

**Addressing Fire and EMS Needs for Your County**

AND THE FUNDAMENTALS OF EMERGENCY SERVICES DISTRICTS

CLAY AVERY – INTERIM EXECUTIVE DIRECTOR

SAFE-D, THE TEXAS STATE ASSOCIATION OF FIRE AND EMERGENCY DISTRICTS



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**About the Presenter /SAFE-D**



**Me:** Worked with SAFE-D/Emergency Services Districts (ESDs) since 2007

- Currently serving as Interim Executive Director (since 10/1/22)

**SAFE-D:** Texas State Association of Fire & Emergency Districts

- State Association for ESDs – 501(c)(6) nonprofit since 2001
- Began as information exchange group in late 90s/early 00s
- Essentially like TAC or TML, but for Emergency Services Districts

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**What this presentation is NOT**



**All about ESDs**

- Many different problems/solutions

**Sales Pitch for creating an ESD**

- You know your County and what works/what doesn't

**Legal Advice**

- Standard Disclaimer

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### What this presentation WILL BE



A frank discussion about the problems facing Texas counties regarding provision of emergency services and the options to protect Texan lives and property

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### Agenda



- Define the problem
- Discuss options/solutions
- Special in-depth focus on a particular solution

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### Status Quo: Fire Service



- Career Departments – All Paid
- 195 Career Depts. in Texas
  - In 76 different counties
  - Over 25,500 full-time personnel
    - Average: 131 per department
    - Median: 52 per department
    - Few part-time paid personnel

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## Status Quo: Fire Service



### Combination Departments – Paid and Volunteer

- 335 Combination Depts. in Texas
- In 125 different counties
- Averages
  - 13 full-time paid personnel
  - 7 part-time paid
  - 15 volunteers

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## Status Quo: Fire Service



### Volunteer Departments – No Paid Personnel

- 1308 Volunteer Depts. in Texas
- Mostly everywhere
- Over 32,500 rostered volunteer, 24,500 listed as ACTIVE
- Averages
  - 20 rostered volunteers
  - 15 ACTIVE volunteers

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## Fire Service Issues



### Personnel

- Decline in volunteerism/Aging population
- Need for training

### Aging apparatus/equipment

Majority (69%) of calls are medical in nature (first response)

Funding issues/rising costs

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## Status Quo: EMS



### Models (from Texas EMS Alliance):

- Third Service – 7.2%
- Fire-Based – 18.5%
- County – 7.3%
- Hospital-Based – 8.7%
- Non-Profit – 13.2%
- Emergency Services District – 3.3%
- Volunteer – 1.8%
- Private/For-Profit

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## EMS Issues



### Rural EMS/ambulance – the MAJOR challenge

- Hospital closures/lack of physicians
  - 911 becomes primary care
  - Increased transport volumes – stresses all facets of service

Staffing shortage (ARPA funding - \$21.7 million)

Lack of reimbursement (Medicaid down 7% since 2010)

Rising Costs (up 90% since 2010)

Focus on non-transport (ET3/MIH/Community Paramedicine)

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## The BIG Problem:



### Increased Demand for Emergency Services

### Increased Costs

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## Compounding Factors



- Local Traditions
  - VFD/Community norms
- Growing populations
- Variety of situations
  - Fire vs. EMS
  - Rural vs. suburban
  - Geography/Topography

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## Time for a self-assessment



Think of the emergency services situation in your county (Fire AND EMS)

What would you say is your county's status?

◦ (Scale of 1-10 for each, with 10 being the best)

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## What is the County's Role?



Do Texas counties have a responsibility to provide fire and/or emergency medical service to their citizens?

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**Options** 

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Option #1 – County **provides** the service directly

- Pros
  - Ensures service delivery
  - Provides accountability at the County level
- Cons
  - Requires use of county budget
  - Additional responsibility to the equation

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**Options** 

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Option #2 – County **supports** the service provider

- Partial funding/grant assistance
- Ancillary services (county attorney/auditor/dispatch)
- Support for fundraising efforts

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**Options** 

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Option #3 – Alternative governmental entity provide services

- Municipalities
- Hospital Districts
- Emergency Services Districts

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### What is an ESD?



Grassroots

Independent

Governments

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### What is an ESD?



Emergency Services Districts are *independent local governments* with the power to levy a tax to provide fire protection and/or emergency medical service

Special Districts – Political Subdivisions of the State of Texas, similar to School Districts, Hospital Districts, and Library Districts

Grassroots Entities – created by the citizens

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### Why ESDs?



Ensure adequate funding for local fire, EMS, rescue, and other emergency services

Spread funding responsibility for emergency services among everyone that might receive those services

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## Let's Get it Over With



### The Elephant in the Room –

- ESDs are a property taxing entity (more gov't)
- Constitutionally capped at .10/\$100

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## ESDs and the Law



### Authorized by the Texas Constitution

- Article 3, Section 48-e
- Sets forth general purposes
- Establishes \$0.10 tax cap

### Enabled by Statute – Texas Health and Safety Code Chapter 775

- "Bylaws" – how ESDs operate
- What ESDs can/can't do

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## Basic Creation Process



Petition

Acceptance

Order for Election

Election

Canvass

Order Creating District

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## What can an ESD do?



### Authority to provide emergency services

- Derived from the grassroots nature of creation.
- May provide any services enumerated in Article 3, Section 48-e of the Texas Constitution
- Services must be clearly indentified in creation petition.

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## Service Provider Models



### Contracting for Services

- Arms-length transaction with an independent entity

### DIY Method

- ESD assumes the role of the service provider

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## Contracting for Service



**The ESD must have a formal, contractual relationship with the service provider.**

Contract should be negotiated and agreed upon just like any contract between two separate, independent organizations

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## Contracting for Service – Important Terms



### Chain of Command

- Everyone knows their place

### Services to be provided

- Clearly defined

### Responsibilities Assumed

### Cost/Methods of Reimbursement

- How is compensation structured?

### Reporting – thorough accounting to ESD

- **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 Frame/Contract Term - **The service provider contract should be reviewed every year**

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## Ownership of Assets



**The contract should specifically state who owns what and for how long**

Contract should also detail the disposition of the assets in the event of surplus declaration or the termination of the contract.

**Guiding principle: anything purchased with taxpayer funds remains the property of the taxpayers.**

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## Licensing Requirements



### EMS

- Texas DSHS

### Firefighting

- TCFP tests, regulates, and licenses career firefighters, whether full or part time
- **TCFP does not regulate volunteer fire departments or volunteer firefighters.**

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### Special Issue – Multiple Service Providers



#### More than one provider in a District

- Usually neighboring departments that banded together to create the ESD

#### Methods of compensation?

- Share-and-share-alike
- Per-call
- Area/Percent of Territory Covered
- As-needed/Budgetary Requests

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### Where does the \$\$\$ come from?



#### Levy Taxes

- Ad valorem (property)
  - Up to \$0.10 per \$100 of valuation (can be lower)
  - RFPD limit – \$0.03
  - Can only be increased by election of the voters.
- Sales Tax
  - One of many local governments that can collect sales tax – up to 2%.
  - Election necessary

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### Sources of Revenue – Property Tax



#### As governmental entities – must comply with Truth-in-Taxation

- Detailed Process
- Public hearings/notice
- Unless exempt as a “small taxing unit”

#### Maximum allowable rate - \$0.10 per \$100 of valuation

- Different from “authorized rate”

#### Subject to “voter approval”

#### Big changes due to SB2 (2019)

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## Sources of Revenue – Sales Tax



State maximum is 8.25%

- 2% is available to local governments (increments of 1/8%)

### Benefits

- Alleviates dependency on property tax
- Places share of burden on commuters/tourists

### Must have an election

- Carve-out eliminated in 2017 – everyone votes

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## ESD Budget



An ESD must adopt a budget

Most important principle: **THE ESD IS NOT AN ATM FOR THE SERVICE PROVIDER, NOR SHOULD THE ESD BE EXTENDING BLANK CHECKS TO THE SERVICE PROVIDER.**

Must be able to show the public where the money went

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## The ESD Audit



Required to be filed with County Commissioners Court every year

Deadline - ESDs 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 (except Harris)

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

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.

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### The ESD Audit - Exemption



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.

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### MOST IMPORTANT ESD Financial Principle



**THE ESD IS NOT AN ATM FOR THE SERVICE PROVIDER, NOR SHOULD THE ESD BE EXTENDING BLANK CHECKS TO THE SERVICE PROVIDER**

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### Accountability: What MUST an ESD do?



- Annual Report
- Report due to Texas Department of Emergency Management (Beginning 2019) on January 1 of each year
  - Required data:
    - Name of ESD,
    - County
    - Business address,
    - Name/ mailing address/ term of office for: each Commissioner, GM, Exec. Director, and/or Fire Chief
    - Name of legal counsel and/ or other consultants
    - Annual budget and tax rate for preceding fiscal year
  - SAFE-D has helped collect these reports
- County Reports
- Upon request (by December 31<sup>st</sup>), County Commissioners Court may request a written report showing the ESD's budget, tax rate, and debt service.
  - Due February 1<sup>st</sup>

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## Accountability: What MUST an ESD do?



- New in 2017 (SB 625) – All Special Districts (including ESDs) must report to Texas Comptroller:
- The electronic reporting application to submit financial and tax-related information pursuant to Texas Local Government Code Section 203.061, et seq., is now available from the Comptroller’s office: [comptroller.texas.gov/transparency/local/sb625/](http://comptroller.texas.gov/transparency/local/sb625/)
  - The Comptroller will use this information to operate and maintain the Special Purpose District Public Information Database in accordance with Texas Government Code sections 403.0241 and 403.0242.
  - Size exception (\$250,000)

**The annual 90-day reporting period opens on Jan. 1 and closes on April 1. Entities that do not report the required information in a timely manner may be subject to a maximum penalty of \$2,000.**

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## What an ESD MAY NOT do?



An ESD MAY NOT delegate any of its powers to an outside entity.

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## ESD Governance



- ESDs are governed by a Board of 5 “Commissioners”
- Appointed by County Commissioners Court OR
  - Elected in Harris, Orange, Smith Counties and ESDs existing in more than one county
- Appointed Commissioners
- Default in single counties
  - Serve 2 year, staggered terms

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## Qualifications: Appointed ESD Commissioners



### Age

- Must be 18

### Residency

- Must be a resident of the State of Texas AND
  - A qualified voter in the District OR
  - An owner of land subject to taxation by the ESD

Health and Safety Code 775.034(g) - The commissioners court shall consider relevant factors in determining the individuals to appoint as emergency services commissioners, including **whether the individuals have knowledge that relates to fire prevention or emergency medical services and that is relevant to the common policies and practices of the board**

- SAFE-D has created a guide

Disqualification: Dual office holding/Incompatibility

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## ESD Governance - Accountability



### Bonding Requirement

- Must post a bond with the County for the District's Treasurer
- County Judge determines amount of Bond

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## ESD Governance - Accountability



### Open Government

- All public officials must complete training on open government laws
- All ESD Commissioners must take training within 90 days of taking office
  - At least one hour on the Open Meetings Act AND
  - At least one hour on the Public Information Act (Open Records)
- Can be taken online through AG's website
- SAFE-D always has training at the Annual Conference

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## ESD Governance - Accountability



Effective June 17, 2011, ESD Commissioners must obtain **at least six hours of certified continuing education at least once in a two-year period** and may carry forward not more than three hours from one period to the next

- Result of SB 917

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## ESD Governance - Accountability



### What Kind of Training?

- HB 1619 (filed as companion to SB 917)
- Provided specific topics for training:
  - District Responsibilities
  - Board Responsibilities
  - Government Administration
  - Ethics laws relating to public officers
  - Governance and management of emergency services

HB 1619 did not pass, but SAFE-D uses proposed topics as guidance

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## Removal of ESD Commissioners (By Outside Entity)



Appointed Commissioners removed by County Commissioners Court (IF resolution has been adopted)

Elected Commissioners must be removed by the DA

Can be removed for: incompetency, misconduct, official misconduct

- All terms defined by law

Failure to maintain training requirements counts as "incompetency"

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## Removal of ESD Commissioners: Process



County Commissioners Court must hold a hearing

- Subject to OMA
- ESD Board must be notified no later than 30 days before the hearing
- Commissioner must be allowed to show cause as to why removal is unwarranted

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## ESD Commissioners - Vacancies



Appointed Commissioners – vacancies filled by County Commissioners Court

Elected Commissioners – vacancies filled by remaining Board members by 90<sup>th</sup> day

- In multi-county – County Commissioners Court where previous commissioner resided may fill the vacancy on/after the 91st

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## ESD Statistics



Approximately 340 known ESDs in Texas

1/3 have a tax rate > \$0.09/\$100, 1/3 have a tax rate of \$0.03/\$100 or below

Approximately 70 ESDs collect sales tax

Average taxable property value is around \$1.5 billion. Median value is near \$600 million

Average property tax levy is around \$1 million. Median levy is near \$370,000

Annual property tax collections range from \$13,000 to \$17.5 million

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**The Common Refrain**



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

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

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**SAFE-D**



Texas State Association of Fire and Emergency Districts

- Non-profit 501(c)(6) professional association
- Began as information exchange
- Dedicated to helping ESDs across the State

Training - Annual Conference, Regional workshops, remote webcasts

Legislative advocacy

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**Questions?**



Clay Avery  
 State Association of Fire and Emergency Districts  
 P.O. Box 676  
 Pflugerville, TX 78691  
 (512) 251-8101  
 admin@safe-d.org  
 www.safe-d.org

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