order the owner or occupant of the property that fails an inspection to correct a hazardous situation.

A Fire Marshal may investigate the cause, origin, and circumstances of each fire that damages property, determine whether the fire was caused by negligent or intentional conduct, and enforce all state, county, and ESD orders and rules that relate to fires, explosions, or damages by a fire or an explosion.

### Penalties and Fines

A District may levy penalties and fines for failure to comply with a fire code in order to aid in enforcement.

### **Fees**

ESDs, or a person authorized by contract on the ESD's behalf, may charge a reasonable fee for emergency services performed for or on behalf of a person or entity. For example, an ESD could charge a fee for responding to a false alarm, for undertaking a fire code inspection, or for providing hazardous materials services.

### **Litigation**

An ESD may sue and be sued.

### **Donation of Funds**

ESDs may accept and receive donations for funds and/or services. However, it is important to remember that ESDs may disburse funds only as provided by statute. As such, an ESD **may not** donate funds to an outside entity.

### **Construction of Public Facilities**

An ESD may construct, lease, own, and maintain real property, improvements, and fixtures necessary to house, repair, and maintain emergency services vehicles and equipment. Construction of public facilities is subject to many statutory bidding requirements as described in Chapter 5 of this Handbook. An ESD may contract with other entities, including other ESDs and municipalities, to make emergency services facilities available to the ESD.

### **Employees**

An ESD may appoint and employ any necessary officers, employees, or agents in order to accomplish the ESD's activities. There are several legal and procedural concerns that accompany the ESD's employment of individuals, which will be discussed in Chapter 6 of this Handbook.

## **Purchasing**

An ESD may lease, own, maintain, operate, and provide emergency services vehicles and other necessary or proper apparatus, instrumentalities, equipment, and machinery to provide emergency services.

An ESD may also acquire, purchase, hold, lease, manage, and occupy real and personal property or an interest in property.

Purchasing of property, whether real or personal, is subject to certain statutory requirements as discussed in Chapter 5 of this Handbook.

## **Bonds and Loans – Borrowing Funds**

ESDs may issue bonds and notes in one or more issues that are payable from and secured by liens on and pledges of taxes and/or revenues. More information is available on this topic in Chapter 5.

## **Investing - PFIA**

An ESD must invest its funds subject to the provisions of the Public Funds Investment Act (Government Code Chapter 2256.) The topic is covered in more depth in Chapter 5 of this document.

## **Disposal of Property**

An ESD may dispose of real property through sale or lease and personal property through sale or salvage. A more detailed discussion of this topic is covered in Chapter 5.

## **Hazardous Materials**

An ESD may provide hazardous materials response and bill for such services.

## **Territorial Issues/District Boundary Changes**

### Annexation

An ESD is allowed to expand its territorial limits by an election if 50 registered voters who own taxable real property in the area to be annexed **or** a majority of the registered voters if there are less than 50 registered voters in the proposed territory file a petition with the Board requesting the annexation. The petition is filed with the Secretary of the Board and the Board then sets a public hearing on the matter. The hearing must be held at least 30 days after the order setting hearing. The Secretary is responsible for providing notice of the time and date of the hearing along with a description the proposed annexation territory. Copies of the notice must be posted in three places within the ESD and one place inside the proposed territory to be annexed at least 15 days before the hearing. Notice of the hearing must also be published in a newspaper of general circulation in the county at least 16 days before the hearing.

Should the Board find the proposed territory is necessary and desirable for annexation, it must call an election for annexation. The Board may approve only the territory it finds necessary and desirable for the annexation. The Board has discretion to decide that all, part or

none of the territory in the petition is necessary and desirable to the ESD. Annexation is only final if approved by a majority of voters both in the ESD as well as in the territory requesting annexation.

#### Municipal Removal of District Territory (De-annexation)

There is no legal provision allowing a municipality to remove its territory from an ESD once it has consented to its inclusion except through the municipal annexation process. A municipality may remove territory from the ESD upon annexation of that territory by the municipality if it agrees to provide emergency services in the territory and notifies the Secretary of the ESD Board in writing of the annexation and that commitment.

If the municipality annexes territory from the ESD, it must compensate the ESD for the annexed territory's pro rata share of the ESD's indebtedness. An ESD must use any annexation compensation from a city solely for paying the ESD's indebtedness. A member of the Board who, because of municipal annexation, is no longer a qualified voter of an area served by the ESD or no longer owns land subject to taxation by the ESD may continue to serve until the expiration of the member's term. In some circumstances, a municipality may annex territory within the ESD, but choose to have the ESD continue to provide emergency services.

#### Dissolution

Consistent with its grassroots nature, an ESD can actually be dissolved after its creation. If at least ten percent of the registered voters in the ESD sign a petition, the ESD Board must hold a public hearing on the issue. Notice of the time, date and place of the hearing, along with the description of the ESD's boundaries and the proposal that it be dissolved must be published in a newspaper of general circulation in the ESD once a week for two consecutive weeks starting at least 21 days before the hearing.

It is the ESD Board's responsibility to consider the petition, and **the Board alone can decide whether to grant or deny the petition.** Should the petition be granted, an election is needed to confirm the dissolution. If a majority of voters vote in favor of dissolution, the ESD is dissolved. An election to create a new ESD within the boundaries of the dissolved ESD may not take place until after the one-year anniversary of the date of dissolution. If the vote for dissolution fails, another election for dissolution may not be held for at least a year after the canvass of the first election. There are steps and procedures that must take place in the event of an ESD's dissolution. For more information, consult Section 775.055 of the Texas Health and Safety Code or an experienced ESD attorney.

#### Division

A statutory provision allows for the division of an ESD and the creation of a new ESD in certain less-populated counties. Please consult Texas Health and Safety Code Section 775.221 for more information.



## **ESD Reports/Designations**

### Annual Report

Pursuant to Section 775.083 of the Texas Health and Safety Code, ESDs are required to file an annual report with the Texas Department of Agriculture on or before January 1 of each year. The report must contain:

- The ESD's name
- The name of the county or counties in which the ESD is located
- The ESD's business address
- The name, mailing address, and term of office of each commissioner
- The name, mailing address, and term of office of the ESD's general manager, executive director, and/or fire chief
- The name of the ESD's legal counsel or other consultant for the ESD; and
- The ESD's annual budget and tax rate for the preceding fiscal year.

In an agreement with the Texas Department of Agriculture, SAFE-D is authorized to collect ESD annual reports through its website, [www.safe-d.org](http://www.safe-d.org).

### Special Note: County Reports

**Upon request** from a County Commissioners Court in which the ESD is located, an ESD is required to provide a written report regarding the ESD's budget, tax rate, and debt service for the preceding fiscal year. The Commissioners Court request must be made by December 31 and the ESD's report must be provided no later than the following February 1.

Multicounty ESDs must give a written annual report regarding the ESD's administration and financial condition to the County Commissioners Court of each county in which it is located by February 1 of each year.

### Audit

On or before June 1 of each year, an ESD is required to prepare and file an audit of the ESD's accounts and records with the County Commissioners Court that contains any part of the ESD. There is an exception to filing an audit for certain smaller ESDs. Audits must be conducted by an independent, licensed certified public accountant. Audits are not performed by ESD staff or the ESD's bookkeeper.

It should be noted that an ESD is subject to severe penalties for failure to timely file an audit. A more in depth discussion of the audit requirement can be found in Chapter 5 of this Handbook.

### Depository

An ESD is required to designate one or more banks to serve as depositories for ESD funds. For a more detailed discussion, please see Chapter 5.

### **Delegation of Powers**

An ESD **may not** delegate any of its powers to an outside entity. It may, however, contract with outside service providers to perform its statutory duties.

## **Chapter 3: Roles and Responsibilities of the ESD Commissioner**

This chapter is designed to provide an understanding of the various issues that confront individuals in their roles as ESD Commissioners.

### **Appointed Commissioners**

As stated previously, most ESD Commissioners are appointed. Unless the ESD is in Harris, Smith, or Orange counties, or covers area in more than one county, the ESD Commissioners are appointed by the County Commissioners Court for the county in which the ESD exists. ESD Commissioners are appointed to two-year terms.

#### Qualifications

There are two primary requirements for appointed ESD Commissioners - age and residency. To be eligible for appointment as an ESD Commissioner, a person must be:

- (1) At least 18 years of age; and
- (2) A resident citizen of the state that is:
  - a. A qualified voter within the ESD; or
  - b. An owner of land subject to taxation in the ESD.

While there are no set criteria for appointment beyond the age and residency requirements, the statute does offer some guidance on the traits a county commissioners court should seek in a potential ESD Commissioner. Specifically, the statute requires that the commissioners court consider relevant factors in determining the individuals to appoint as emergency services commissioners, including whether the individuals have knowledge of fire prevention or emergency medical services and knowledge that is relevant to the common policies of the Board.

### **Elected Commissioners**

ESD Commissioners are elected in Harris, Smith and Orange counties as well as in ESDs that exist in more than one county. Elected commissioners serve four-year terms. In Harris County and multi-county ESDs, commissioners are elected at large from the entire ESD. In Smith and Orange counties, commissioners are elected from single-member districts within the ESD.

#### Qualifications

The qualifications to serve as an elected ESD Commissioner are the same as those for Appointed Commissioners. However, a person is not eligible to serve as an elected ESD Commissioner if:

- (1) That person is related within the third degree to:
  - a. Someone providing professional services to the ESD;
  - b. A commissioner of the ESD; or
  - c. Someone who is an employee or volunteer of an organization providing emergency services to the ESD.

- (2) That person is employed by an ESD Commissioner, or an attorney or other person providing professional services to the ESD;
- (3) That person serves in a professional capacity for the ESD or an organization providing emergency services to the ESD; or
- (4) That person fails to maintain the qualifications (age, residency) required by law to serve.

## **Oaths**

At the beginning of each new term of office, an ESD Commissioner must make a sworn statement and take an oath of office. **Before assuming duties, each newly appointed/elected ESD Commissioner must be officially sworn in, usually by the county judge or other person authorized to administer oaths.** The Secretary of State provides the required forms and instructions for the necessary Statements of Office and Oaths of Office that must be completed by the ESD Board before conducting any business. The Statement of Office must be executed before taking the Oath of Office. Legal counsel should be consulted before conducting any business of a newly-created ESD.

A template for the sworn statement and the official oath of office are attached in the appendix to this document.

## **Term of Office**

As stated above, most Commissioners serving on ESD Boards are appointed by the county commissioner's court. The term of office for all appointed ESD Commissioners is two years. The County Commissioners Court has the option to reappoint current ESD Commissioners at the expiration of their terms, or appoint successors as terms expire.

In the case of an ESD located in more than one county or an ESD in Harris, Smith or Orange counties, the registered voters of that ESD elect the Board and the term of office is four years. The process for holding such an election is explained in detail in Chapter 8.

\*Special note on bracketing legislation: Appointing ESD Commissioners is the “default” status. In other words, ESD Commissioners are appointed unless the statute specifically says otherwise. In passing legislation that requires ESD Commissioners to be elected in certain counties or situations, the legislature passed bills that are “bracketed” or use specific language to identify a certain county or area. This is important because the bracketing language intended to cause Harris County ESD Commissioners to be elected states “in a county of more than 3 million persons.” There are several other provisions aimed at Harris County with this similar language. At the time of this document’s construction, Harris County is the only county in Texas with ESDs *and* a population of more than 3 million. However, the growing Texas population combined with the possibility of further ESD creation in urban and suburban areas calls into question whether future counties will be affected by the “Harris County” rules.

## **Compensation**

ESD Commissioners may be compensated at the rate of \$50 per day while actively performing work for the ESD. The total amount of compensation per year may not exceed \$3,000. An ESD Board has the discretion to determine whether it will authorize the compensation or not. Legal counsel should be consulted on this matter.

## Expense Reimbursement

ESD Commissioners may be reimbursed for **reasonable and necessary expenses incurred while performing official ESD duties**. This is a different concept than compensation for one's role as an ESD Commissioner.

## **Offices and Roles of Officers of the Board**

Each year, the ESD Board must elect a president, vice-president, secretary, treasurer, and assistant treasurer to perform the duties usually required of these offices. The office of secretary and treasurer may be combined, and if this is done, then there is usually one member who does not hold an office as an officer of the Board.

The various roles and functions of the Board Officers will be explored in more depth in the next Chapter on Board meetings.

## **Establishing Policies and Strategic Planning**

It is important to always keep in mind the overarching role of the ESD Board. ESD Commissioners are not the ones actually fighting fires or providing emergency medical care (at least not in their capacity as an ESD Commissioner.) Rather, ESD Commissioners serve both as a **policy-making body and as the decision-making body** that oversees the general provision of emergency services in their ESD. As such, the ESD Board should develop written policies and procedures for the ESD to follow in situations that may arise in the normal course of operations. These policies are then executed by those who work for or contract with the ESD to provide services. Therefore, it is a good practice to develop mutual cooperation and have open communication with those individuals. Some suggested operational policies and procedures for ESDs are:

- Standard operating procedures;
- Personnel management policies;
- Financial operations policies; and
- Policies regarding contracting for services, supplies, and equipment.

Other policies and procedures related to actual service provision may be necessary based on the specific circumstances of and services offered by the ESD. All stakeholders within the ESD, including Board members, staff, volunteers, and other interested parties should be made familiar with the standing policies of the ESD.

## Strategic Planning

One of the most vital aspects of an ESD's success is long-range strategic planning for the purpose of ensuring continued health of the ESD and the efficient provision of emergency services. Developing overall goals for the ESD and identifying the short-term and long-term

objectives needed to achieve those goals is necessary to an ESD that desires to be run like a professional organization. With this in mind, the ESD Board should schedule at least one strategic planning session (or workshop) per year to focus on broad focused goals and activities for the ESD.

### **Bonding Requirement**

The treasurer of the ESD Board must file a bond with the county clerk, for an amount to be determined by the County Judge. In multicounty Districts, the bond is determined and filed in the county with the largest population.

### **Training Requirements**

#### Open Government

All elected and appointed officials in the state of Texas are required to complete training on the Texas open government laws. The law requires two hours of open government training, consisting of a one-hour educational course on the Open Meetings Act and a one-hour educational course on the Texas Public Information Act.

All officials (including ESD Commissioners) must complete the training within **90 days** of taking office. The Open Meetings Act and the Public Information Act (which deals with open records/records requests) will be covered in more depth in a later chapter.

#### ESD Commissioner Education

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 Period – The law did not define what constitutes a “two-year period”. In practice, the two-year period has been treated as follows: if a Commissioner was appointed or elected after June 17, 2011, then the two-year period starts when that person assumes the office. For commissioners who were in office on June 17, 2011, the two-year period would have started at that date, the first day the law was in effect.

Certification – The law mandates that an “institution of higher education” must certify the training. An “institution of higher education” is a legally-defined phrase.

Training topics – The law does not specify the type of training that should be received or place any requirements on the training, other than certification. In practice, training topics often include:

- District responsibilities;
- Board responsibilities;
- Government administration;
- Ethics laws relating to public officers; and
- The governance and management of emergency services.

Failure to complete training – For purposes of removal of an ESD commissioner, “incompetency” includes failure to comply with training requirements. Removal of ESD Commissioners, generally, will be covered more in depth below.

### **Removal of an ESD Commissioner**

There are various ways in which an ESD Commissioner can be removed from office. **IMPORTANT:** The validity of a Board action is not affected even if taken when grounds for removal of a Board member exists.

#### Removal of a member by the ESD Board

The Board may remove a member if:

- The member misses more than half of the regularly scheduled meetings that the member was eligible to attend during a calendar year, without an excuse approved by the majority of the Board; **AND**
- The other members of the Board vote unanimously to remove that member.

Regarding absences: Not later than the 30<sup>th</sup> day after the vote to remove a Board member, that member may file a written appeal for reinstatement with the County Commissioners Court. If the District is a multicounty District, the appeal should be made to the Commissioners Court in the county in which the removed member resides. The Commissioners Court may reinstate the member if it finds the removal unwarranted based on factors such as:

- The reason for the absences;
- The time and place of the missed meetings;
- The business conducted at the missed meetings; or
- Any other factors the Commissioners Court considers relevant.

#### Removal of an appointed ESD Commissioner by the County Commissioners Court

**IMPORTANT:** The section of Chapter 775 regarding removal of an ESD Commissioner by the Commissioners Court can only be utilized if the Commissioners Court of the County in question has adopted the section by resolution and only applies to board members appointed by Commissioners Court.

The Commissioners Court may remove an **appointed** ESD Commissioner by an order adopted by **majority vote, taken after an official hearing** on the issue. The hearing is subject to the Texas Open Meetings Act requirements related to personnel matters. No later than the 30<sup>th</sup> day before the hearing, the Commissioners Court must notify the ESD Board that it is considering the action and allow the affected ESD Commissioner to show cause as to why the removal is unwarranted. An appointed ESD Commissioner can only be removed for the following:

- Incompetency (As defined in the Texas Local Government Code, Chapter 87.)
- Official Misconduct (As defined in the Texas Local Government Code, Chapter 87.)

- Misconduct (As defined in the Texas Local Government Code, Chapter 178.)

Take special note: The grounds for removal are all statutorily defined terms. Also, the above should be construed to apply only to appointed ESD **positions**, meaning that an ESD Commissioner appointed to fill the vacancy created by an elected ESD Commissioner is considered “elected” for purposes of removal.

#### Removal of an elected Commissioner

An elected ESD Commissioner (or one appointed to fill a vacancy created by an elected ESD Commissioner) can generally only be removed through a legal proceeding that is described in Chapter 87 of the Texas Government Code. Grounds for removal are as follows:

- Incompetency (As defined in the Texas Local Government Code, Chapter 87.)
- Official Misconduct (As defined in the Texas Local Government Code, Chapter 87.)
- Misconduct (As defined in the Texas Local Government Code, Chapter 178.)
- Intoxication (As defined in the Texas Local Government Code, Chapter 87.)

Again, all grounds for removal are statutorily defined terms.

#### **Vacancies**

##### Appointed Commissioners

The County Commissioners Court should fill vacant ESD Commissioner positions in counties where the ESD Commissioners are appointed.

##### Elected Commissioners – Multi-County Districts

The remaining members of the Board must fill vacant ESD Commissioner positions in ESDs that are located in more than one county not later than the 90<sup>th</sup> day after the vacancy was created. If the vacancy has not been filled by the 91<sup>st</sup> day, the County Commissioners Court in which the previous Board member resided may fill the vacancy.

##### Elected Commissioners – Harris, Smith, and Orange Counties

The remaining members of the Board should fill vacancies in the above counties (created by any reason, including failure of any individuals to file for office) not later than the 90<sup>th</sup> day after the vacancy was created.

#### **Liability of Board Members**

Board members are generally immune from liability for actions taken within the scope of his or her duties as an ESD Commissioner. An ESD Commissioner’s duties and responsibility are set forth in the statutes and rules applicable to ESDs. An ESD Board member that acts outside the scope of his or her authority as set forth in the statutes and rules may be held personally liable for those actions. For example, personal liability may be found in instances of violation of the Texas Open Meetings Act, the Texas Public Information Act, the



Texas conflict of interest laws, the Texas bidding and purchasing laws and Texas Penal Code provisions such as bribery and other corrupt influences.

## Chapter 4: ESD Board Meetings

### Required Meetings

Texas law requires each ESD Board to meet at least once each month and an ESD should, by resolution, designate a regular time and location for each meeting. The requirements state that:

- Notice must be provided of each meeting, and the notice must list every topic that will be discussed;
- The ESD must keep proper minutes and records of acts and proceedings; and
- All meetings must be open to the public unless they meet the specific criteria for a closed meeting, as set forth in the Texas Open Meetings Act, Chapter 551, Texas Government Code. All records are open to the public under the Public Information Act (excluding notes and minutes for Executive or “Closed” Sessions.)

### Open Meetings Act

Chapter 551 of the Texas Government Code is referred to as the Open Meetings Act (“Act”). The Act is designed to increase government transparency and citizen access to the governmental process. The ultimate purpose of the Act is to allow the public to be involved and aware of the governmental entity’s (in this case, the ESD’s) business and dealings. As stated previously, all ESD Commissioners are required to receive training on the Act within 90 days of assuming office. ESD Commissioners would be wise to consult the attorney general’s website, <https://texasattorneygeneral.gov/>, to access a publication on Open Meetings.

### Notices

72-hour notice of a meeting is required, unless the meeting falls under the exceptions as an “emergency meeting.” The agenda serves as notice of a meeting. The notice must state the time, date and place of the meeting. The notice must also sufficiently describe the matters to be discussed at the meeting and must be posted at the County Courthouse or posted on the District’s website and the District Administrative Offices. **Important:** the public has a legal right to attend all open portions of the meeting, but the public does not generally have a right to speak unless so granted by the Board.

### Public Information Act

Chapter 552 of the Texas Government Code is the Public Information Act (“PIA”), sometimes referred to as the “open records act”. The PIA is designed to allow the public to inspect and monitor the activities of the governmental entity (in the case, the ESD) through its various records. As stated previously, all ESD Commissioners are required to receive training on the PIA within 90 days of assuming office. ESD Commissioners would be wise to consult the attorney general’s website, <https://texasattorneygeneral.gov/>, to access a publication on open records and the Public Information Act.

There are special concerns surrounding ESDs and the PIA, given the common occurrence where an ESD supports a nongovernmental entity with public funds. The act expressly provides that ESDs *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. Simply stated, the ESD and any part of an entity that the ESD supports with public funds (i.e. volunteer fire department) are subject to the PIA. This means that VFD records that in any way relate to the expenditures of public funds are subject to the act. Portions of the VFD (and the entity’s corresponding records) that are not supported by public funds are not necessarily subject to the PIA, but that determination can only be made by the Texas Attorney General’s Office.

### Requesting Public Information

A written request for records or information by a member of the public triggers the PIA. The request may be made to any official of the ESD, and may be an e-mail or hard copy. The PIA does not require the governmental entity to create new records, research information, or answer questions.

Generally, no charges are allowed to view or inspect the records requested, but the PIA does allow minimal charges for copies or staff time, subject to certain rules promulgated by the Texas Attorney General.

### Exceptions

Unless specifically excluded by statute, all public information is subject to disclosure. If the ESD believes the information requested is subject to exclusion, it must refer the matter to the Office of the Attorney General within ten business days of receiving the request and request an open records opinion. It is best to have legal counsel draft open records opinion requests. The ESD Board cannot independently decide that a record is not subject to disclosure.

### **Notice of District Office**

An ESD must establish a District Administrative Office and publish notice of its location in newspapers within 60 days of Commissioner qualifications and annually thereafter.

### **Agenda**

The Board president is responsible for creating an agenda for each regular, special, or emergency Board meeting. Careful consideration should be given to the development of each agenda. **No discussion among board members can occur and no action can be taken on any item unless that item has been posted on the agenda for that meeting.** However, items may be received as information, on a very limited basis and commissioners are generally not allowed to respond, other than to make a commitment to place the item on a future agenda.

All Board members may submit proposed agenda items. Agenda items should reach the Board president's office by a set time before the regular meeting. The president may exercise the best judgment in determining the most important items received for placement on

the agenda and add other items of business to come before the Board, but all Board members have the same rights to have items placed on the agenda.

Any member of the ESD staff or the emergency service providers, any individual, or any organizational representative wishing to have an item placed on the agenda should submit that item, through the normal supervisory channels, to the Board president's office for approval. The president may establish procedures for submission of routine items without his/her approval.

### **Rules of Procedure**

Adopting rules of order and procedure is the first step in conducting efficient and orderly meetings. ESDs sometimes adopt Robert's Rules of Order for aid in running the meeting, but such adoption is not required. A quorum of commissioners must be present to take action on any agenda item. (A quorum is a majority of the total number of ESD Commissioners. For example, on a five-commissioner board, a quorum is present if three commissioners are in attendance).

In addition, ESD Boards may consider that:

- The president, if present, must preside over meetings;
- The Board will follow parliamentary procedures; and/or
- All Board members vote unless there is a conflict of interest.

### **Motions**

At a meeting, motions are the impetus for taking Board action. By making a motion, a Board member is requesting the Board determine its position on the question (the issue at hand in the meeting). The presiding officer should recognize the motion if it is properly made and seconded, and ask for any discussion on the motion. Once discussion is finalized, the presiding officer should call for a vote on the question, calling for both "ayes" and nays". Any member may request a roll call vote at any time.

### **Debate**

The president, or the officer presiding in his or her place, is responsible for maintaining order at all times during the meeting. The presiding officer should not allow Board members or other individuals to speak or debate on a matter without first being recognized to speak. The presiding officer may recognize individuals with information or comment and silence any interruptions with voice or gavel. In some circumstances, a person who refuses to follow the presiding officer's instructions may be subject to removal from the meeting. The Board may agree to limit debate on any business before it. That agreement should be formalized by majority vote.

### **Citizen Participation**

The Open Meetings Act allows the public to observe the open portion of an ESD meeting. However, the Texas Attorney General has concluded that the Open Meetings Act does not give members of the public a right to speak on items considered at an open meeting. Such a

right exists only if a specific state law requires a public hearing on that item or if state law requires that public comment be allowed on that issue. If an ESD allows members of the public (and this includes representatives of emergency services providers) to speak on an item on the agenda, the Board may adopt reasonable rules regulating the number of speakers on a particular subject and the length of time allowed for each presentation. The ESD must apply its rules equally to all members of the public. While it may seem counterintuitive, the public generally cannot participate in any manner other than observing an open meeting, and unsolicited comments from the public are not allowed.

A Board member may not engage in discussion at all with a member of the public who addresses the Board under an agenda item such as "Citizen Comment." Generally, the only acceptable response to a citizen question on issues not listed on the posted agenda during an open meeting is to provide a reference to a specific written policy of the ESD or to request that such an item be placed on a later agenda of the ESD for possible discussion and action. At no time should a Board member ever enter into discussions during a meeting of the ESD with members of the public on issues not listed on the posted agenda, as this in itself may be a violation of the Open Meetings Act.

For more information on this, please see the current Open Meetings Handbook published by the Texas Attorney General's Office, or consult your legal counsel.

## **Types of meetings**

### Regular Meetings

Regular meetings are generally held at the same location, day, and time of each month, e.g., 7:00 p.m. on the third Wednesday of each month. These meetings are still subject to the notice requirements of the Open Meetings Act.

### Special Meetings

Special meetings are those meetings that are not regular meetings of the ESD, such as additional meetings in a particular month or public hearings required by other applicable law, such as the Texas Tax Code. These meetings require the same notice as with any other meeting under the Texas Open Meetings Act. A special meeting is not necessarily an emergency meeting.

### Emergency Meetings

Emergency meetings may be held to act upon **matters of urgent public necessity**. The notice of an emergency meeting must be posted following the rules for posting of the regular meeting with the exception that the notice must be posted at least 2 hours before the emergency meeting. **An emergency or an urgent public necessity exists only if immediate action is required of an ESD because of an imminent threat to public health or safety or a reasonably unforeseen situation.** It is extremely rare for an ESD to have a situation that qualifies as an emergency.

When posting a notice of an emergency meeting, the ESD must clearly identify the emergency or urgent public necessity in the notice, and, in addition, the presiding officer or

member of the ESD who calls an emergency meeting must provide notice to the news media of the meeting by telephone, facsimile or electronic mail, and only to those members of the news media who have previously filed a request for the notice and agreed to reimburse the ESD for the cost of providing the special notice.

### **Agenda Issues - Streamlining Meetings**

One of the biggest issues that can affect an ESD's productivity and effectiveness (or any governmental body's, for that matter) is an inefficient meeting. The meeting is where the ESD Board's business is done, and an unproductive meeting environment can slow business to a halt and ultimately harm enthusiasm for the ESD's work. The Board should take steps that counteract meeting inefficiency and help reduce the stress and dysfunction of a meeting.

The first step is to analyze the agenda and each item's importance:

- Emergency Items – A legitimate emergency situation must be given primary attention. As discussed in this chapter, a legitimate emergency, as specified in the Open Meetings Act, may be added to the agenda or special meeting with notice of at least two hours. The nature of the emergency must be specified on the agenda and notice given to any in the news media who have filed a written request for the information.
- Immediacy Items – Item that do not rise to the nature of an emergency but do require immediate attention should also be given priority. (An example is annual budget planning and tax rate adoption.)
- Impactful Policy Items – Anything that may result in a major, long-term impact to the District should be placed early in the meeting to ensure that appropriate time is given to its consideration. (An example is negotiating service provider contracts.)
- Items of Particular Citizen Interest – Citizen participation, especially with respect to items that are controversial or have motivated increased interest in the community, require special attention. The agenda should be structured to accommodate that interest and allow the public its say on the matter by posting an item on the agenda to allow Board discussion of the issue. The simplest solution is to separate citizen participation from Board discussion on agenda items. **A scheduled citizen comment period with appropriate time limitations** is generally a good way to address general citizen interest. But if citizen interest in an issue is overwhelmingly intense, it may be best to **schedule a separate public meeting or town hall meeting** on the subject. Consult your attorney when specific instances arise.
- Items Related by Subject Matter – Related or contingent items should be listed consecutively beneath one heading. This alleviates last minute arranging and rehashing of related issues. (An example is combining the treasurer's report item with items related to the payment of invoices that the treasurer presents.

### Consent Agenda

A Consent Agenda contains items that have unanimous support and are considered so routine that no discussion is required. The Consent Agenda should only be populated with ordinary, non-controversial items that are necessary as a matter of course.

The Consent Agenda in its entirety can be approved with one motion and one voice vote. At any time before its passage, a member of the Board may ask that an item be removed from the Consent Agenda for discussion as a regular agenda item.

### Agenda Distribution

The Board president is also responsible for compliance with all open meetings regulations. Proper distribution of the meeting agenda should include:

- Posting the agenda at least 72 hours prior to the meeting at a place convenient to the public in the ESD's administrative office as required by the Open Meetings Act;
- Delivering a copy of the agenda to the county clerk for posting at the courthouse or posting a copy of the agenda on the ESD's website;
- Delivering the agenda packets (with all supporting documentation) to each ESD Commissioner prior to each meeting. **It is essential that the Board be given ample time to review and learn about the various agenda items in order to be prepared for the meeting.** This will help streamline the meeting; and
- (Optional) Issuing a copy of the agenda to any local governmental entities within the ESD and local media. Disseminating the agenda to other local governmental entities and to the media is not a requirement, but establishing good and clear communication with others can be beneficial to the operations of the ESD.

### Meeting Process

All meetings (regular, special, or emergency) are always open to the public. Thus, there should be some sort of **sign-in sheet** for attendees to register their attendance with the official record. The President of the Board is the presiding officer at all meetings, if present. If the President is absent or unavailable, the Board's Vice President should be the presiding officer. If both the President and Vice President are absent or unavailable and the three remaining members are present (thus constituting a quorum), those members should select from among themselves a presiding officer. The presiding officer has many responsibilities during the meeting, including:

- Adhering to the rules of order and Board meeting procedures;
- Opening and closing discussion on each agenda item;
- Recognizing the various members or other participants and granting them the right to speak;
- Calling for and acknowledging motions for action on various agenda items; and
- Calling for and holding votes on properly made motions.

Board members and other participants should only be allowed to speak when recognized by the presiding officer. Likewise, such recognition should not be unfairly withheld.

The following is a suggested template for the order of conducting business at an ESD meeting:

- Call to order, roll call, and certification of a quorum (note: a quorum requires at least three of five Board members to be present at the meeting.)
- Presentations to the Board/Citizen Comment – The board may receive presentations from representatives of different entities, but these presentations must be tied to a specific, noticed agenda item. The presenter should identify himself or herself by name and the organizations that he or she represents for the official record. The presenter should remain at the meeting until any questions from the Board have received a response and the presiding officer excuses the presenter.
- Approval of minutes of previous meeting(s).
- Treasurer’s Report
- Report of Service Provider(s) – this is important. The service provider(s) should have a representative at **every meeting** of the Board and should be able to apprise the Board of the service provider’s activities.
- Discussion, consideration, and possible action on agenda items. The presiding officer may deviate from the specific order of agenda items if the rest of the Board approves such deviation.
- Board action - the Board may take appropriate action after discussion on each agenda item. **Discussion and action may only be taken on properly posted agenda items.**

### Mechanical Aids

#### **Records of Actions/Meeting Minutes**

The Board’s Secretary is responsible for taking the meeting minutes. The minutes are **official documents of the ESD and should be treated as such**. They should include:

- Recorded presence of Board members, ESD/service provider staff, and all guests/public citizens in attendance;
- A restatement of the agenda item as it appears on the posted agenda;
- A brief review of the discussions on all agenda items, in the order they were discussed at the meeting, identifying each speaker, and, if possible, the specific point(s) that were made;
- **A record of ALL motions made, including who made and seconded them;**
- **A record of the outcome of every motion** (pass or fail), including the roll call vote, if requested;
- Any points/comments that Board members made specifically for the record;
- The names of anyone who addressed the Board and the subject or request addressed.

The minutes do not have to be verbatim transcriptions of the meetings. Paraphrasing is permissible, provided the key information above is recorded. The Secretary should have a draft of the minutes prepared by the next Board meeting. The draft should be delivered to the Board President, who then reviews the minutes, suggests any changes, and approves the draft as appropriate. The Secretary should revise the minutes as necessary and include copies in each Board member’s agenda packet for formal review and approval at the next



meeting. Board members should be afforded the opportunity to review the minutes prior to the meeting and suggest changes/amendments. The Board may adopt minutes subject to agreed-upon amendments suggested by Board members. **Remember: Once finalized, the completed and approved minutes are permanent District records and must be open for inspection by the public.**

### **Video and Teleconference Calls**

Meeting by teleconference or video conference is possible, but the Open Meetings Act restricts when and how those meetings may occur. The best practice is to consult with your ESD's legal counsel before the Board attempts a meeting by teleconference or video conference. The ESD's attorney may participate in a Board meeting via teleconference, video conference, or via the Internet.

### **Executive (Closed) Sessions**

A closed meeting (or executive session) is a portion of a meeting to which the public does not have access. The most common situation in which such an executive session is needed usually arises when the ESD Board is meeting with its attorney for legal advice regarding pending or threatened litigation, a settlement offer, or any matter where the attorney's duties under the Texas Disciplinary Rules of Professional Conduct clearly conflicts with the Open Meetings Act (i.e. Attorney-Client privilege.)

Other instances where a closed meeting is allowed are:

- Discussion on the purchase or sale of real estate;
- Discussion of the employment, appointment, evaluation, reassignment, duties, discipline, or dismissal of an employee or to hear complaints against such an official or employee;
- Discussion of deployment or implementation of security devices or personnel for security measures; and
- Discussions involving gifts that are being made to the ESD when public discussions might jeopardize the transaction.

In the event a closed meeting on a particular item/topic is needed, notice of that issue must be included in the meeting notice/agenda and posted in the same manner and with the same notice. At the bottom of the regular meeting agenda, it is recommended that an ESD include a disclaimer explaining the right of the Board to adjourn to an executive session.

### Process for Executive Session

Before entering into a closed meeting or executive session, a quorum of members must convene in an open meeting during which the presiding officer must announce that the body is going to go into closed/executive session. The announcement must include:

- The specific time and date that the Board entered the closed session;
- The purpose of the closed session; and
- The section of the Texas Government Code that allows for such an action.

**IMPORTANT: No action (i.e. votes or decisions) may be taken during a closed meeting or executive session.** Upon completion of the closed session, the quorum must reconvene in an open, public meeting during which the presiding officer must announce that the body is coming out of the closed session. The presiding officer should note for the record that **no actions were taken during the closed session and note the time.** Only after the closed meeting has been completed and the public portion of the meeting has been reconvened, may the presiding officer call for a motion to take action on an agenda item discussed in the closed session or may state that no action is required.

It is illegal to make any recording or certified agenda of a closed meeting available to the public. A person who knowingly and without lawful authority makes any such records public faces charges of a Class B misdemeanor and may be held liable for actual damages, court costs, reasonable attorney fees or punitive damages. The Board secretary must prepare a certified agenda of the executive session including the date, time of executive session and matters discussed in executive session. A certified agenda is signed by the presiding officer and is sealed in an envelope marked with the date and time of the executive session. The certified agenda is a governmental record and must be maintained. No certified agendas are created when the executive session was for the purpose of consulting with the ESD's legal counsel.

#### Special Note on Executive Sessions/Closed Meetings

**It is important to clearly understand:** Open Meetings/Public Information and transparency in general are major issues in Texas. There are very specific instances when an ESD may utilize executive sessions, and Chapter 551 of the Texas Government Code is very clear about when those instances arise. It is vital that you consult legal counsel when considering using an executive session or closing a meeting to the public. **Your ESD's attorney should be consulted for any such executive session or closed meeting.**

## Chapter 5: ESD Budget and Financial Administration

At its core, an ESD is a financing vehicle, designed to provide method of enhancing emergency service provision to the residents of the ESD. As a taxing (and spending) entity, it is important to remember the ESD's mission is to provide superior emergency services to the community. Therefore, the ESD's business should be run in a professional manner. An understanding of budgeting and finance is key to the continued financial health of the ESD.

### Sources of Revenue

In order to finance the provision of emergency services, ESDs have multiple sources of revenue that are available. These include, but are not limited to, ad valorem property taxes, sales tax, and fees for services.

#### Setting a Property Tax Rate

It is important to understand that ESDs, as governmental entities, must comply with all state-mandated Truth-in-Taxation requirements. Essentially this means that meetings and public hearings must be scheduled and conducted before the ESD is able to adopt its budget or tax rate. This is an important part of the citizen involvement process and it is necessary to be as open as possible with the public as these matters progress.

#### Maximum Property Tax Rate

As stated earlier, ESDs are subject to a constitutionally-imposed tax cap of 10 cents per \$100 of property valuation. It's important to remember that some areas may actually be in two overlapping ESDs. Overlapping ESDs are permitted as long as there is no duplication of emergency services (for example, one ESD would be responsible for fire protection, while another would be organized for the purposes of emergency medical service.)

It's essential that ESDs understand the concept of the ESD's **authorized tax rate**, as an ESD is essentially already capped at the tax rate that was authorized when the ESD was created. For example, Rural Fire Prevention Districts were constitutionally capped at three cents per \$100 of valuation. When RFPDs were automatically converted to ESDs by the legislature, those new ESDs became subject to the constitutional cap of ten cents, yet remained bound by their authorized rate of three cents. This is a vital distinction because any ESD that desires to increase its *authorized tax rate* (assuming ESD was created with an authorized tax rate of something other than 10 cents per \$100 valuation) must seek and receive public approval to increase its authorized tax rate (or "tax cap") via election. An ESD that was created with a maximum tax rate of 10 cents per \$100 valuation maximum does not have to have an election to raise the tax rate to 10 cents (in the event they were previously taxing below that rate.) However, any increase in the ESD's tax rate is subject to roll-back requirements and may trigger a roll-back election. Be sure to consult your attorney about your authorized tax rate.

## Sales Tax

ESDs are one of a number of local governmental entities that may collect sales tax, subject to voter approval. The maximum sales tax rate in Texas is 8.25%. Of that number, 6.25% is reserved and collected by the State of Texas. The remaining 2% is available for certain local governments to collect. ESDs may collect sales tax in increments of 1/8% up to 2%, if it is available.

For an ESD to be able to collect sales tax, an election must be called and the voters of the area in which the sales tax is proposed must approve the proposition. Revenue from sales tax can be a considerable funding source for ESDs. Some districts have high numbers of tourists or commuters who travel through the area. Tourists and commuters (who are served by the ESD while in the District without prejudice) that simply pass through the ESD without owning property obviously don't contribute to the tax base through property taxes, but do occasionally purchase goods in the district. ESDs with commercial operations can benefit from sales tax revenues that spread the burden around and offer relief for property owners. Indeed, there are a few ESDs in Texas that operate solely on sales tax funding.

## Sales Tax Carve-Out

ESDs seeking to collect sales tax can encounter some complicated issues. An ESD may overlap with several other local jurisdictions. Some of those local jurisdictions may already be collecting part or all of the 2% local sales tax. If any area in the ESD has a sales tax of 8.25%, that area's sales tax cannot be increased. An ESD may encounter the situation where, upon deciding to seek approval to collect sales tax, it discovers that a portion of its area is at the 8.25% maximum. The ESD can choose to "carve out" that area from the sales tax proposal, leaving the area of the ESD where sales tax remains available subject to the proposed sales tax election.

## Fees

An ESD, or a person authorized by contract on the ESD's behalf, may charge a reasonable fee for emergency services performed for or on behalf of a person or entity, including a fee for responding to a false alarm or for a fire code inspection.

Because false alarm fees are penal in nature, an ESD must provide notice and conduct a public hearing to adopt them.

## **Adopting a budget**

The ESD budget process is at once remarkably involved and complex, while at the same time being completely and utterly simple. Understanding the simplicity is to understand the idea behind the purpose of budgeting. Your ESD has a job to do (provide emergency services as prescribed by its creation documents); your ESD has money coming in (see above for the various methods and sources of revenue); and your ESD needs to spend that money in order to do its job. The most IMPORTANT piece of information in this entire chapter that should be understood above all else: **THE ESD IS NOT AN ATM FOR THE SERVICE PROVIDER, NOR SHOULD THE ESD BE EXTENDING BLANK CHECKS TO THE SERVICE PROVIDER.**

As stewards of the taxpayer's money, the ESD Board must understand where the tax money is going and what it is being used for. This is the reason budgets are necessary.

### Budget Basics

Balanced Budget Requirement – Texas ESDs must have enough resources to fund any and all appropriations. Any deficit at the end of the fiscal year must be eliminated, as **ESDs are prohibited from deficit financing**.

Revenue/Expenditure Estimates – The best rule of thumb is to strive for accuracy on revenue and expenditure estimates, but to err on the conservative side. For revenues, this means you should err towards predicting lower amounts of money coming in, while for expenditures, it is best to predict the maximum amount of money that will be needed.

Reserves – **An ESD does not have to expend all its funds in one fiscal year.** In fact, it is a recommended practice to budget for a contingency or reserve fund. This is prudent in the event of emergency or unanticipated situations. The minimum recommended reserve amount is 10% of the annual budget, although most auditors will recommend and lenders will desire a reserve of 3-6 months of operating expense.

Capital Outlays – some of the most sizeable expenditures an ESD will make are capital expenditures. These are usually large-ticket items that will be utilized for an extended course of time in the ESD's operations. An example could be a new station or trucks. These expenditures should be thought of as an investment, thus a plan or schedule for purchase, financing, maintenance, and replacement should be created and adhered to in order to avoid costly repairs or the unneeded stress of having to make a large last-minute purchase.

### Developing the Budget

The key words to remember when in the preliminary stages of the budget process are: **study and evaluation**. The idea is to get a grasp on the current state of the ESD and what needs may develop in the future. This is also a good time to consult the results of the District's strategic plan. Strategic Planning is essential to developing a framework for budgeting requirements. This is a process that takes place before any actual construction of a budget. It is a way to set priorities and make sure there is a top-level view to the ESD's financial situation.

Program Evaluation – Each program that the ESD undertakes should be evaluated. This is where you look at the different overall goals and objectives of the ESD to understand whether the ESD is meeting the needs of its constituents, if it is doing so in the best way possible, and what adjustments could be made to the ESD's overall structure and organization to improve the functioning of the ESD.

Operations Evaluation – The specific everyday activities related to running the District should be evaluated. This is a way to look at each level of day-to-day activities to understand how ESD staff (if they exist) and/or the service providers do their jobs. Questions should be asked about equipment, compliance issues (such as licenses and insurance), con-

tracts, and other agreements. Special attention should be paid to costs and possible operations duplication.

Personnel Evaluations – The people of the ESD are who make it really work. The Board should evaluate performance generally, but also ask whether the ESD’s employees and/or volunteers are being placed in the best position to succeed and what improvements could be made to existing practices.

Needs Assessment – The Board should take a moment to determine what is working and what, if anything, needs improvement.

Priority Setting – This is an important part of the budget process for an entity with limited resources. The information gained in the evaluations must be used to rank the priorities of the different items that the ESD is seeking to add to the budget. Determining the items that need attention now versus what can wait will aid the Board as the process continues.

Once the evaluation phase of the process has been done, the ESD should proceed to actually constructing and, ultimately, passing the upcoming fiscal year’s budget.

#### Budget Preparation, Review and Adoption

A budget is a plan for using the ESD’s resources to meet its goals and objectives. Although **the budget is a legal requirement**, there are no statutory requirements or guidelines for how to go about assembling the budget. The “**RAW**” system for budget preparation has been gleaned from the extensive experience of ESDs and governmental bodies in general:

- **Review** the District’s previous year operations and activities;
- **Analyze** what is needed or desired to make things work better, with special attention paid to existing assets and capabilities;
- **Weigh** the priorities of desired activities with the resources the District can expect to have on hand for accomplishing those priorities.

The budget process requires a copious amount of two things when traveling through the process: **information and involvement**. The specific goals and objectives of your ESD should be gleaned through assembling as much information as possible. This information includes data about previous year’s activities, information on the current state of operations within the ESD, and data for revenue projections.

The ESD Board is ultimately responsible for the budget process. The Board must ensure adequate record keeping and accounting systems are in place to provide accurate information.

The recommended steps of the budget preparation process are as follows:

- Designate a Budget Officer – this individual will serve as the Board’s primary contact regarding all budget preparation matters. If a Budget Committee is being utilized (this is recommended) the chair would serve as the designated officer. In some ESDs fortunate enough to be able to afford full time staff, the budget officer may be a staff

member rather than a Board member; **however**, an individual Board member should still be selected to oversee the process and work with the staff.

- Develop Formalized Reporting Methods – in other words, make sure to develop workable forms that will be used to guide the Board through the process. These should be uniform and detailed, yet easy to understand for those without a finance or accounting background.
- Gather Input – every level of the ESD must be involved in explaining what is working and what needs to be addressed with budgetary funds. This should be a top-down assessment of the ESD’s working needs.
- Prepare Revenue Estimates – While knowing what the ESD needs is one part of the process, the other is understanding what revenues will be coming in to supply the basis for the budget. Pay attention to the economic conditions of the community. **Revenue estimates should be comprehensive, yet conservative.**

The budget officer, along with whatever assistance is available, must evaluate, verify, and justify both revenue and expenditure estimates for the proposed budget. It is incumbent on the budget officer to take those estimates and “make the pieces fit” if necessary. The guiding principle is that when the final product is submitted for review, it must be in the form of a **balanced budget**.

The budget officer is responsible for submitting the completed budget proposals to the Board, as well as local media outlets (if requested) and interested citizens. The Board should take ample time, within reason, to review and become familiar with the proposed budget. Any concerns or questions should be addressed, and recommendations should be implemented if necessary. **The ESD Board accepts ultimate responsibility for the final budget.**

With this in mind, the Board should engage in thorough discussion on the budget document. The Board should remember to keep in mind the long-term health and goals of the District. The budget should reflect the realities of the ESD’s situation within the community and represent the wishes of the public in terms of the level of services they wish to receive. **The budget should NOT be aspirational. This document must be grounded in reality and be applicable to the present-day status of the ESD.**

Once a proposed budget has Board approval, the public should be formally involved in the process through a public hearing(s) on both the budget and proposed tax rate. The public’s interaction is key in gauging the level of responsiveness and efficiency that the ESD is providing. Any suggestions by members of the public should be carefully taken into consideration, with the possibility that the document is amended if the need arises.

When all parties are satisfied (or at least as close to satisfaction as they can be during such a project) the final action for the Board on the budget is approval of the budget **by formal resolution**. Official copies of the budget should be filed with the secretary of the Board for the District’s records, and the Board should file a copy with the County Commissioner’s Court for each county that the ESD operates in.

The Board must also **adopt a formal Order Levying a Tax Rate**; but only after adopting the ESD's budget. The ESD should then work with the county tax assessor-collector to proceed with the levying and collection of taxes as required. **In the event of an increase in the tax rate or in the assessed values that in effect nets a tax revenue increase, the Board must post a notice of the increase as provided by the Tax Code** (see notes on Truth-in-Taxation below).

A Note on Budget Implementation – the ESD's budget and the time invested in the budgeting process are a waste of time and energy if the budget is simply placed on a shelf and forgotten about once adopted. The Board must take care that adequate controls remain in place to ensure that the budget is adhered to throughout the fiscal year. Some tips on making sure your ESD sticks to its budget:

- Maintain exemplary record keeping and accounting systems. If no one on the Board has accounting experience, it is recommended that the board engage a bookkeeper, or, at the very least, install and utilize bookkeeping software for the ESD.
- Ensure that the budget is kept in mind when negotiating contracts with the ESD's service provider(s) and be sure to place controls in the contract that tie it to the ESD's budget. The ESD's legal counsel will help with this contractual language.
- There should be regular financial reports available to the Board that clearly demonstrate the use of funds and the activities that have been funded by the ESD with comparisons to budgeted amounts.
- An independent accounting firm must prepare an audit unless the ESD is specifically exempt from the statutory audit requirement. If exempted from the statutory audit requirement, the ESD must create a compiled financial statement.
- Engage in proactive controls and checks designed to limit fraud and misappropriation of funds.
- Ensure that a copy of the budget or year-to-date profit and loss statement is available at every ESD meeting. Preferably each Board member should receive a copy along with their agenda packet.

Lastly regarding implementation: the budget is not set in stone. It is recommended that **the Board hold a budget workshop halfway through the fiscal year** to discuss the effectiveness of the current budget and possibly make any amendments that have become necessary based on the District's different experiences as time has progressed. The budget is ultimately a working document designed to help, not hinder, the financial performance of the District. The Board may make budget amendments throughout the fiscal year, as necessary.

#### Budget Calendar/Truth-in-Taxation

An ESD cannot properly run a District, comply with an annual audit, or justify its tax rate without having first adopted a budget. Therefore, it is vital that the budget process be undertaken in a timely and efficient manner. Pay attention to the calendar to prevent time from slipping away and falling behind on the budgeting process. Below is a suggested calendar for staying on top of budgeting issues as the year progresses. Note: the below calendar assumes an October 1 – September 30 fiscal year.



- October through March – this is the time to stay active in the current year’s budget and evaluate the programs and performances of the ESD in light of the District’s goals and objectives. The Board should revisit the current year’s budget at some point around the six-month mark of the fiscal year to discuss lessons learned and make any necessary adjustments. This will, in fact, lay the groundwork for the following year’s budget process.
- June 15 – The ESD should receive notice of its appraised value from the chief appraiser by this date. This can give the District a preliminary idea on tax collections for the coming year. Going into the summer, the budget formation process should be undertaken in earnest, with a proposed budget taking shape through July.
- July 20-25 – The chief appraiser certifies the appraisal records and certifies the Certified Tax Roll for each taxing unit. The Certified Tax Roll is used to calculate the amount of property tax the ESD will receive in the following year. This is where you essentially know, as much as one can know, how much revenue should be coming to the ESD from property taxes. At this point, your preliminary budget should be essentially formed and adjustments/fine tuning should be underway to formulate a budget proposal.
- Early August – The ESD should publish notice of its effective and rollback tax rates.
- August through September – This is the time when public hearing(s) and actions on the final budget adoption take place. After adopting the budget, the ESD should adopt an ad valorem tax rate. A budget must be adopted before the Board adopts a tax rate.
- **September 30** – Generally, **a tax rate MUST be adopted by this date**. Note: in some counties, the taxing unit does not receive the appraisal roll until possibly August or even later (this generally occurs in larger counties where there are more protests on appraised value, etc.) In this instance, the **tax rate must be adopted no later than 60 days after the taxing unit receives the appraisal roll**.

### **Fiscal Year**

The ESD must officially adopt a Resolution Establishing District Fiscal Year at a Board meeting. The ESD may use any fiscal year it chooses; however, the most common fiscal years are calendar (January 1 through December 31) or October 1 through September 30.

### **District Depository**

The ESD must designate one or more banks to serve as depositories for ESD funds. All ESD funds should be deposited in the depository bank, except:

- The ESD may deposit funds pledged to pay bonds or notes with banks named in the trust indenture or in the bond or note resolution, **and**
- The Board shall remit funds for the payment of the principal of and interest on bonds and notes to the bank of payment.

The ESD may not deposit funds in a depository or trustee bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation (the amount is currently \$250,000) unless the excess funds are secured in the manner provided by law

for the security of government funds. The law requires specific security, so the Board should review this with its legal counsel.

The resolution or trust indenture securing the bonds or notes may require that any or all of the funds must be secured by obligations of or unconditionally guaranteed by the federal government.

### **Audit Requirement**

Virtually every ESD is required to file an annual audit with the County Commissioners Court in each county that it operates. ESDs with an annual revenue less than \$250,000 and meeting certain other requirements and ESDs formed in the current fiscal year, do not have to file an audit. Smaller revenue ESDs do have to file a compiled financial statement. See below.

#### Deadline

The law states that an ESD located wholly in one county shall prepare and file an audit report of the ESD's fiscal accounts and records with the county **on or before June 1** of each year. This means, for example, that if an ESD's fiscal year ended on September 30, 2015, the audit for fiscal year 2015 would be due on June 1, 2016. This provision does not apply to Harris County. In Harris County the audit is due by July 1 of each year, with a copy filed with the commissioners court within 30 days after receipt by the Board.

#### Auditor

The person who performs the audit and issues the report must be an independent certified public accountant or firm of CPAs licensed in the State of Texas. An employee or officer of the ESD cannot perform the audit, nor can it be performed by the ESD's bookkeeper.

#### Removal for Failure to Comply

If an ESD (other than those in Harris County) fails to complete and file the required audit report by **September 1**, and a county auditor is not ordered to prepare the report, **the ESD Board President and Treasurer are automatically removed from the ESD Board** and the commissioners court is required to fill the vacancies.

In Harris County, failure to comply with the audit requirement may be grounds for removal from the Board.

#### Audit Exemption – Compiled Financial Statements

An ESD may prepare and file a compiled financial statement (as opposed to a full, more expensive, audit) if:

- The ESD has not had more than \$250,000 in revenues in the prior year;
- The ESD has not had more than \$250,000 in cash and investments during the previous year; **AND**
- The ESD has no outstanding debt or liabilities secured by property taxes with a term of more than one year.

## **Purchasing/Selling Property**

An ESD may acquire, purchase, hold, lease, manage, occupy and sell real and personal property or an interest in property. This includes emergency services vehicles and other necessary or proper apparatus, instrumentalities, equipment, and machinery to provide emergency services. Due to the importance of fiscal propriety, the Board should adopt a written policy governing all purchasing activities, with special attention paid to possible conflicts of interest and bidding requirements. This policy should:

- Establish clear standards and specifications for goods and services that are to be purchased;
- Establish clear controls to prevent purchases of unauthorized or unbudgeted items;
- Establish firm guidelines governing relationships between suppliers and service providers and the ESD and its staff;
- Establish procedures for the use of centralized purchasing.

## Bidding - Generally

An ESD must submit any expenditure of more than \$50,000 to competitive bids. The \$50,000 requirement can be met with the purchase of one item or service **OR** for more than one of the same or similar types of items or services if they are being purchased in the same fiscal year. An ESD may solicit bids for items or services under \$50,000 as well, and some ESDs proactively set a policy adopting a lower threshold for soliciting bids.

## Bidding – Exceptions

There are several instances in which an ESD would not have to bid for goods or services. These are generally goods and services that can only be purchased from a single source or have a specific nature that makes the bidding process inappropriate for their purchase, for instance:

- 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. In other words, an ESD does not have to solicit bids from its service provider.
- The purchase of vehicle fuel
- The purchase of insurance
- The purchase of bunker gear
- A contract with the State of Texas to participate in a general services commission state purchasing program
- Purchases made pursuant to a local government co-op purchasing program
- Purchases made under federal supply schedules of the United States General Services Administration

### Bidding – Prohibitions

In addition to goods and services that are exempted from the bidding process, the Professional Services Procurement Act prohibits bidding on the following professional services:

- Accounting
- Architecture
- Landscape architecture
- Land surveying
- Medicine
- Optometry
- Professional engineering
- Real estate appraising
- Professional nursing

Many ESDs confronted with the need to engage with architectural, engineering, and surveying service providers are faced with a competitive challenge. The ESD should emphasize procuring a quality service at a competitive price. The process for securing contracts for these services must proceed as follows:

- The ESD requests proposals from candidates with expertise in the field.
- The proposals are presented to the Board for review and, if necessary, discussion at an open meeting.
- The Board selects the most qualified provider on the basis of demonstrated competence and qualification. If there are more than one qualified providers, it is usually best to rank them in order of the Board's preference.
- The Board (possibly through a representative or committee) attempts to negotiate a contract at a fair and reasonable price.
- If negotiations fail, the Board formally ends negotiations with the selected service provider. The Board then selects the next most highly qualified provider and repeats the process until a fair and reasonable contract is negotiated.

### Bidding – Process

- Solicit at least three bids
- Bids must be advertised according to Local Government Code Chapter 262 or, in the case of public works such as buildings, Government Code Chapter 2267 (Contracting and Delivery Procedures for Construction Projects).
- Government Code Chapter 2267 details multiple procedures for the bidding of public works. The Board should consult legal counsel to help navigate this intricate process.

### **Borrowing and Financing**

An ESD may borrow money and finance purchases. The ESD is limited in that it may not contract for an amount of indebtedness in any one year that is in excess of the funds then on hand and anticipated revenues for the year except through bonds or an authorized loan.

In other words, an ESD cannot bind itself to a debt or financing agreement beyond the current year unless it is doing it through a bond or loan. There are many different lenders in the market place offering their services to ESDs. The ESD Board should consider contacting several in order to determine the best option given the ESD's needs.

### Loans

The ESD may borrow money and make other financial arrangements to purchase real property or emergency services equipment or construct emergency services facilities in the amount and subject to a rate of interest or other conditions the Board considers advisable.

A loan may be secured by **tax revenues or funds on hand** that are not otherwise pledged to pay a debt of the district or the real property acquired or improved or equipment acquired with the borrowed money. Under recent legislation, loans do not require voter approval.

There is still a question surrounding whether ESD's can pledge future ad valorem (property tax) tax revenues. Most leading ESD authorities say that any pledge of future tax revenues on an instrument of indebtedness must be "subject to appropriation," meaning that the ESD must still approve the appropriation of the funds in each year of the loan. There has been no Attorney General opinion or court decision on the issue yet.

Term limits for loans to ESD are as follows: 20 years for real estate, and 10 years for personal property, such as fire trucks or ambulances.

### Bonds

A district may issue bonds or notes secured by a pledge or notes secured by a pledge of ad valorem taxes, other revenues, or both, for up to 40 years. This pledge allows a bondholder to force the ESD to levy taxes to make the debt payment on the bond. An ESD **must hold an election** to authorize the issuance of bonds or notes.

### Lease Purchases

Many ESDs enter into Lease-Purchase Agreements for acquisition of trucks or equipment. A Lease-Purchase differs from a traditional lease, as the ESD has the option to purchase the leased item(s) at the end of the lease term in a Lease-Purchase Agreement.

## **Disposition of Property**

### Generally

An ESD may only dispose of property through means allowed by Chapter 775.0735 of the Texas Health and Safety Code. An ESD may contract with a private vendor to assist with the sale of property. The District shall choose the method of sale that the Board determines to be most advantageous to the ESD, and the Board must adopt rules that describe how to make that determination. Additionally, the Board has the power to reject any and all bids or proposals for the purchase of the property.

## Real Property

An ESD may dispose of real property through the procedures detailed in Chapter 263 of the Texas Local Government Code.

## Surplus and Salvage Property

“Surplus Property” and “Salvage Property” are legally defined terms within Chapter 775. Essentially, Surplus Property refers to property that the District has too much of but is still useful for its intended purposes. Salvage Property refers to items (other than wastepaper) that is so damaged or used up that it no longer has any value for its intended purpose.

Surplus Property may be sold for **fair market value** only if it meets the National Fire Protection Association Standards in effect at the original time of the property’s purchase as well as at the time of the surplus sale. The property must be sold to a Volunteer Fire Department (as defined by the statute) or another ESD.

Salvage Property may be sold for **fair market value** to anyone in the State of Texas. If the ESD is unable to sell the property for fair market value, it may destroy or dispose of the property (i.e. throw it away as trash.)

It is up to the Board to determine fair market value for surplus and salvage property.

## Internet Auction Sites

A district may dispose of property using an Internet auction site. The property must be posted on the site for at least 10 days.

## **Financial Reports**

### Audit

An audit – or, in the case of smaller revenue ESD’s, compiled financial statements – is the most important financial report for an ESD, largely because of the legal requirement that was discussed earlier in this document. However, it’s vitally important to understand the audit process and be familiar with the contents of the resulting audit.

An audit is, in the most basic terms, a yearly picture of the ESD’s overall financial health. The idea behind an audit is that a third-party expert examines the ESD’s financial statements and processes to identify weaknesses in the ESD’s financial record keeping. It is essentially a check on the ESD’s books that can serve to verify to the outside world that the financial information of the ESD is what the district claims it is.

An audit can serve to not only identify actual fraud and mistakes in the ESD’s financial record keeping, but also any potential hazardous pitfalls or openings in the ESD’s financial system. For this reason, it is important that an ESD Commissioner not only ensure that an audit (or, if excepted, compiled financial statements) is done to satisfy the legal requirement, but also gain familiarity with the results and information in the report, in order to have a better understanding of the ESD’s overall financial structure.

## Internal Reports

Every ESD should have an accounting system that accurately records and reports the receipts and disbursement of the ESD's funds. Whether the transactions are deposits in financial institutions or payments for goods and services, the ESD must be able to accurately track where its money is coming from and going to. The accounting system should correspond to the budget accounts for comparison of revenues and expenses when reported. This may require specialized knowledge, and require the ESD to install computerized accounting software or engage with an outside bookkeeping consultant.

The ESD may have different types of fund accounts based on the ESD's activities. The three types of ESD fund accounts are:

- General Operating Fund – All ESDs will have this general fund for normal revenue and expenses accrued and incurred during the course of operations.
- Tax Debt Service Fund – This fund will house revenues from property tax (operating and debt service) while expenses for this fund are generally loan payments, dispatch, insurance, construction and capital costs.
- Sales Tax Fund – If the ESD is able to collect sales and use tax, it may have a separate fund for the revenue and interest from sales tax and the costs associated with that money.

All funds should be accounted for according to generally accepted accounting principals (GAAP) and follow guidelines given by the Government Accounting Standards Board (GASB). Working with a bookkeeper or accountant who is familiar with government accounting can be very helpful to maintaining proper financial records.

## **Investments**

An ESD may invest its funds subject to the Public Funds Investment Act ("PFIA") (Government Code, Chapter 2256.) Without special training for its Investment Officer, an ESD may invest its funds only in:

- (1) Obligations of, or guaranteed by, governmental entities;
- (2) Certificates of deposit and share certificates; or
- (3) Investment pools

Should the ESD Board wish to invest in the broader array of investment vehicles, then the treasurer, Chief Financial Officer, and the investment officer of the ESD attend and successfully complete the training requirements under the PFIA. The same person can serve all of the above roles.

If the ESD is investing funds under the PFIA, the investment officer, at least quarterly, must submit a written report of investment transactions for all funds covered by the PFIA for the preceding period to the ESD.

## Financial Warning Signs

The primary financial responsibility of an ESD is to be a good steward of the taxpayers' money, safeguarding it from waste and fraud. A particular idea mentioned above bears repeating: though the service provider may have been a primary instrument in propelling the creation of the ESD, **THE ESD IS NOT AN ATM FOR THE SERVICE PROVIDER, NOR SHOULD THE ESD BE EXTENDING BLANK CHECKS TO THE SERVICE PROVIDER.** Continuous monitoring of the ESD's financial status can aid the Board in the awareness of potential financial distress and allow it to be proactive to avoid a financial disruption.

An understanding of the fiscal obligations that the ESD must meet, as well as an understanding of the ESD's revenue sources, is critical. Long-range planning and budget monitoring can head off potential problems before an issue threatens service provision. Some basic methods of financial vigilance:

- Monitor fund balances with an eye toward the ESD's upcoming expenses;
- Be mindful of debt financing and the potential to lock the ESD into a fiscal obligation that can consume operational resources;
- Be wary of frequent budget adjustments or extraneous requests for non-budgeted funds from service providers; and
- Monitor the monthly net revenues less expenditures. This is similar to a private corporation's "profit and loss" schedule. While the monthly totals may vary from month-to-month, an overall view of the money coming in and going out can assist the Board in understanding the total financial position of the ESD.



## **Chapter 6: Providing Services**

The core responsibility of every ESD is to provide effective emergency services to the residents of the district's territory. Unfortunately, as a saying in the ESD world goes, "if you've seen one ESD, you've seen one ESD." There are many different aspects and considerations to providing services, and it is important that each ESD Board find the right model and level of service delivery that will benefit its citizens to the highest degree.

### **Different Models**

There are multiple methods for providing emergency services to the citizens of an ESD. The central issue is finding the optimal way to provide services to the constituents of the district.

#### Contracting for Services

ESDs are often created in areas that are already served by a service provider. The prime example is a volunteer fire department (usually existing as a nonprofit corporation) determining that it can no longer provide adequate services under its current financial structure and spearheading an effort to create an ESD. Once the ESD is created, the Board of Commissioners, acting in its capacity as the administrator of the newly-created independent governmental entity, will contract with the VFD to provide services for the district. An ESD must enter into a contract with a service provider before making any payments to the service provider because an ESD cannot simply give away public funds.

As will be discussed later in this chapter, this model creates an arms-length, independent contractual relationship that can present the ESD with a particular set of opportunities and challenges.

#### Special Issues

**Multiple Service Providers** – Some ESDs are created over an area that includes the territory of multiple service providers. This usually happens when neighboring fire departments band together to create an ESD that encompasses a wide swath of the county or the entire county. At first, the relationship is generally cordial as the departments work together to help establish the ESD as an entity that can benefit the citizens of the area by providing stable funding to multiple service providers.

Once the district is created, however, the task falls on the ESD Board to apportion the resources of the district among the various service providers under contract. It is important to remember that the ESD must have separate agreements (contracts) with each service provider. These arrangements may need to be different, based on the specific needs and capabilities of each provider.

**Methodology for compensation** – There is no established standard for how to compensate multiple service providers in one ESD. ESDs around the state use a variety of methods and formulas based on the specific circumstances of their individual ESD. Some examples:

- The Share-and-Share-Alike method – Likely the simplest way to apportion resources, this method would simply split the compensation for each provider equally. As an example, if an ESD contracted with four different volunteer fire departments, it would split the financial resources four equal ways. While being simple, this method may not always make the most sense given that not all departments have the same capabilities or call volume.
- The Per-Call Basis – To some ESDs, it makes sense to simply apportion resources based on the documented activity of each provider. Under this method, if one department historically made twice as many calls as another, that department would receive twice as much funding. The problems with this model are that calls and activity are not always stable year-to-year, and ESD planning should be concerned with the best way to provide service going forward.
- Area/Percent of Territory Covered – Similar to Per-Call Basis, the resources are allotted based on the amount of the ESD's area each service provider covers. This could lead to issues when the different department's responsibilities are not proportional to the size of their territory.
- The As-Needed or Budgeted approach – Some ESDs choose to work backwards on the issue of resource apportionment for multiple service providers. In this instance, a service provider will be required to clear all expenses with the ESD before an expenditure is made.

### Employing Service Providers

Some ESDs choose to assume the role of service provider. This means that the ESD becomes directly responsible for hiring the men and women (or accepting volunteers) providing services and oversees the day-to-day operations. In this instance, there is no longer a contract relationship between independent entities, as the ESD and service provider have been unified under the ESD banner.

While this model can be intentional, there are instances where the ESD assumed the role of service provider out of necessity. This generally happens when the relationship between the ESD and the independent service provider has become strained and the parties are unable to sustain a working relationship that can continue to provide services for the benefit of the residents.

There are both benefits and drawbacks to this approach. On the positive side, an ESD acting as a service provider can eliminate the kind of contentiousness that may arise in a contract relationship between two entities. The process of negotiation and agreement on terms of a contract can be a naturally arduous process that could result in acrimony between the two sides. Streamlining the service provision model can make for a more effective and efficient process that is ultimately beneficial to the residents of the district. ESDs must take into consideration that having paid firefighting personnel hired by the ESD subjects the ESD and its personnel to regulation by the Texas Commission on Fire Protection.

However, it's important to remember that an ESD Board is a governmental entity that is primarily concerned with the administration of the district rather than the day-to-day op-

erations of a service-providing entity. ESD Commissioners come from a variety of backgrounds, which may or may not include experience with running an emergency service providing entity. In this situation, the Board should consider hiring a Chief or Chiefs who manage day-to-day operations and who report to the Board regularly.

### Combination Departments

Many service providers have supplemented their volunteer roster with professional firefighters or EMTs, thanks largely to the financial resources provided by an ESD. Combination departments can perform very well, particularly if volunteer resources are minimal. Volunteers can be used to supplement the work of paid staff, thus reducing the strain on volunteers and the needs for 24/7 paid staff.

### **Ownership of Assets**

One of the most controversial issues in the world of ESDs revolves around the question of “who owns what?” In a situation where an ESD is providing financial resources to an independent service provider that uses that money to acquire property or facilitate service provision, the question of ownership of that property is sometimes disputed.

The essential governing principle in such a matter is that ESDs are governmental entities using taxpayer money to finance their intended purpose. This means that anything purchased with public money must ultimately belong to the public. Substantive amounts of case law refer to this proposition as a “**constructive trust**,” meaning that items purchased with tax dollars can be used by another entity but remain assets of the taxpayers. In the 2013 legislative session, the Texas Legislature passed Health & Safety Code Section 775.073(d), making it clear that any property (land or equipment) leased or purchased with money provided by an ESD is owned or leased by the ESD even if property is used by a service provider.

That law itself still allows for some unsettled issues, particularly in an instance where an independent service provider has used its own funds (such as money gained from donations or grants) to purchase an asset along with public money. In this instance, most authorities agree that, while the ESD may not retain total ownership of the asset, the ESD does own at least a proportionate interest in the asset.

### **Licensing Requirements**

In order to conduct operations, an ESD must ensure that all service providers are appropriately licensed to carry out their respective duties. The ESD maintains this responsibility regardless of the model of service provision that it employs. As will be discussed later in this chapter, an ESD that is contracting for services must make sure that up-to-date licensing is covered under the ESD-service provider agreement.

### EMS

The Texas Department of State Health Services licenses emergency medical professionals.

## Firefighting

In Texas, paid firefighter employees, both part-time and full-time, are tested, licensed, and regulated by the Texas Commission in Fire Protection (“TCFP”). The TCFP is an independently-functioning state agency **and does not regulate volunteer fire departments or volunteer firefighters.**

## **Contracts**

As outlined above, instead of directly acquiring equipment, buildings, supplies, or personnel, many ESDs choose to rely on existing service provider organizations to provide actual emergency services. Some ESDs contract with other ESDs or municipalities for emergency services. ESDs are encouraged to recognize the existing service provider(s) that had been providing emergency services prior to the ESD’s creation. Many times, in fact, the creation of the ESD was spearheaded and endorsed by members of the existing service provider in hopes of creating a superior level of service through a constant funding stream.

Unfortunately, this familiarity can also breed contempt, or confusion, when the time comes to formally construct a service provider relationship. In the event that an ESD contracts with an outside entity (such as an independent VFD or ambulance service) for service provision, **the ESD must have a formal, contractual relationship with the service provider.** This is important to protect the ESD and the citizens it serves. Important: remember the entity concept when thinking about these agreements: the ESD is an independent governmental entity funded by the taxpayers. The service provider is generally an independent nonprofit corporation (or in some cases a for-profit company) run by its members or shareholders. The contract should be negotiated and agreed upon just like any contract between two separate, independent organizations.

## Important Terms

The ESD must make sure that, in any contractual relationship with a service provider, the service provider has its own established policies and procedures that detail how the organization operates. If any of the service provider’s policies or procedures materially conflict with the ESD’s, those issues must be resolved before a contractual relationship can begin. Some other important items in an ESD-service provider contract are:

- Chain of Command – The chain of command in an emergency situation should be spelled out in the contract for services. It is important to remember that the ESD has ultimate responsibility for the provision of emergency services in the district’s area. This idea must be balanced with the idea that a service providing organization has expertise and, likely, a preexisting chain of command that should be respected. The ideal interaction between the Board and the command staff of the service provider in various emergency situations should be specifically planned and prepared for prior to the emergency actually occurring.
- Services Provided – The contract should specifically state what the ESD can expect its citizens to receive from the service providing organization.
- Responsibilities Assumed – The contract should note which entity is responsible for certain duties or activities and to what extent interaction will take place on various activities.

- Costs/Method of Reimbursement – How much is the ESD going to pay under the contract and how will the service provider be reimbursed for its own out-of-pocket expenses in performing its duties under the contract. As you may imagine, this is where some of the more tense issues can appear during negotiation. The key thing to remember is that the ESD represents the taxpayer and is a steward of public funds, meaning that it has a fiduciary duty to ensure those funds are being used responsibly and for the betterment of the community. Also remember that both parties are on the same side, namely: the public’s safety. There should be a clear and easily defined structure of payment agreed upon before the contract is signed.
- Reporting Structure – The service provider must be required to make a thorough, informative report on its actions under the contract to the ESD on a regular and timely basis. **A representative of the service provider should be at every monthly ESD meeting to make a progress report. This requirement should be mandated in the contract.**
- Time Frames/Contract Term – The contract should clearly denote when certain important, time-sensitive items are going to take place under the agreement. **The service provider contract should be reviewed every year.** The contract should be subject to termination or renewed every year.
- Knowledgeable legal counsel should draft Service provider contracts.

#### Financial Oversight/Transparency

When dealing with money between two independent organizations, things can get tricky. The contract for service provision should discuss what amount of financial information the service provider would be required to share with the ESD. **The ESD must be able to verify where its money is going and how it is being used.** At a minimum, the service provider should provide a detailed budget for items that are purchased with ESD funds and be prepared to provide receipts to the ESD for the same. The ESD should also be able to determine what amount of ESD funding is necessary given the other revenues available to the service provider.

#### Independent Contractor or Agency Status

As an independent contractor, the service provider is performing under the contract in a manner to legally keep its independence from the ESD in its day-to-day operations. The men and women associated with the service providers are not employees of the ESD. However, there are also situations in which an agency relationship exists between an ESD and its service provider. Both “independent contractor” and “agency” are legal terms and beyond the scope of this manual. The Board should consult legal counsel to determine which status exists. **This status should be explicitly stated in the contract and is dependent upon the level of ESD oversight set forth in the contract.**

#### Liability/Immunity/Indemnification

Emergency service provision can be dangerous and unfortunately, sometimes, bad things happen. Most service providers are small volunteer organizations with little in the way of financial resources (thus why the ESD was formed in the first place). The ESD, however, can sometimes be seen as “the government” and thought to have “deep pockets.” Whether or

not this is true, the contract should clearly spell out what happens in the case of an accident or resulting lawsuit and how the sides will handle liability issues. This cannot be stressed enough: **an experienced attorney's counsel is extremely important here.**

### Service Standards

Accountability is important under any contractual agreement. The ESD-service provider contract should detail standards of performance to ensure that the public is receiving the level of service it has bargained for. Instead of looking at performance standards as an arduous requirement that must be complied with (like passing a test), these should be thought of as more of an opportunity to show the outside world how beneficial the ESD has been. Strong or improved performance standards can be a crucial public relations tool when promoting the value that the ESD and service provider bring to the community.

### Ownership of Assets

See above for a discussion of the legal constructs regarding the ownership of assets between an ESD and a service provider. The issue of asset ownership, however, should be directly addressed in the service provider contract. **The contract should specifically state who owns what and for how long.** The contract should also detail the disposition of the assets in the event of surplus declaration or the termination of the contract. **The main guiding principle here: anything purchased with taxpayer funds remains the property of the taxpayers.**

### **Employee Issues**

Some ESDs choose to employ individuals to undertake its duties. These employees can range from administrative staff to first-responding personnel. Employing individuals brings additional issues that an ESD Board should be aware of. It is important to consult with knowledgeable legal counsel to navigate the labyrinth of employee issues.

### Employee Policies

The ESD Board is responsible for administering a **written personnel policy** for its employees that outlines:

- The ESD's standards of conduct
- Job Descriptions
- General work rules
- Leave policies
- Benefits
- Wage and salary administration
- Purchasing rules
- Other pertinent employee issues as the ESD sees fit

If the ESD contracts with a service provider, and that service provider employs individuals within its organization, the service provider contract should require the service provider to have corresponding employee policies and procedures for those individuals.

### Employment Contracts

When necessary, an ESD should consider employment contracts for certain employees. Consult an ESD attorney regarding which employees should be hired under a contract and the exact specifications that should be included in the contract.

### Employer/Employee Tax Issues

The Internal Revenue Service has promulgated rules for governmental employees and fire and emergency workers. These issues can be complex and involved: **consult an experienced attorney to ensure your ESD is in compliance.**

Compensation – generally, tax laws apply to firefighters and EMS providers in the same manner as other types of workers. **Simply designating workers as “volunteers” does not necessarily exempt them from employee status.** If the work the individual does is **subject to the will and control of the payer, they are common-law employees.** It also does not matter what the wages are called or whether the individuals are paid on a “call” basis, monthly, hourly, or otherwise. Nor does a “full time” or “part time” distinction matter. If an individual is determined an employee and receives payments that are not exempt under a special provision, the wages should be reported on a Form W-2 as taxable income.

Income Tax – All amounts received by employees are generally subject to Federal income tax. Some benefits are excluded, such as:

- Certain minimal fringe benefits;
- Meals provided for the convenience of the employer;
- Employee discounts;
- Achievement awards;
- Health insurance; and
- Educational benefits.

Reimbursements for expenses may be excludable from wages if the reimbursements meet certain rules. There are also federal regulations related to benefit requirements for full- and part-time personnel.

Social Security – State and local government employees are generally subject to social security tax for wages paid unless they:

- Participate in a qualifying public retirement system; **OR**
- Are covered by a voluntary (Section 218) agreement between their state and the Social Security Administration

Medicare - employees hired after March 31, 1986 are covered by Medicare tax, subject to a few exceptions. Employees hired before that date may be exempt if they have remained in continuous employment since then.

Emergency workers – there are exemptions under the Federal tax code from Social Security and Medicare tax for workers serving on a temporary basis in the event of certain emer-

gencies. This exemption is only for temporary hires in response to a specific, unforeseen emergency event.

Expenses and Reimbursements – Firefighters and EMS workers may receive amounts designated as expenses for transportation, equipment, clothing, etc. These are generally treated as taxable wages. However, if the amounts are paid under an **accountable plan**, they may be excluded from wages. An accountable plan must:

- Require workers to substantiate actual expenses;
- Allow no reimbursements for unsubstantiated expenses; and
- Require any excess reimbursements to be returned timely.

Ordinary and necessary expenses that are incurred by employees in the course of performing their duties are excludable under an accountable plan. A fixed cash amount, which does not require documentation of expenses, should be considered ordinary wages subject to tax and withholding.

State or Local Tax Benefits – If a benefit in the form of a local tax credit or rebate is offered in return for services performed, their value should be deemed income for tax purposes and included in taxable wages.

#### Fair Labor Issues

ESDs and their contracting emergency services providers are subject to the Fair Labor Standards Act (FLSA). The rules under the FLSA apply to overtime and state that an employee who works more than 40 hours in a specific workweek shall be compensated at a rate of 1.5 times the normal salary or granted compensatory time at 1.5 hours for each hour of overtime. FLSA rules are complex, and an ESD with FLSA questions should consult an attorney experienced in FLSA matters.

#### Civil Rights Issues

United States Code, Section 1983, Title 42 states “every person who, under color of any statute, ordinance, regulation, custom, or usage of any state or territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured.” Simply stated, **this means that using your power as a governmental entity to violate someone’s constitutional rights could result in serious liability.**

This liability extends not only to employees, but also to citizens and property. An example: allowing one group to use District facilities while disallowing another group access based on an attribute of that group that is legally protected.



## Chapter 7: Ethics, Conflicts of Interest, and Accountability

### Conflicts of Interest

Conflict of interest concepts are rooted in the common law. From *Meyers v. Walker* (276 S.W. 305, 310-311 (Tex. Civ. App 1925, no writ)): “If a public official directly or indirectly has a pecuniary interest in a contract, no matter how honest he may be, and although he may not be influenced by the interest, such a contract so made is violative of the spirit and letter of our law and is against public policy.”

The most prevalent type of conflict of interest is where the public official has a substantial **interest in a business entity or in real property** with which the governmental entity is transacting business. Texas Local Government Code Section 171.004 details the process for handling these types of conflicts.

If the local public official is confronted with such a situation, he or she must **file an affidavit** stating the nature and extent of the interest before a vote or decision on any matter involving the business entity or the real property, **AND abstain from further participation in the matter** if the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public OR it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property that is distinguishable from its effect on the public.

A “substantial interest” is a statutorily defined term. A person has a substantial interest in a business entity if:

- Stock Interest – The official owns ten percent or more of the voting stock or shares of the business entity, or
- Other Ownership Interest – The official owns ten percent or more of the fair market value of the business entity or \$15,000 or more of the fair market value of the business entity, or
- Income Interest – If the official received ten percent or more of his or her gross income for the previous year from the business entity.

A substantial interest owned by a close family member (spouse, child and parents) is deemed to be the interest of the official for conflicts purposes, meaning that official is considered to have the same business interest as the family member. A substantial interest in real property is quantified as equitable or legal ownership with a fair market value of \$2,500 or more. It is important to note that the rule not only applies to the interests of the official, but also to those of the official’s close family members (spouse, child and parents) as well.

A local public official can also violate conflict of interest laws if that person acts as a surety for a business entity that has work, business, or a contract with the governmental entity or acts as a surety on any official bond required of an officer of the governmental entity. Vio-

lating conflict of interest laws is a Class A misdemeanor, punishable by up to one year in jail and/or up to a \$4,000 fine.

\*Special note for Harris, Smith and Orange counties: if you or your spouse, child, or parents are members of the service provider contracting with an ESD, you are **automatically ineligible** to serve on that ESD's Board.

## **Dual Office Holding/Incompatibility**

### Dual Office Holding

The Texas Constitution prohibits a person from holding or exercising more than one civil office of emolument at any one time. An "office of emolument" is one where the official is allowed to receive a payment or stipend for their service. The prohibition exists regardless of whether the stipend is accepted or rejected by the official. If a person accepts a second office of emolument, the law states that the first office is automatically resigned and the official remains in the office that was assumed later in time.

ESD Commissioners are also prevented from holding two public offices if the Commissioner could use his power in one office to control and/or impose policies that impact the other office.

The Texas Health & Safety Code Section 775.0205 specifically prohibits fees of office if a person is appointed to a second ESD board, which removes the emolument problem and allows for a person to serve on the boards of overlapping ESDs.

Note: some offices are specifically exempted from the prohibition on dual office holding, one example being County Commissioners. However, see the next section for an explanation of why County Commissioners cannot serve on an ESD Board.

### Incompatibility

In some instances, an individual is prohibited from serving on an ESD Board. For example, there is a common law prohibition on **self-appointment**, which, in ESD terms, states that a person sitting on the body appointing the ESD Commissioners (the County Commissioners Court for counties where ESD commissioners are not elected) cannot also serve on the ESD board. Further, the idea of incompatibility extends to **self-employment**, meaning that someone who is employed by the ESD may not also serve on the board. The prohibition on self-employment can arise when the position of employment is subordinate to the ESD board in some of its principal duties.

There is also an incompatibility issue when "**conflicting loyalties**" arise. This happens when a person serving in two offices on two different governmental bodies is confronted with a conflict between the two bodies such as:

- The governmental bodies are allowed to contract with each other;
- The governmental bodies both have the power of taxation (it doesn't matter if the powers differ, i.e. one has ad valorem authority and one has power to levy a sales tax);

- The governmental bodies have overlapping boundaries; or
- One of the governmental bodies has the authority to impose its will on the other in any matter whatsoever.

The Texas Health and Safety Code explicitly states that holding positions on two ESD boards is not incompatible, whether those ESDs overlap or not.

### **Nepotism**

Fun fact: the term “nepotism” arises from the practice of Medieval Popes appointing their nephews to positions of high stature. In modern Texas, there is a prohibition on securing offices that are either directly or indirectly compensated from public funds or fees of offices for one’s family members. A public official may not:

- Appoint;
- Confirm the appointment of;
- Vote for the appointment of; or
- Vote for the confirmation of the appointment of an individual if that individual is related to the public official within a degree described by law (Texas Government Code, Section 573.002.) The current prohibited degrees of relationships are those within the third degree by consanguinity or within the second degree by affinity. Please see the attached appendix for more details.

Other members of the governing body may not vote to hire a person who is a relative of the public official. Abstention by the related public official does not allow the remaining members to vote on the hire.

### Exemption (related to Nepotism prohibitions)

If a person has been in continuous employment in the office for a period prior to the election/appointment of the public official related to the employee for:

- At least 30 days if the public official is appointed;
- At least six months if the public official is elected at an election other than the general election for state and county officers (November of even-numbered years)
- At least one year if the public official is elected at the general election for state and county officers.

### Penalty

An official who violates the nepotism laws commits official misconduct, which is a misdemeanor punishable by a fine not less than \$100 or more than \$1,000. It is also grounds for removal of an ESD Commissioner.

### **Education Requirements**

In 2011, the Texas Legislature became concerned with incidents of ESD Commissioner malfeasance in multiple areas of the state. The lack of state level oversight for ESDs became an issue as legislators discussed the possibility of limiting autonomy for ESDs or possibly burdening ESDs with more stringent restrictions.

To create a compromise to alleviate these concerns, the Texas Legislature added an education requirement to ESD law. Under the Texas Health and Safety Code Chapter 775.0365, ESD Commissioners are required to receive **six hours of training (certified by an institute of higher learning) during a two-year period**. A Commissioner is allowed to carry over three hours of training (above the mandatory six) into the next two-year period.

While the training requirement may seem arduous to some, it is important to remember that the goal is to assist ESD Commissioners in better serving their ESDs and the residents of the ESD by equipping them with the knowledge of how to do their jobs correctly and within the boundaries of the law.

### **Removal**

An ESD Commissioner may be removed for violation of conflict of interest laws, nepotism, or failing to comply with training requirements. Essentially, an ESD Commissioner is under the same conditions as other local government officials and can be removed for incompetency, misconduct, or official misconduct (elected Commissioners can also be removed for intoxication). For a more detailed discussion of ESD Commissioner removal see Chapter 3 of this document.

## Chapter 8: Elections

Since ESDs are governmental entities, certain operations, as well as an ESD's creation, are subject to voter approval. Indeed, the voters, in a constitutional referendum in 1987, approved the very constitutional provision authorizing ESDs.

ESDs must comply with election laws and procedures when placing an item before the voters. The goal of this chapter is to offer a brief overview of the election process. It should be noted that not only Chapter 775 of the Health and Safety Code, but also other laws, including the Texas Election Code and the U.S. Voting Rights Act, govern elections for ESDs.

The Texas Secretary of State's Office oversees elections in the state, and offers valuable information on its website, [www.sos.texas.gov](http://www.sos.texas.gov). **The ESD Board should consult legal counsel when undertaking any election process.**

### Creation

As discussed during the section on creating an ESD, the residents of the proposed district can only form an ESD through an election. The County conducts the election and it must confirm both the creation of the ESD and the authorization of the imposition of the maximum tax rate as described in the creation petition. Any conditions required under the portion of the law dealing with municipal consent must be included in the ballot provision. Remember that an ESD may not include territory in a municipality's city limits or extra-territorial jurisdiction unless a majority of the voters in that territory vote in favor of creation. Should the election fail inside that territory, the ESD might still be created with that territory excluded, provided that the County Commissioners Court has found that such an ESD could feasibly exist.

Notice of the election should be in the same manner as prescribed for the notice of the public hearing on the issue of creation. The election should be held on the first uniform date (either the first Saturday in May in odd-numbered years or the Tuesday after the first Monday in November in any year) that allows sufficient time to comply with other requirements of the law. Note, though, that Texas counties are not allowed to conduct election in May of even-numbered years.

Following the election, the Commissioner's Court canvasses the election and enters the order with the results of the election to confirm the creation of the proposed ESD. The Commissioners Court must use language mandated by Chapter 775 when ordering that an ESD is created. Should the proposed ESD fail to receive a majority of votes in favor of creation, the Commissioners Court may not order another election for its creation for one year after the date of the official canvass.

### County Election

Since there is obviously no ESD in existence prior to creation, the creation election must be called and ordered by the County Commissioners Court. As such, the county unit responsible for elections must administer the election.

## **Elections for Commissioners**

Currently, ESD Commissioners in Harris, Smith, and Orange counties, as well as commissioners for ESDs that span more than one county, are elected. The possibility exists that more areas of the state will require ESD Commissioners to be elected in the future.

As discussed above, an ESD with elected commissioners must ascertain whether it is beneficial or, in some cases, ultimately necessary, to contract with the county to administer the commissioner election. A Notice for Applications for Place in Ballot must be given 30 days before the beginning of the candidate filing period. The election must be called **no later than the 78th day before the election**.

Once the deadline for candidate applications has passed, the ESD may cancel the election if there are no contested races. This may save the ESD money. In the event there are contested races, places on the ballot should be drawn and notice should be given to candidates regarding those results. Notice should be provided to the County Clerk and an Agent of Election Information should be selected. The ESD must then publish and post notice of the election. The election requirements are detailed and ESDs should consult legal counsel to help navigate these requirements.

The early voting period runs from 12 days to 4 days before the actual Election Day. **Elections may only be held on uniform election days**, which are either the first Saturday in May or the Tuesday after the first Monday in November. Generally, canvassing may take place between 3 and 11 days after the election and records must be retained for 6 months after the election.

## **Annexation Election**

The expansion of an ESD's territory was previously discussed in Chapter 3. Annexation of a territory to an ESD is final when approved by a majority of the voters at an election held by the ESD within the district and by a majority of the voters at a separate election held by the ESD within the territory to be annexed. If the ESD has outstanding debts or taxes, the voters in the election to approve the annexation must also determine if the annexed territory will assume its proportion of the debts or taxes if added to the ESD.

Ballot language, notice of the annexation election, and the election process should conform to both the Texas Health and Safety Code and the Texas Election Code.

## **Sales Tax Elections**

In recent years, the most common elections held by ESDs have been elections for the ability to levy and collect sales tax. As discussed previously, sales tax offers an alternative source of revenue for ESDs.

A sales tax election is called by the ESD through adoption of a resolution. The Board can also be compelled to call a sales tax election if at least five percent of the registered voters in the ESD petition the Board to call the election.

### **Election to Increase an ESD's Maximum Property Tax Rate**

It is important to understand the difference between the “tax cap” and the ESD’s “approved tax rate.” All ESDs are subject to the previously discussed tax cap of **ten cents per \$100 of property valuation**. This standard is set forth in the Texas Constitution. However, each specific ESD is subject to its own “approved tax rate” that is set forth at its creation, in the creation petition. **An ESD may be created with a property tax rate below \$0.10/\$100.** For example an ESD can be created with a six-cent tax rate set forth in its creation petition, meaning it is not able to tax above \$0.06/\$100, without regards to the constitutional tax cap. Needless to say, an ESD is not required to tax up to its approved tax rate, and can set any rate up to the approved rate as circumstances dictate.

Voters within certain ESDs must approve any increase in the maximum ad valorem tax rate. As stated, an ESD is created with an “approved tax rate,” which may or may not be the constitutional cap of ten cents. Former Rural Fire Prevention Districts were constitutionally capped at \$0.03/\$100 and **the approved rate was not automatically raised when those districts were converted to ESDs**. The voters must approve any increase to the maximum ad valorem tax rate of those ESDs as well.

The ESD Board may order an election to increase the tax rate, but remember the proposed tax rate may not exceed the constitutionally set maximum cap of \$0.10/\$100. The proposition on the ballot must state the maximum tax rate, as proposed by the ESD Board, to be authorized at the election. The increase in the maximum tax rate takes effect in the tax year following the tax cap election.

### **Bond Elections**

An ESD may not authorize bonds and notes secured in whole or in part by taxes unless a majority of the district's qualified voters approve the issuance of the bonds and notes.

### **Election Process**

The election process, in most instances, consists of the following steps:

- Order of Election (in some cases this is spurred by a petition)
- Hearing
- Vote
- Canvass

Chapter 775, as well as the Texas Elections Code, governs notice requirements and other procedures regarding elections. As has been stated, the assistance of legal counsel is essential when traversing the election process.

### **Political Advertising vs. Public Education**

As public servants of a governmental entity, ESD Board members are barred from engaging in political support or antagonism for any election including ESD election. The ESD may not use tax funds to engage in political advertising and may not endorse any position regarding an election. This is an incredibly serious issue that can result in charges of electioneering before the Texas Ethics Commission.

An ESD may, however, engage in public education about the factual issues surrounding an election. For example, when the Board calls an election for sales tax or a possible increase in the maximum authorized ad valorem rate, it is acceptable to discuss the facts behind the Board's decision with the public and educate residents about the realities of how such a measure would affect them. Explaining the practical monetary effects of a tax increase on an individual household in the ESD, or defining how extra revenue from such an increase would be used to benefit the ESD's operations is allowable during the period before an election.

It is also permissible, and even recommended, to engage with consultants who can help guide the ESD through an effective, yet ethical, public education campaign. The Texas Ethics Commission publishes some guidance materials related to this issue. The line between political advertising and public education can be complicated, thus it is best to consult your ESD's attorney (which, as stated above, should be coordinated with during any election effort) on the do's and don'ts regarding this topic.



## Chapter 9: Interacting with Constituents and Media

Part of conducting business as a governmental entity is the obligation or desire to interact with the media as well as undertake a coordinated public relations effort. This chapter is designed to give the ESD Commissioner some helpful ideas about working to present a positive image of the ESD to the public.

### Developing Your Message

The first issue to understand is that much of the public is unaware of the existence of ESDs, much less knowledgeable about what they do. When emergency responders perform their duty, it is generally the service provider, be it a fire department or ambulance company, which the public assumes bears the extent of responsibility for the emergency response.

In most instances, that is how it should be. The men and women who serve as first responders earn and deserve the credit and adulation of the public. But the public, as taxpayers and citizens, do need to be informed about the governmental entity responsible for ultimately ensuring the provision of those emergency services. It is an essential part of how our system of government works. **This responsibility to educate and inform falls on the ESD Board.** Thus, the ESD Board should work to formulate a cohesive and comprehensive message that fits the district's purposes and goals and can be communicated clearly to the public.

### Mission Statement

Prevalent in corporations and nonprofit organizations, mission statements are an excellent way to quickly summarize the purpose behind an organization's existence. While not a requirement, the ESD Board should take some time to refine a pointed statement that defines what its ESD aims to do for the citizens it serves.

### Community Outreach

The ESD should be proactive in connecting with the community it serves. There are numerous efforts that the Board can initiate to better inform the public about its activities while building a positive relationship with its constituents.

### Public Education

Keeping the public informed and up-to-date on the ESD's activities is vital to successful ESD-public relations. A good start is to engage with other community groups and local interest efforts. Hosting open houses at district facilities and holding periodic town hall meetings on the issue of emergency services and public safety can be a way to engage the public face-to-face and have them gain first-hand experience with the ESD.

### Newsletters

Another method of public engagement is sending a newsletter, either in printed or electronic form that details the activities of the ESD and also contains general public safety tips and information. While this can be costly due to printing and postage expenses, an ESD

should consider sending at least one ‘Annual Report’ style communication to the public that can inform about the ESD’s performance over the year. Electronic newsletters (assuming the ESD undertakes an effort to capture residents’ email addresses) and social media, such as Facebook, are also cost-effective, but can require sustained effort to obtain the desired results.

### Websites/Social Media

In the Internet age, a website for the ESD is absolutely crucial to public communication. The ESD’s website is generally the first place a media member or a citizen will look for information about the district. It is important to not only have a web presence for the ESD, but to ensure that the website is accessible and kept as current as possible.

Social media is a frontier that many governmental entities find themselves attempting to navigate. While having a social media account can provide the ESD with an immediate, interactive source for connectivity with the public, that same connectivity lends itself to being a source of confusion or possibly even offensiveness when mistakes are made. The important thing to remember: **items on the Internet can be seen everywhere, and can stay in existence forever.** If you wouldn’t want to say or do something in a meeting that is being simultaneously recorded while also being broadcast to the entire world, you shouldn’t post it on the Internet. The ESD’s Internet image is representative of the district as whole, including the Board.

### Press Releases

Press releases are the ESD Board’s opportunity to control the message about issues that it deems to be of public interest. As such, a press release should be professional, well written, and informative. Put simply, the press release is a news article written by the ESD. Feel free to include positive information and quotes from those involved with the effort that is being spotlighted. Press releases must be factually true. The press release is a chance to put the ESD’s name in front of the public in a manner that reflects positively on the work that is going on in the district. It may be useful to hire a professional with experience in writing and press relations to assist in this effort.

### **Working with Media**

*The following information is compiled from a 1999 training manual from the Texas Department of State Health Services, "Working with the News Media: A Guide to Getting Your Message to the Public."*

The exchange of information is critical to ESD operations. Information sharing includes assuring that the public receives accurate, complete and consistent information. Establishing a good working relationship with the news media can be advantageous to both the district and the media. The success of a district and its programs and services hinges on its relations with the news media.

It is important that individuals and public officials representing ESDs recognize the role of the news media.

Each type of news media offers its own advantage:

- Newspapers cover issues in greater detail and excel at handling complex stories or issues.
- Television offers immediacy of information, visuals of news events as they happen or soon after, and a summary of local, state, national and international news
- Radio offers portable immediacy and “news as it happens,” particularly helpful during crises or severe weather.

The media's goal is to gain and to hold the largest possible audience, and each recognizes its abilities and limitations. A neighborhood paper cannot afford to devote a lot of space to national or international events; at the same time, the metropolitan paper will have little interest in an ESD meeting at which the most exciting event is a 20-minute discussion to determine the district's letterhead.

### Developing Positive Relations

So with all of this knowledge and understanding about the news media, how does one go about establishing a positive relationship with the media and developing programs to let the public know what is going on with the ESD? There is no single magic answer that will be correct in every situation and with every media representative. However, below are a few pearls of wisdom:

1. Get acquainted with the news media. This includes the reporters as well as editors and publishers. Get them involved in local activities.
2. Invite the news media to an open house, a field day or to special training sessions. This will help them to know the conditions and situations faced by the emergency responders in their work.
3. Provide frequent information and stories to the news media. This does not mean for each commissioner to try to scoop the others. The goal here is for the ESD to select its spokesperson and have that person get the information to the news media. Each commissioner should be prepared and ready to talk to the media, but all need to have the same information and stay on the same message.
4. Don't be tempted with your knowledge of a subject to answer questions that are not asked. Just answer the question(s) that the reporter asks.
5. Be careful when communicating with the news media, but don't be paranoid.
6. Don't ever lie to the media, but keep in mind that you do not always have to give all of the information if there is a reason not to release certain facts. If at all possible, give the complete story to the media. It is very important to build trust and credibility.
7. If you don't want to be quoted, don't say it.

8. Don't talk "off the record," as there is no such thing. On the other hand, if you have developed an attitude of trust with the reporter, you may be able to give the reporter some background information that will relate to a future story. Even then don't be surprised to see the story in the news before you intended. The reporter himself/herself may not release it, but he/she may casually mention it and another person pick it up.

9. If you have news releases, be sure that all of the media receive the same information. However, if a reporter comes to you with a request for information about a project or situation, then that topic of information is that reporter's story. This could get sticky if one reporter jumps the gun on something that was about to break anyway.

10. Make sure that the information that you give to the reporter is as accurate and complete as possible. Giving partial or slanted information can lead to bad relations and distrust of your motives as well as lack of confidence in the individual.

11. In the event that you feel that a reporter has not been accurate, has not been fair, or you have had some other difficulty, do not be afraid to talk to the reporter, or, if conditions warrant, talk to the reporter's boss.

12. If you must talk to a reporter, you can respond to a question with, "No comment," but be prepared to pay the consequences. "No comment" often carries a connotation that you know something, but you don't want to admit it because it may make you or your program look bad.

13. Do not hesitate to tell a reporter that you do not know anything about the subject, which he/she is questioning. It is appropriate to refer the reporter to the person who does have the information or you can get the answers and call the reporter back within a reasonable time. If you do have to get the information, it is imperative to remember the reporter's deadline.

14. Do not hesitate to consult your legal counsel in any situation involving the media. This may save great legal expenses down the line. Also, never talk to a reporter about a specific call or individual, as you may be violating statutory confidences, and if you do have to talk about a specific event, provide general information only. Never allow any employee or volunteer to ever speak about in an incident or individual, unless you have specifically authorized that individual to do so.

Applying these suggestions does not guarantee perfect media relations, but they may be beneficial to those who have not worked with the media in the past.

## INDEX

Ad Valorem (Property) Tax .....	7
Adopting a budget .....	30
Agenda .....	21
Agenda Distribution .....	25
Agenda Issues - Streamlining Meetings .....	24
Annexation.....	9
Annexation Election.....	56
Annual Report .....	11
Appointed Commissioners .....	13, 18
Audit .....	11, 41
Audit Exemption – Compiled Financial Statements .....	37
Audit Requirement.....	36
Auditor.....	36
Authority over Emergency Services Issues .....	6
Bidding – Exceptions .....	37
Bidding - Generally.....	37
Bidding – Process.....	39
Bidding – Prohibitions .....	38
Bond Elections .....	57
Bonding Requirement.....	16
Bonds .....	39
Bonds and Loans – Borrowing Funds .....	9
Borrowing and Financing.....	39
Budget Basics.....	31
Budget Calendar/Truth-in-Taxation .....	34
Budget Preparation, Review and Adoption.....	32
Chapter 1: ESD History & Overview .....	1
Chapter 2: Powers and Duties of ESDs .....	6
Chapter 3: Roles and Responsibilities of the ESD Commissioner.....	13
Chapter 4: ESD Board Meetings.....	20
Chapter 5: ESD Budget and Financial Administration.....	29
Chapter 6: Providing Services .....	43
Chapter 7: Ethics, Conflicts of Interest, and Accountability .....	51
Chapter 8: Elections.....	55
Chapter 9: Interacting with Constituents and Media .....	59
Cities .....	1
Citizen Participation .....	22
Civil Rights Issues .....	50
Combination Departments .....	45
Committees.....	6
Community Outreach .....	59
Compensation.....	15
Conflicts of Interest.....	51
Consent Agenda .....	24
Constitutional Provisions.....	3
Construction of Public Facilities.....	8

## INDEX

Contracting for Services.....	43
Contracts.....	46
Counties .....	1
County Election.....	55
Creation.....	55
Deadline .....	36
Debate.....	22
Delegation of Powers .....	12
Depository .....	11
Developing Positive Relations.....	61
Developing the Budget .....	31
Developing Your Message.....	59
Different Models.....	43
Disposal of Property .....	9
Disposition of Property .....	40
Dissolution.....	10
District Depository .....	35
Division .....	10
Donation of Funds .....	8
Dual Office Holding .....	52
Dual Office Holding/Incompatibility.....	52
Education Requirements .....	53
Elected Commissioners.....	13
Elected Commissioners – Harris, Smith, and Orange Counties.....	18
Elected Commissioners – Multi-County Districts .....	18
Election Process .....	57
Election to Increase an ESD’s Maximum Property Tax Rate.....	57
Elections for Commissioners .....	56
Emergency Meetings .....	23
Emergency Services Districts .....	2
Employee Issues.....	48
Employee Policies.....	48
Employees.....	8
Employer/Employee Tax Issues .....	49
Employing Service Providers .....	44
Employment Contracts.....	49
EMS .....	45
Enabling Laws .....	3
Enabling Statutes .....	3
ESD Commissioner Education.....	16
ESD Creation .....	4
Establishing Policies and Strategic Planning.....	15
Exceptions.....	21
Executive (Closed) Sessions.....	27
Exemption (related to Nepotism prohibitions).....	53
Expense Reimbursement.....	15

## INDEX

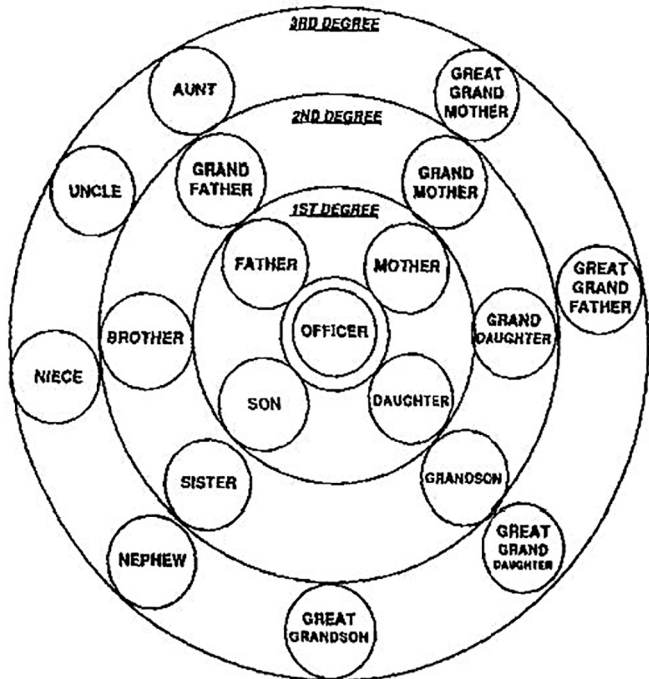
Fair Labor Issues.....	50
Fees .....	8, 30
Financial Oversight/Transparency.....	47
Financial Reports.....	41
Financial Warning Signs .....	42
Fire Code.....	7
Fire Marshal .....	8
Firefighting.....	46
First Steps .....	4
Fiscal Year.....	35
Generally.....	40
Governing Body .....	6
Hazardous Materials.....	9
History & Purpose .....	2
Important Terms.....	46
Incompatibility.....	52
Independent Contractor or Agency Status .....	47
Internal Reports .....	41
Internet Auction Sites .....	40
Investing - PFIA .....	9
Investments.....	42
Lease Purchases .....	40
Liability of Board Members.....	18
Liability/Immunity/Indemnification.....	47
Licensing Requirements .....	45
Litigation .....	8
Loans .....	39
Local Governments in Texas .....	1
Maximum Property Tax Rate.....	29
Mechanical Aids.....	26
Meeting Process.....	25
Mission Statement.....	59
Motions.....	22
Municipal Removal of District Territory (Deannexation).....	10
Nepotism .....	53
Newsletters .....	60
Notice of District Office .....	21
Notices.....	20
Oaths.....	14
Offices and Roles of Officers of the Board .....	15
Open Government.....	16
Open Meetings Act.....	20
Ownership of Assets.....	45, 48
Penalties and Fines .....	8
Penalty.....	53
Police Powers .....	7

## INDEX

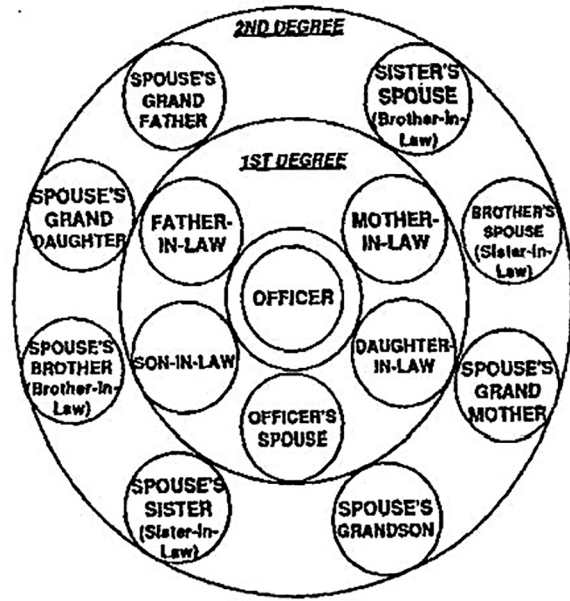
Political Advertising vs. Public Education.....	58
Press Releases .....	60
Process for Executive Session .....	27
Process Overview (separate booklet).....	4
Provision of Emergency Services.....	6
Public Education .....	59
Public Information Act .....	20
Purchasing .....	9
Purchasing/Selling Property .....	37
Qualifications .....	13
Real Property.....	40
Records of Actions/Meeting Minutes.....	26
Regular Meetings .....	23
Removal .....	54
Removal for Failure to Comply .....	36
Removal of a member by the ESD Board.....	17
Removal of an appointed ESD Commissioner by the County Commissioners Court .....	17
Removal of an elected Commissioner .....	18
Removal of an ESD Commissioner .....	17
Requesting Public Information .....	21
Required Meetings .....	20
Rules of Procedure .....	22
Sales Tax .....	7, 30
Sales Tax Carve-Out.....	30
Sales Tax Elections .....	56
Service Contracts .....	7
Service Standards .....	48
Setting a Property Tax Rate.....	29
Sources of Revenue .....	29
Special Districts .....	1
Special Issues.....	43
Special Meetings.....	23
Special Note on Executive Sessions/Closed Meetings .....	28
Special Note: County Reports .....	11
Strategic Planning.....	15
Surplus and Salvage Property .....	40
Taxing Authority .....	7
Term of Office .....	14
Territorial Issues/District Boundary Changes.....	9
Training Requirements .....	16
Types of meetings.....	23
Vacancies.....	18
Video and Teleconference Calls.....	27
Websites/Social Media.....	60
Working with Media .....	60



# Consanguinity Charts



Consanguinity Kinship Chart  
(Blood)



Affinity Kinship Chart  
(Marriage)



*EXECUTION OF THE OATH OF OFFICE*

Pursuant to Tex. Const. art. XVI, § 1 (amended 2001), the Oath of Office **may not** be taken until a signed statement (Statement of Elected/Appointed Officer or Pre-Oath Statement) has been filed with the official records of the office of the ESD. Tex. Const. art. XVI § 1 c.

*ADMINISTRATION OF THE OATH OF OFFICE*

The Oath of Office may be administered by anyone authorized under the provisions of Tex. Gov't Code Ann. § 602.002 or § 602.006. Commonly used officials include notaries public and judges.

The seal of the person administering the Oath should be visible. If the person is a notary public, Tex. Gov't Code Ann. § 406.013, requires that the seal be affixed in a way "that legibly reproduces the required elements of the seal under photographic methods".

*FILING OF THE OATH OF OFFICE*

After each Statement of Officer has been properly filed and Oath of Office has been administered, all ESD Commissioners should file their Oaths locally. Please check with the county clerk, city secretary or board/commission secretary for the proper filing location.

**\*\*\* PLEASE DIRECT ANY QUESTIONS REGARDING THE OATH OF OFFICE  
TO THE STATUTORY DOCUMENTS SECTION AT (512) 463-5705. \*\*\***

---

Example:

In the name and by the authority of

**The STATE of TEXAS**

**OATH OF**

**OFFICE**

I, \_\_\_\_\_, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of \_\_\_\_\_ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.

\_\_\_\_\_  
Affiant

SWORN TO and subscribed before me by affiant on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature of Person Administering Oath

(Seal)

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Form #2204

*Revised August 1999*