

The Office of Rural Community Affairs does not take any position on the need for the creation of a political subdivision such as an Emergency Services District (ESD). ORCA's role is to serve as a resource and not an advocate. The decision to create an ESD is a local decision. In addition, a community should not rely exclusively on the following information if it decides to create an ESD, and should become familiar with H&S Code 775 Statute as a whole.

## **Emergency Services District Creation Overview**

### **Checklist overview for creating an ESD under the Health and Safety Code Chapter 775**

The information provided in this document is only part of the overall statute(s) related to creating an ESD. This information should not take the place of reading, referencing, becoming familiar with or following the whole 775 Health & Safety Code or any other statute referenced within or pertinent to the 775 Health & Safety Code or the creation of an ESD.

#### **I. ANSWER THREE BIG QUESTIONS**

1. What are you trying to do? (Provide fire service, EMS, or both fire and EMS)
2. Will the ESD provide the legal authority to do what is needed? (775.031 H & S Code) District Powers)
3. Have there been other, alternative sources of revenue researched to meet your financial need?

The newly created ESD is a stand alone Political Subdivision and must abide by the Health and Safety Code as well as all other codes and statutes cited within the Health and Safety Code as they are laid out.

#### **II. GETTING ORGANIZED**

- A. Identify an organized core group of supporters to work on the creation of the district from start to finish.
- B. Gather critical information
  1. Map of the entire area the district will cover.
  2. Estimate budgets of services and support to be funded or costs to run the district. Review a budget from everyone that will contract to provide services within the district.
  3. Estimated tax base to determine estimated revenues to assess if the tax will fund the need.
- C. Review whether or not the ESD will provide the legal authority to do what is needed, and if the district will bring in enough money to meet the budgeted needs.
- D. Test the political waters
  1. Talk to the officials of the cities which may be included in the district (Sec. 775.014 H&S Code)
  2. Visit with the county judge and commissioners
  3. Talk to leaders, citizens, and civic groups, i.e., Lions Club, Rotary Club, Exchange Club, etc.

#### **III. THE MECHANICS**

- A. Seek legal advice, even possibly hire a Lawyer
- B. Develop a metes and bounds legal description of the district or other sufficient legal description. (775.013. (a)(3) Contents of Petition)
- C. U. S. Department Of Justice Pre-Clearance (address included) -Reference 42 U.S.C. 1973c.-  
Assistant Attorney General  
Chief, Voting Section  
Civil Rights Division  
Room 7254 - NWB  
U.S. Department Of Justice  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530  
Web: [http://www.usdoj.gov/crt/voting/sec\\_5/notices.htm](http://www.usdoj.gov/crt/voting/sec_5/notices.htm)

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D. Petition

1. A minimum of 100 qualified voters who own property are required for an acceptable petition. Ref. (775.012 H & S Code) Getting more than 100 signatures is highly recommended.
2. Two petitioners must agree in writing to pay up to \$150 of the election costs (§ 775.013 (b) Contents of Petition)
3. Include specific required wording, per Sec. 775.013 H&S Code.
4. Election Code Sec. 277.002 Petition Contents:
  - a. The signer's printed name
  - b. Date of Birth
  - c. Date of signing
  - d. Residence addressor
  - e. A voter registration number. This is helpful to authenticate the petitioner, and, if the territory from which signatures must be obtained is situated in more than one county, the county of registration. (Voter Registration requirement repealed, for more information see the Secretary of States Office website at <http://www.sos.state.tx.us/elections/laws/petitions.shtml>)

NOTE: Ref. Election Code 277.002

- The signature is the only information that is required to appear on the petition in the signer's own handwriting.
  - The use of ditto marks or abbreviations does not invalidate a signature if the required information is reasonably ascertainable.
  - The omission of the state from the signer's residence address does not invalidate a signature unless the political subdivision from which the signature is obtained is situated in more than one state
  - The omission of the zip code from the address does not invalidate a signature.
  - A petition signature is invalid if the signer signed the petition earlier than the 180th day before the date the petition is filed.
5. Deliver the completed petition to the county judge, per § 775.015. Filing of Petition and Notice of Hearing.
    - a. The judge will files petition with the county clerk
    - b. The court selects the date, time and place of the public hearing to consider the creation of the district at next Commissioners' Court meeting.

**IV. CREATING A DISTRICT CONTAINING A MUNICIPALITY OR THE EXTRATERRITORIAL JURISDICTION See Full Text in Sec. 775.014.**

- A. A written request to include a municipality's limits or extraterritorial jurisdiction in the district to be created must be presented to the municipality's governing body after the petition is filed under Section 775.015
- B. The municipality's governing body must give written consent on or before the 60th day after the date on which the municipality receives the request.
- C. If the municipality's governing body does not consent to inclusion within the 60-day period as stated above:
  - A majority of the qualified voters and the owners of at least 50 percent of the territory in the municipality's limits or extraterritorial jurisdiction that would have been included in the district may petition the governing body to make fire control and emergency medical and ambulance services available.
  - The petition must be submitted to the governing body not later than the 90th day after the date on which the municipality receives the request

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- D. If the municipality's governing body refuses or fails to act on the petition within six months after the date on which the petition submitted
  - The refusal or failure to act constitutes consent for the territory that is the subject of the petition to be included in the proposed district

**V. PUBLIC HEARING/PETITION APPROVAL (775.016 & 775.017 H & S Code)**

- A. Invite the public to provide testimony, ask questions, and discuss the pros and cons of the proposed ESD.
- B. Invite supporters such as city and county officials, civic leaders, citizens, and civic groups. This may come from the support gathered in Section II. D of this document.
- C. The court must make the finding that the district is feasible and the court will set the boundaries, per Sec. 775.017 (a) H&S Code.
- D. If the Commissioners Court finds that the proposed district does not meet the requirements prescribed by H & S Code 775.017(a), the commissioners court shall deny the petition. (775.017(c) H & S Code)

**VI. ELECTION (775.018 & 775.019 H & S Code)**

On the granting of a petition, the commissioners court shall order an election to confirm the district's creation and authorize the imposition of a tax not to exceed the rate allowed by Section 48-e, Article III, Texas Constitution. (775.018(a) H & S Code)

**NOTE:**

- If a proposed district is located wholly in a county with a population of more than 2.4 million, refer to H & S Code 775.018(b)
- If the petition indicates that the proposed district will contain territory in more than one county, refer to H & S Code 775,018(c)
  - A. The election date is the first uniform election date that will allow time for proper notices, etc., per Election Code Title 4, Chap. 41. Sec. 41.001. Ref.(775..18(e) H & S Code)
    1. The First Saturday In February;
    2. The First Saturday In May;
    3. The Second Saturday In September; or
    4. The First Tuesday After The First Monday In November.
  - B. Consider coordinating and distributing mail-outs, making personal contacts, using a phone bank on election day.
  - C. The Commissioners' Court canvasses election and enters order of results.

**VII. APPOINTMENT OF ESD COMMISSIONERS IN DISTRICT WHOLLY IN ONE COUNTY (775.034 H & S Code) FOR INFORMATION ON MULTIPLE COUNTY ESD COMMISSIONERS REFER TO 775.035**

- A. The Commissioners' Court appoints temporary ESD Commissioners to serve until January 1 of the following year.
- B. On January 1 of the following year, the Commissioners' Court selects three members to serve two-year terms and two members to serve one-year terms. Replacements of ESD Commissioners whose terms expire are appointed/reappointed on January 1 of following years as required.

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- C. ESD Commissioners will need training and orientation immediately following appointment. Contact the Office of Rural Community Affairs for assistance.

NOTE: 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. (775.034 (g) H & S Code)

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