

BILL ANALYSIS

C.S.S.B. 917
By: Wentworth
County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law provides for the creation, powers, and duties of emergency services districts to provide firefighting and other emergency services to residents of areas where voters have approved the creation of such districts under certain conditions. As the state's population continues to rapidly grow, particularly in suburban and exurban areas adjacent to established cities, the need for and number of such districts continues to increase. C.S.S.B. 917 intends to allow streamlining of service administration as well as enhanced training and accountability measures for such districts.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 917 amends the Health and Safety Code to require the commissioners court of each county in which an emergency services district proposed under Chapter 775, Health and Safety Code, is located, if the territory of the proposed district overlaps with the boundaries of another district created under that chapter, to send to the board of emergency services commissioners of the existing district a copy of the petition for creation of the proposed district. The bill requires the board of the existing district to adopt a statement before the date of the confirmation election that specifies the types of emergency services the existing district will provide or continue to provide in the overlapping territory if the proposed district is created. The bill makes these requirements inapplicable to a proposed district located wholly in a county with a population of more than three million.

C.S.S.B. 917, in provisions inapplicable to a district located wholly in a county with a population of more than three million, if the territory in a district overlaps with the boundaries of another district, prohibits the most recently created district from providing services in the overlapping territory that duplicate the services described in the required statement specifying the types of emergency services the existing district will provide or continue to provide in the overlapping territory if the proposed district is created, rather than prohibiting the most recently created district from providing services in the overlapping territory that duplicate the services provided by the other district at the time the overlapping district was created. The bill establishes that the legislature finds that the performance of non-duplicative emergency services in the overlapping territory of districts is complementary to and not in conflict with the powers and duties of the respective districts. The bill authorizes a person to serve as an emergency services commissioner of a district at the same time that the person serves as an emergency services commissioner of another district with overlapping territory. The bill authorizes a person serving as a commissioner of more than one district to receive compensation for serving on only one board and entitles the person to reimbursement for reasonable and necessary expenses incurred in performing official duties for both boards.

C.S.S.B. 917 specifies that two or more districts may consolidate, rather than merge, into a single district and makes conforming changes. The bill requires the board of each district, before consolidating, to determine that consolidation would allow the districts to provide services more economically and efficiently and to adopt a joint order of consolidation that includes the name and proposed territory of the consolidated district; the proposed date on which the existing districts dissolve and the consolidated district is created and will start offering services; if the maximum property tax rates in the districts are different, a statement that the districts will consolidate only if voters approve an equalized property tax rate at a required election as provided by the bill; and a statement that the district will be consolidated only if the residents of the district and the residents of at least one other district approve the consolidation in an election held for that purpose. The bill, if the boards do not make the appointments to the initial board for the proposed district before the 31st day after the date the boards adopted the joint order, for a consolidated district to which provisions relating to the election of a board in a district located wholly in a county with a population of more than three million or in a district located in more than one county do not apply, requires the commissioners court to appoint five commissioners to the board of the consolidated district or, for a consolidated district to which such provisions do apply, establishes that the board of the consolidated district is initially composed of the two commissioners from each existing board who have served the longest terms and that the number of initial commissioners on such a board is not required to be five.

C.S.S.B. 917 requires the ballot for an election to approve a consolidation to include a proposition for a required election under the bill's provisions relating to taxes for a consolidated district, if applicable. The bill provides that if a majority of the voters voting in at least two of the districts proposed to be consolidated favor the consolidation, the consolidated district is created and is composed of the districts that favored the consolidation, and that if less than a majority of the voters voting in any of the districts are in favor of the consolidation, that district is not part of any consolidated district. The bill establishes that the consolidated district is created on the latest of the date stated in the joint order, the date the consolidation is approved in an election, or the date the maximum property tax rate the consolidated district may impose is established, if necessary.

C.S.S.B. 917, for a consolidated district to which provisions relating to the election of a board in a district located wholly in a county with a population of more than three million or in a district located in more than one county apply, establishes that the initial commissioners of the consolidated district serve until the next available uniform election date after the date the joint order is adopted and that allows sufficient time to comply with other requirements of law. The bill establishes that, after an election is held under such provisions, the two commissioners who receive the fewest votes of the elected commissioners serve terms ending on December 31 of the second year following the year in which the election is held and that the remaining elected commissioners serve terms ending on December 31 of the fourth year following the year in which the election is held.

C.S.S.B. 917, if two districts that want to consolidate have different maximum property tax rates, requires the board of the district with the lower maximum property tax rate to order an applicable election in its district to authorize the imposition of taxes in the territory of that district at a maximum rate that equals the maximum rate authorized in the district with the higher maximum rate and makes conforming changes. The bill prohibits the districts from proceeding with the consolidation if a majority of the voters do not favor the increase in the maximum property tax rate. The bill requires the board of the consolidated district, if the districts have different sales and use tax rates, to designate the territory of the former districts as subdistricts; continue to impose the sales and use tax in each subdistrict at the rate the tax was imposed by the former district; and send to the comptroller of public accounts by registered or certified mail a copy of the joint order of consolidation and a map of the consolidated district that clearly shows the territory of each subdistrict. The bill establishes that such requirement does not limit the authority of the board of the consolidated district to order a sales and use tax election in a subdistrict or in the entire district. The bill makes conforming changes.

C.S.S.B. 917 prohibits a district from regulating the sale, use, or transportation of fireworks, but authorizes a district to adopt a rule relating to fireworks that is the same as or less stringent than a rule adopted or enforced by the commissioner of insurance and the state fire marshal relating to retail fireworks stands, fireworks bulk manufacturing and storage facilities, fireworks sales buildings, or any other structure used in public pyrotechnic displays to which the rules adopted under provisions of law relating to the regulation of fireworks and fireworks displays apply.

C.S.S.B. 917 requires an emergency services commissioner to complete at least six hours of continuing education relating to the performance of the duties of an emergency services commissioner at least once in a two-year period. The bill requires such continuing education instruction to be certified by an institution of higher education. The bill, for purposes of the continuing education requirement, authorizes an emergency services commissioner to carry forward from one two-year period to the next two-year period not more than three continuing education hours that the commissioner completes in excess of the required six hours. The bill establishes that, for purposes of certain removal of a board member, "incompetency" includes the failure of a commissioner to comply with the continuing education requirement.

C.S.S.B. 917 authorizes the board of a district to contract with a local government, including another district, to provide staff, facilities, equipment, programs, or services the board considers necessary to provide or obtain emergency services that the district or the local government is authorized to provide. The bill establishes that a person acting under such a contract, including a commissioner, does not, because of that action, hold more than one civil office of emolument or more than one office of honor, trust, or profit. The bill establishes that if a district contracts with a local government to provide or obtain emergency services, the district is responsible for any civil liability that arises from furnishing those services if the district would have been responsible for furnishing the services in the absence of the contract. The bill authorizes the parties to a contract between governmental entities to agree to assign responsibility for civil liability that arises from services provided under the contract in any manner agreed to by the parties. The bill requires the parties to assign that responsibility in a written provision of the contract that specifically refers to the applicable provision of the bill and states that the assignment of liability is intended to be different from liability otherwise assigned. The bill establishes that these provisions relating to service contracts do not change the liability limits and immunities for a governmental unit under the Texas Tort Claims Act or other law and establishes that a service contract is not a joint enterprise for liability purposes. The bill, for purposes of these service contract provisions, provides for the meaning of "local government" by reference to the Government Code.

C.S.S.B. 917 makes provisions relating to the removal of an appointed board member who is not elected nor appointed to fill a vacancy in an elected board member position by a commissioners court, as amended by the bill, inapplicable to a district unless the commissioners court of the county in which the district is located adopts such provisions by resolution. The bill authorizes the commissioners court of the county in which a district is located, by an order adopted by a majority vote after a hearing, to remove a board member for incompetency, official misconduct, or misconduct. The bill removes a provision authorizing the commissioners court of the county in which a district is located, by an order adopted by a majority vote after a hearing, to remove one or more board members if the board failed to give a required report regarding the district's budget, tax rate, and debt service for the preceding fiscal year to the commissioners court before the 91st day after the date on which the report was due and makes conforming changes. The bill makes a state open meetings law provision relating to a closed meeting regarding personnel matters affecting a county advisory body applicable to a deliberation regarding a removal of a board member in the same manner as such provisions apply to a deliberation regarding a dismissal of a member of an advisory body. The bill requires a commissioners court seeking removal under provisions relating to the removal of an appointed board member by a commissioners court, not later than the 30th day before the date on which the hearing is held, to notify the board members that it is considering that action and to provide the board member with

an opportunity to show cause why the board member should not be removed.

C.S.S.B. 917 authorizes a board member who is elected or appointed to fill a vacancy in an elected board member position to be removed using the procedures provided by Local Government Code provisions relating to the removal of county officers from office and the filling of vacancies for incompetency, official misconduct, intoxication, or misconduct. The bill establishes that the validity of a board action is not affected because it is taken when a ground for removal of a board member exists.

C.S.S.B. 917 prohibits the board of a district from setting the property tax rate for a fiscal year before the date the board adopts a budget for that fiscal year.

C.S.S.B. 917, when a district located wholly in one county that does not have a population of more than three million fails to complete and file a certain audit report by September 1 of each year and a county auditor is not ordered to prepare the report, removes the president and treasurer of the board from the board and requires the commissioners court to fill the vacancies.

C.S.S.B. 917 makes provisions relating to a district election to approve bonds and notes inapplicable to a secured loan for real property or emergency services equipment, including a loan made before the bill's effective date.

C.S.S.B. 917, on the bill's effective date, converts a district created under Chapter 776 (Emergency Services Districts in Counties of 125,000 or Less), Health and Safety Code, into a district operated under Chapter 775 (Emergency Services Districts). The bill continues such a converted district in existence and makes the district subject to Chapter 775. The bill makes an emergency commissioner of a district created under Chapter 776 an emergency services commissioner of the converted district under Chapter 775 and requires the commissioner to serve on the board of the converted district as an emergency services commissioner until the term for which the commissioner was appointed or elected expires.

C.S.S.B. 917 makes conforming changes.

C.S.S.B. 917 repeals Chapter 776, Health and Safety Code, relating to the creation and operation of emergency services districts in counties of 125,000 or less and makes conforming changes in the Local Government Code and Tax Code.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 917 differs from the original, in provisions relating to the consolidation of emergency services districts providing for the adoption of a joint order of consolidation that includes a statement that the districts will consolidate only if voters approve a property tax rate, by specifying that the property tax rate be equalized, whereas the original does not make such specification. The substitute contains language not included in the original including in the joint order of consolidation a statement that the district will be consolidated only if the residents of the district and the residents of at least one other district approve the consolidation in an election held for that purpose.

C.S.S.B. 917 differs from the original, in a provision contingent on the boards of emergency services commissioners of districts proposed to be consolidated not making appointments for the initial board for the proposed consolidated district by a certain date, by, dependent on the applicability of certain provisions, requiring a commissioners court to appoint five commissioners to the board of the consolidated district or establishing that the board of the

consolidated district is initially composed of the two commissioners from each existing board who have served the longest terms and setting out a related provision, whereas the original requires the commissioners courts to jointly appoint commissioners to the board of the consolidated district.

C.S.S.B. 917 differs from the original by amending statutory provisions relating to a ballot regarding an election to approve a merger of districts and for the effect of election results to provide for a ballot relating to an election to approve a consolidation of districts and for the effect of election results and setting out a related provision, whereas the original removes such statutory provisions.

C.S.S.B. 917 differs from the original, in a provision establishing that a consolidated district is created on the latest of certain dates, by providing as such a date the date the consolidation is approved in an applicable election, whereas the original provides as such a date the date the initial board of the consolidated district is appointed.

C.S.S.B. 917 contains provisions not included in the original providing terms for the commissioners of a consolidated district to which certain provisions of law apply.

C.S.S.B. 917 contains language not included in the original requiring the board of the consolidated district, if the districts have different sales and use tax rates, to send to the comptroller of public accounts by registered or certified mail a copy of the joint order of consolidation and a map of the consolidated district that clearly shows the territory of each subdistrict.

C.S.S.B. 917 contains provisions not included in the original prohibiting a district from regulating the sale, use, or transportation of fireworks but authorizing a district to adopt certain rules.

C.S.S.B. 917 omits provisions included in the original requiring each emergency services commissioner to complete a training course by certain dates, requiring the Texas Department of Rural Affairs to determine the minimum course requirements and make the course available, authorizing the department to provide the training course and requiring the department to approve any training course provided by an entity other than the department, requiring the training course to provide certain instruction, requiring the entity providing the training course to provide a certificate of course completion, requiring a commissioner who completes the training course to file a copy of the certificate of course completion with the commissioners court of each county in which the district is located by a certain date, and requiring the department to set a fee for the training course.

C.S.S.B. 917 contains provisions not included in the original requiring an emergency services commissioner to complete at least six hours of continuing education relating to the performance of the duties of an emergency services commissioner at least once in a two-year period; requiring the continuing education instruction to be certified by an institution of higher education; authorizing an emergency services commissioner to carry forward from one two-year period to the next two-year period not more than three continuing education hours that the commissioner completes in excess of the required six hours; and establishing that for purposes of certain removal, "incompetency" includes the failure of an emergency services commissioner to comply with the continuing education requirement.

C.S.S.B. 917 omits language included in the original authorizing the board of a district to contract with a volunteer fire department to provide staff, facilities, equipment, programs, or services the board considers necessary to provide or obtain emergency services and omits a provision defining "volunteer fire department" for purposes of the bill's service contracts provisions.

C.S.S.B. 917 contains a provision not included in the original making provisions relating to the removal of an appointed board member by a commissioners court, as amended by the substitute, inapplicable to a district unless the commissioners court of the county in which the district is located adopts such provisions by resolution. The substitute differs from the original by authorizing the commissioners court of the county in which a district is located, by an order adopted by a majority vote after a hearing, to remove a board member for incompetency, official misconduct, or misconduct, whereas the original authorizes the removal of one or more board members if the board failed to give a report required under provisions relating to the powers and duties of the board to the commissioners court before a certain date.

C.S.S.B. 917 omits a provision included in the original authorizing the commissioners court of the county in which a district is located, by an order adopted by a majority vote after a hearing, to remove a board member if the board member does not complete a training course and file a copy of the certificate of course completion and requiring the commissioners court of each county to adopt the order before the board member may be removed if the district is located in more than one county. The substitute contains a provision not included in the original making Government Code provisions relating to a closed meeting regarding personnel matters affecting a county advisory body applicable to a deliberation regarding a removal of a board member in a certain manner. The substitute contains a provision not included in the original requiring a commissioners court seeking removal to notify the board members that it is considering that action and to provide the board member with an opportunity to show cause why the board member should not be removed.

C.S.S.B. 917 contains provisions not included in the original authorizing a board member who is elected or appointed to fill a vacancy in an elected board member position to be removed for incompetency, official misconduct, intoxication, or misconduct and establishing that the validity of a board action is not affected because it is taken when a ground for removal of a board member exists.

C.S.S.B. 917 differs from the original, when a certain district located wholly in one county fails to complete and file a certain audit report by a certain date and a county auditor is not ordered to prepare the report, by removing the president and treasurer of the board from the board and requiring the commissioners court to fill the vacancies, whereas the original abolishes the board and requires the commissioners court to appoint a new board.

C.S.S.B. 917 contains a provision not included in the original making provisions relating to a district election to approve bonds and notes inapplicable to a secured loan for real property or emergency services equipment, including a loan made before the bill's effective date.

C.S.S.B. 917 differs from the original by repealing Chapter 776 of the Health and Safety Code relating to emergency services districts in counties of 125,000 or less and making conforming changes, whereas the original contains provisions relating to such districts regarding overlapping territory of a district, emergency commissioner training, removal of an appointed board member by a commissioners court, service contracts, a prohibition on setting the property tax rate for a fiscal year before adoption of a budget for that fiscal year, and certain effects of the original's provisions.

C.S.S.B. 917 contains provisions not included in the original converting a district created under Chapter 776 (Emergency Services Districts in Counties of 125,000 or Less) into a district operated under Chapter 775 (Emergency Services Districts), making an emergency commissioner of a district created under Chapter 776 an emergency services commissioner of the converted district under Chapter 775, and setting out related language.

C.S.S.B. 917 differs from the original in nonsubstantive ways by conforming to certain bill drafting conventions.