

By: Wentworth  
(Miller of Comal)

S.B. No. 917

Substitute the following for S.B. No. 917:

By: Marquez

C.S.S.B. No. 917

A BILL TO BE ENTITLED

AN ACT

relating to emergency service districts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 775.018, Health and Safety Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) If the territory of a district proposed under this chapter overlaps with the boundaries of another district created under this chapter, the commissioners court of each county in which the proposed district is located shall send to the board of the existing district a copy of the petition for creation of the proposed district. This subsection does not apply to a proposed district located wholly in a county with a population of more than three million.

(g) The board of the existing district shall adopt a statement before the date of the election required by this section 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. This subsection does not apply to a proposed district located wholly in a county with a population of more than three million.

SECTION 2. Section 775.0205, Health and Safety Code, is amended by amending Subsection (a) and adding Subsections (d-1), (d-2), and (d-3) to read as follows:

(a) If the territory in a district created under this

1 chapter overlaps with the boundaries of another district created  
2 under this chapter [~~or a district created under Chapter 776~~], the  
3 most recently created district may not provide services in the  
4 overlapping territory that duplicate the services described in the  
5 statement required by Section 775.018(g) [~~provided by the other~~  
6 ~~district at the time the overlapping district was created~~].

7 (d-1) The legislature finds that the performance of  
8 non-duplicative emergency services in the overlapping territory of  
9 emergency service districts is complementary to and not in conflict  
10 with the powers and duties of the respective districts.

11 (d-2) A person may serve as an emergency services  
12 commissioner of a district created under this chapter at the same  
13 time that the person serves as an emergency services commissioner  
14 of another district with overlapping territory created under this  
15 chapter.

16 (d-3) A person serving as a commissioner of more than one  
17 district under this section:

18 (1) may receive compensation for serving on only one  
19 board; and

20 (2) is entitled to reimbursement for reasonable and  
21 necessary expenses incurred in performing official duties for both  
22 boards.

23 SECTION 3. Section 775.024, Health and Safety Code, is  
24 amended to read as follows:

25 Sec. 775.024. CONSOLIDATION [~~MERCER~~] OF EMERGENCY SERVICES  
26 DISTRICTS. (a) Two or more emergency services districts may  
27 consolidate [~~merge~~] into a single emergency services district as

1 provided by this section. Before consolidating, ~~[if:~~

2 ~~(1)]~~ the board of each district must:

3 (1) determine that consolidation would allow the  
4 districts to provide services more economically and efficiently ~~[of~~  
5 ~~the districts votes in favor of the merger]~~; and

6 (2) adopt a joint order of consolidation that  
7 includes:

8 (A) the name and proposed territory of the  
9 consolidated district;

10 (B) the proposed date on which the existing  
11 districts dissolve and the consolidated district is created and  
12 will start offering services;

13 (C) if the maximum ad valorem tax rates in the  
14 districts are different, a statement that the districts will  
15 consolidate only if voters approve an equalized ad valorem tax rate  
16 at the election required by Section 775.0241; and

17 (D) a statement that the district will be  
18 consolidated only if the residents of the district and the  
19 residents of at least one other district approve the consolidation  
20 ~~[the residents of each district approve the merger]~~ in an election  
21 held for that purpose.

22 (b) The boards shall agree on a name for the proposed  
23 consolidated ~~[merged]~~ district and choose five commissioners from  
24 among the membership of the boards to serve on the initial board for  
25 the proposed district. The boards shall agree to stagger the terms  
26 appropriately.

27 (c) If the boards do not make the appointments before the

1 31st day after the date the boards adopted the joint order:

2 (1) for a consolidated district to which Section  
3 775.0345 or 775.035 does not apply, the commissioners court shall  
4 appoint five commissioners to the board of the consolidated  
5 district; or

6 (2) for a consolidated district to which Section  
7 775.0345 or 775.035 does apply, the board of the consolidated  
8 district is initially composed of the two commissioners from each  
9 existing board who have served the longest terms.

10 (c-1) The number of initial emergency services  
11 commissioners on a board described by Subsection (c)(2) is not  
12 required to be five.

13 (d) The ballot for the election to approve a consolidation  
14 [~~merger~~] shall be printed to permit voting for or against the  
15 proposition: "The consolidation [~~merger~~] of the \_\_\_\_\_ (insert  
16 district names) to create the \_\_\_\_\_ (insert name of  
17 proposed district), which assumes all outstanding debts of the  
18 existing [~~merged~~] districts." The ballot shall include a  
19 proposition for an election required under Section 775.0241, if  
20 applicable.

21 (e) [~~(d)~~] If a majority of the voters voting in at least two  
22 of the districts proposed to be consolidated [~~each district~~] favor  
23 the consolidation [~~merger~~], the consolidated [~~merged~~] district is  
24 created and is composed of the districts that favored the  
25 consolidation. If less than a majority of the voters voting in any  
26 of the districts are in favor of the consolidation [~~merger~~], that  
27 district is not part of any consolidated district [~~the vote fails~~

1 ~~and the districts are not merged].~~

2 (f) The consolidated district is created on the latest of:

3 (1) the date stated in the joint order;

4 (2) the date the consolidation is approved in an  
5 election described by Subsection (d); or

6 (3) the date the maximum ad valorem tax rate the  
7 consolidated district may impose under Section 775.0241 is  
8 established, if necessary.

9 (g) [~~(e)~~ The maximum tax rate that may be imposed by the  
10 ~~merged district may not exceed the maximum tax rate authorized for~~  
11 ~~any of the previous districts.~~

12 [~~(f)~~] The consolidated [~~merged~~] district assumes all  
13 powers, rights, duties, assets, and liabilities of the former  
14 districts without a change in status. The consolidation [~~merger~~]  
15 does not diminish or impair the rights of the holders of any  
16 outstanding and unpaid bonds, warrants, or obligations of the  
17 district.

18 (h) For a consolidated district to which Section 775.0345 or  
19 775.035 applies, the initial commissioners of the consolidated  
20 district serve until the next available uniform election date after  
21 the date the joint order is adopted and that allows sufficient time  
22 to comply with other requirements of law. After an election is held  
23 under Section 775.0345 or 775.035:

24 (1) the two commissioners who receive the fewest votes  
25 of the elected commissioners serve terms ending on December 31 of  
26 the second year following the year in which the election is held;

27 and

1           (2) the remaining elected commissioners serve terms  
2 ending on December 31 of the fourth year following the year in which  
3 the election is held.

4           SECTION 4. Subchapter B, Chapter 775, Health and Safety  
5 Code, is amended by adding Section 775.0241 to read as follows:

6           Sec. 775.0241. TAXES FOR CONSOLIDATED DISTRICT. (a) If two  
7 districts that want to consolidate under Section 775.024 have  
8 different maximum ad valorem tax rates, the board of the district  
9 with the lower maximum ad valorem tax rate shall order an election  
10 in its district under Section 775.0745 to authorize the imposition  
11 of taxes in the territory of that district at a maximum rate that  
12 equals the maximum rate authorized in the district with the higher  
13 maximum rate.

14           (b) If a majority of the voters do not favor the increase in  
15 the maximum ad valorem tax rate under Subsection (a), the districts  
16 may not proceed with the consolidation.

17           (c) If the districts have different sales and use tax rates,  
18 the board of the consolidated district shall:

19                   (1) designate the territory of the former districts as  
20 subdistricts;

21                   (2) continue to impose the sales and use tax in each  
22 subdistrict at the rate the tax was imposed by the former district;  
23 and

24                   (3) send to the comptroller by registered or certified  
25 mail:

26                           (A) a copy of the joint order described by  
27 Section 775.024(a)(2); and

1           (B) a map of the consolidated district that  
2 clearly shows the territory of each subdistrict.

3           (d) Subsection (c) does not limit the authority of the board  
4 of the consolidated district to order an election under Section  
5 775.0752 in a subdistrict or in the entire district.

6           SECTION 5. Subchapter C, Chapter 775, Health and Safety  
7 Code, is amended by adding Sections 775.0362 and 775.0363 to read as  
8 follows:

9           Sec. 775.0362. LIMIT ON REGULATION OF FIREWORKS. Except as  
10 provided by Section 775.0363, the district may not regulate the  
11 sale, use, or transportation of fireworks.

12           Sec. 775.0363. REGULATION OF FIREWORKS. The district may  
13 adopt a rule relating to fireworks that is the same as or less  
14 stringent than a rule adopted or enforced by the commissioner of  
15 insurance and the state fire marshal under Chapter 2154,  
16 Occupations Code, relating to retail fireworks stands, fireworks  
17 bulk manufacturing and storage facilities, fireworks sales  
18 buildings, or any other structure used in public pyrotechnic  
19 displays to which the rules adopted under Chapter 2154, Occupations  
20 Code, apply.

21           SECTION 6. Subchapter C, Chapter 775, Health and Safety  
22 Code, is amended by adding Sections 775.0365 and 775.0366 to read as  
23 follows:

24           Sec. 775.0365. BOARD TRAINING. (a) An emergency services  
25 commissioner shall complete at least six hours of continuing  
26 education relating to the performance of the duties of an emergency  
27 services commissioner at least once in a two-year period.

1       (b) Continuing education instruction required by Subsection  
2 (a) must be certified by an institution of higher education as  
3 defined by Section 61.003, Education Code.

4       (c) For purposes of Subsection (a), an emergency services  
5 commissioner may carry forward from one two-year period to the next  
6 two-year period not more than three continuing education hours that  
7 the commissioner completes in excess of the required six hours.

8       (d) For purposes of removal under Section 775.0422 or  
9 775.0423, "incompetency" includes the failure of an emergency  
10 services commissioner to comply with Subsection (a).

11       Sec. 775.0366. SERVICE CONTRACTS. (a) In this section,  
12 "local government" has the meaning assigned by Section 791.003,  
13 Government Code.

14       (b) The board may contract with a local government,  
15 including another district, to provide staff, facilities,  
16 equipment, programs, or services the board considers necessary to  
17 provide or obtain emergency services that the district or the local  
18 government is authorized to provide.

19       (c) A person acting under a contract under this section,  
20 including an emergency services commissioner, does not, because of  
21 that action, hold more than one civil office of emolument or more  
22 than one office of honor, trust, or profit.

23       (d) Except as provided by Subsection (e), if a district  
24 contracts with a local government under this section to provide or  
25 obtain emergency services, the district is responsible for any  
26 civil liability that arises from furnishing those services if the  
27 district would have been responsible for furnishing the services in



1 the absence of the contract.

2 (e) The parties to a contract between governmental entities  
3 under this section may agree to assign responsibility for civil  
4 liability that arises from services provided under the contract in  
5 any manner agreed to by the parties. The parties must assign that  
6 responsibility in a written provision of the contract that  
7 specifically refers to this subsection and states that the  
8 assignment of liability is intended to be different from liability  
9 otherwise assigned under Subsection (d).

10 (f) This section does not change the liability limits and  
11 immunities for a governmental unit under Chapter 101, Civil  
12 Practice and Remedies Code, or other law.

13 (g) A contract under this section is not a joint enterprise  
14 for liability purposes.

15 SECTION 7. The heading to Section 775.0422, Health and  
16 Safety Code, is amended to read as follows:

17 Sec. 775.0422. REMOVAL OF APPOINTED BOARD MEMBER BY  
18 COMMISSIONERS COURT [~~FOR FAILURE TO GIVE REPORT~~].

19 SECTION 8. Section 775.0422, Health and Safety Code, is  
20 amended by amending Subsections (a), (b), and (c) and adding  
21 Subsections (a-1) and (b-1) to read as follows:

22 (a) This section does not apply to a district unless the  
23 commissioners court of the county in which the district is located  
24 adopts this section by resolution.

25 (a-1) This section applies only to an appointed board  
26 member. This section does not apply to a board member who:

27 (1) is elected; or

1           (2) is appointed to fill a vacancy in an elected board  
2 member position.

3           (b) The commissioners court of the county in which a  
4 district is located, by an order adopted by a majority vote after a  
5 hearing, may remove a ~~[one or more]~~ board member for:

6           (1) incompetency, as defined by Section 87.011, Local  
7 Government Code;

8           (2) official misconduct, as defined by Section 87.011,  
9 Local Government Code; or

10           (3) misconduct, as defined by Section 178.001, Local  
11 Government Code ~~[members if the board failed to give the report~~  
12 ~~required by Section 775.036(a)(4) to the commissioners court before~~  
13 ~~the 91st day after the date on which the report was due under that~~  
14 ~~section].~~

15           **(b-1) Section 551.0745, Government Code, applies to a**  
16 **deliberation regarding a removal of a board member in the same**  
17 **manner as that section applies to a deliberation regarding a**  
18 **dismissal of a member of an advisory body.**

19           (c) Not later than ~~[Before]~~ the 30th ~~[60th]~~ day before  
20 ~~[after]~~ the date on which the hearing is held, a ~~[report was due,~~  
21 ~~each]~~ commissioners court seeking removal under this section must:

22           (1) notify the board members that it is considering  
23 that action; and

24           (2) provide the board member with an opportunity to  
25 show cause why the board member should not be removed.

26           SECTION 9. Subchapter C, Chapter 775, Health and Safety  
27 Code, is amended by adding Section 775.0423 to read as follows:

1       Sec. 775.0423. REMOVAL OF ELECTED BOARD MEMBER. (a) This  
2 section applies only to a board member who:

3           (1) is elected; or

4           (2) is appointed to fill a vacancy in an elected board  
5 member position.

6       (b) A board member may be removed using the procedures  
7 provided by Chapter 87, Local Government Code, for:

8           (1) incompetency, as defined by Section 87.011, Local  
9 Government Code;

10          (2) official misconduct, as defined by Section 87.011,  
11 Local Government Code;

12          (3) intoxication, as described by Section 87.013,  
13 Local Government Code; or

14          (4) misconduct, as defined by Section 178.001, Local  
15 Government Code.

16       (c) The validity of a board action is not affected because  
17 it is taken when a ground for removal of a board member exists.

18       SECTION 10. Section 775.056(a), Health and Safety Code, is  
19 amended to read as follows:

20       (a) After a hearing, a district may make mutually agreeable  
21 changes in boundaries with another district, [~~or a district created~~  
22 ~~under Chapter 776,~~] provided that the maximum tax rate authorized  
23 for such a district does not exceed the maximum tax rate previously  
24 authorized for any territory added to that district. The districts  
25 shall agree on an effective date for the changes in boundaries.

26       SECTION 11. Section 775.074, Health and Safety Code, is  
27 amended by adding Subsection (d-1) to read as follows:

1       (d-1) The board may not set the tax rate for a fiscal year  
2 before the date the board adopts a budget for that fiscal year.

3       SECTION 12. Section 775.082, Health and Safety Code, is  
4 amended by adding Subsection (e-1) to read as follows:

5       (e-1) When a district located wholly in one county fails to  
6 complete and file the audit report by September 1 of each year and a  
7 county auditor is not ordered to prepare the report, the president  
8 and treasurer of the board are removed from the board and the  
9 commissioners court shall fill the vacancies as provided by Section  
10 775.034.

11       SECTION 13. Section 775.085, Health and Safety Code, is  
12 amended by adding Subsection (d) to read as follows:

13       (d) Section 775.077 does not apply to a loan secured under  
14 this section, including a loan made before the effective date of  
15 this subsection.

16       SECTION 14. Section 344.051(c), Local Government Code, is  
17 amended to read as follows:

18       (c) Except as provided by Subsection (f), a district may be  
19 created inside the boundaries of an emergency services district  
20 operating under Chapter 775 [~~or 776~~], Health and Safety Code, only  
21 if the governing body of the emergency services district gives its  
22 written consent by order or resolution not later than the 60th day  
23 after the date the governing body receives a request for its  
24 consent.

25       SECTION 15. Section 323.101(f), Tax Code, is amended to  
26 read as follows:

27       (f) The provisions of this chapter govern the application,

1 collection, and administration of a sales and use tax imposed under  
2 Chapter 285 or [7] 775, [~~or 776,~~] Health and Safety Code, to the  
3 extent not inconsistent with the provisions of those chapters.  
4 Provided, however, that Subsection (b) shall not apply to a tax  
5 authorized under those chapters.

6 SECTION 16. Chapter 776, Health and Safety Code, is  
7 repealed.

8 SECTION 17. (a) On the effective date of this Act, a  
9 district created under Chapter 776, Health and Safety Code, is  
10 converted into a district operated under Chapter 775, Health and  
11 Safety Code. A district converted under this section continues in  
12 existence and is subject to Chapter 775, Health and Safety Code.

13 (b) An emergency commissioner of a district created under  
14 Chapter 776, Health and Safety Code, is an emergency services  
15 commissioner of the converted district under Chapter 775, Health  
16 and Safety Code, and shall serve on the board of the converted  
17 district as an emergency services commissioner until the term for  
18 which the commissioner was appointed or elected expires.

19 SECTION 18. This Act takes effect immediately if it  
20 receives a vote of two-thirds of all the members elected to each  
21 house, as provided by Section 39, Article III, Texas Constitution.  
22 If this Act does not receive the vote necessary for immediate  
23 effect, this Act takes effect September 1, 2011.