| **House Bill 1619**  Senate Amendments  Section-by-Section Analysis | | |
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| HOUSE VERSION | SENATE VERSION (CS) | CONFERENCE |
| No equivalent provision. | 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. |  |
| No equivalent provision. | 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 chapter overlaps with the boundaries of another district created under this chapter [~~or a district created under Chapter 776~~], the most recently created district may not provide services in the overlapping territory that duplicate the services described in the statement required by Section 775.018(g) [~~provided by the other district at the time the overlapping district was created~~].  (d-1) The legislature finds that the performance of non-duplicative emergency services in the overlapping territory of emergency service districts is complementary to and not in conflict with the powers and duties of the respective districts.  (d-2) A person may serve as an emergency services commissioner of a district created under this chapter at the same time that the person serves as an emergency services commissioner of another district with overlapping territory created under this chapter.  (d-3) A person serving as a commissioner of more than one district under this section:  (1) may receive compensation for serving on only one board; and  (2) is entitled to reimbursement for reasonable and necessary expenses incurred in performing official duties for both boards. |  |
| No equivalent provision. | SECTION 3. Section 775.024, Health and Safety Code, is amended to read as follows:  Sec. 775.024. CONSOLIDATION [~~MERGER~~] OF EMERGENCY SERVICES DISTRICTS. (a) Two or more emergency services districts may consolidate [~~merge~~] into a single emergency services district as provided by this section. Before consolidating, [~~if:~~  [~~(1)~~] the board of each district must:  (1) determine that consolidation would allow the districts to provide services more economically and efficiently [~~of the districts votes in favor of the merger~~]; and  (2) adopt a joint order of consolidation that includes:  (A) the name and proposed territory of the consolidated district;  (B) the proposed date on which the existing districts dissolve and the consolidated district is created and will start offering services;  (C) if the maximum ad valorem tax rates in the districts are different, a statement that the districts will consolidate only if voters approve an equalized ad valorem tax rate at the election required by Section 775.0241; and  (D) 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 [~~the residents of each district approve the merger~~] in an election held for that purpose.  (b) The boards shall agree on a name for the proposed consolidated [~~merged~~] district and choose five commissioners from among the membership of the boards to serve on the initial board for the proposed district. The boards shall agree to stagger the terms appropriately.  (c) If the boards do not make the appointments before the 31st day after the date the boards adopted the joint order:  (1) for a consolidated district to which Section 775.0345 or 775.035 does not apply, the commissioners court shall appoint five commissioners to the board of the consolidated district; or  (2) for a consolidated district to which Section 775.0345 or 775.035 does apply, the board of the consolidated district is initially composed of the two commissioners from each existing board who have served the longest terms.  (c-1) The number of initial emergency services commissioners on a board described by Subsection (c)(2) is not required to be five.  (d) The ballot for the election to approve a consolidation [~~merger~~] shall be printed to permit voting for or against the proposition: "The consolidation [~~merger~~] of the \_\_\_\_\_\_\_\_\_ (insert district names) to create the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (insert name of proposed district), which assumes all outstanding debts of the existing [~~merged~~] districts." The ballot shall include a proposition for an election required under Section 775.0241, if applicable.  (e) [~~(d)~~] If a majority of the voters voting in at least two of the districts proposed to be consolidated [~~each district~~] favor the consolidation [~~merger~~], the consolidated [~~merged~~] district is created and is composed of the districts that favored the consolidation. If less than a majority of the voters voting in any of the districts are in favor of the consolidation [~~merger~~], that district is not part of any consolidated district [~~the vote fails and the districts are not merged~~].  (f) The consolidated district is created on the latest of:  (1) the date stated in the joint order;  (2) the date the consolidation is approved in an election described by Subsection (d); or  (3) the date the maximum ad valorem tax rate the consolidated district may impose under Section 775.0241 is established, if necessary.  (g) [~~(e) The maximum tax rate that may be imposed by the merged district may not exceed the maximum tax rate authorized for any of the previous districts.~~  [~~(f)~~] The consolidated [~~merged~~] district assumes all powers, rights, duties, assets, and liabilities of the former districts without a change in status. The consolidation [~~merger~~] does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or obligations of the district.  (h) For a consolidated district to which Section 775.0345 or 775.035 applies, 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. After an election is held under Section 775.0345 or 775.035:  (1) 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  (2) the remaining elected commissioners serve terms ending on December 31 of the fourth year following the year in which the election is held. |  |
| No equivalent provision. | SECTION 4. Subchapter B, Chapter 775, Health and Safety Code, is amended by adding Section 775.0241 to read as follows:  Sec. 775.0241. TAXES FOR CONSOLIDATED DISTRICT. (a) If two districts that want to consolidate under Section 775.024 have different maximum ad valorem tax rates, the board of the district with the lower maximum ad valorem tax rate shall order an election in its district under Section 775.0745 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.  (b) If a majority of the voters do not favor the increase in the maximum ad valorem tax rate under Subsection (a), the districts may not proceed with the consolidation.  (c) If the districts have different sales and use tax rates, the board of the consolidated district shall:  (1) designate the territory of the former districts as subdistricts;  (2) continue to impose the sales and use tax in each subdistrict at the rate the tax was imposed by the former district; and  (3) send to the comptroller by registered or certified mail:  (A) a copy of the joint order described by Section 775.024(a)(2); and  (B) a map of the consolidated district that clearly shows the territory of each subdistrict.  (d) Subsection (c) does not limit the authority of the board of the consolidated district to order an election under Section 775.0752 in a subdistrict or in the entire district. |  |
| No equivalent provision. | SECTION 5. Subchapter C, Chapter 775, Health and Safety Code, is amended by adding Section 775.0362 to read as follows:  Sec. 775.0362. LIMIT ON REGULATION OF FIREWORKS. (a) Except as provided by Subsection (b), the board may not regulate the sale, use, or transportation of fireworks.  (b) The board may 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 under Chapter 2154, Occupations Code, 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 Chapter 2154, Occupations Code, apply. |  |
| SECTION 1. Subchapter C, Chapter 775, Health and Safety Code, is amended by adding Section 775.0365 to read as follows:  Sec. 775.0365. BOARD TRAINING. (a) An emergency services commissioner shall 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.  (b) Continuing education instruction required by Subsection (a) must be certified by an institution of higher education as defined by Section 61.003, Education Code.  (c) For purposes of Subsection (a), an emergency services commissioner may 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.  (d) For purposes of removal under Section 775.0422 or 775.0423, "incompetency" includes the failure of an emergency services commissioner to comply with Subsection (a). | SECTION 6. Subchapter C, Chapter 775, Health and Safety Code, is amended by adding Sections 775.0365 and 775.0366 to read as follows:  Sec. 775.0365. BOARD TRAINING. (a) An emergency services commissioner shall 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.  (b) Continuing education instruction required by Subsection (a) must be certified by an institution of higher education as defined by Section 61.003, Education Code.  (c) For purposes of Subsection (a), an emergency services commissioner may 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.  (d) For purposes of removal under Section 775.0422 or 775.0423, "incompetency" includes the failure of an emergency services commissioner to comply with Subsection (a).  Sec. 775.0366. SERVICE CONTRACTS. (a) In this section, "local government" has the meaning assigned by Section 791.003, Government Code.  (b) The board may 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.  (c) A person acting under a contract under this section, including an emergency services 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.  (d) Except as provided by Subsection (e), if a district contracts with a local government under this section 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.  (e) The parties to a contract between governmental entities under this section may agree to assign responsibility for civil liability that arises from services provided under the contract in any manner agreed to by the parties. The parties must assign that responsibility in a written provision of the contract that specifically refers to this subsection and states that the assignment of liability is intended to be different from liability otherwise assigned under Subsection (d).  (f) This section does not change the liability limits and immunities for a governmental unit under Chapter 101, Civil Practice and Remedies Code, or other law.  (g) A contract under this section is not a joint enterprise for liability purposes. |  |
| SECTION 2. The heading to Section 775.0422, Health and Safety Code, is amended to read as follows:  Sec. 775.0422. REMOVAL OF APPOINTED BOARD MEMBER BY COMMISSIONERS COURT [~~FOR FAILURE TO GIVE REPORT~~]. | SECTION 7. Same as House version. |  |
| SECTION 3. Section 775.0422, Health and Safety Code, is amended by amending Subsections (a), (b), and (c) and adding Subsections (a-1) and (b-1) to read as follows:  (a) This section does not apply to a district unless the commissioners court of the county in which the district is located adopts this section by resolution.  (a-1) This section applies only to an appointed board member. This section does not apply to a board member who:  (1) is elected; or  (2) is appointed to fill a vacancy in an elected board member position.  (b) The commissioners court of the county in which a district is located, by an order adopted by a majority vote after a hearing, may remove a [~~one or more~~] board member for:  (1) incompetency, as defined by Section 87.011, Local Government Code;  (2) official misconduct, as defined by Section 87.011, Local Government Code; or  (3) misconduct, as defined by Section 178.001, Local Government Code [~~members if the board failed to give the report required by Section 775.036(a)(4) to the commissioners court before the 91st day after the date on which the report was due under that section~~].  (b-1) Section 551.0745, Government Code, applies to a deliberation regarding a removal of a board member in the same manner as that section applies to a deliberation regarding a dismissal of a member of an advisory body.  (c) Not later than [~~Before~~] the 30th [~~60th~~] day before [~~after~~] the date on which the hearing is held, a [~~report was due, each~~] commissioners court seeking removal under this section must:  (1) notify the board members that it is considering that action; and  (2) provide the board member with an opportunity to show cause why the board member should not be removed. | SECTION 8. Same as House version. |  |
| SECTION 4. Subchapter C, Chapter 775, Health and Safety Code, is amended by adding Section 775.0423 to read as follows:  Sec. 775.0423. REMOVAL OF ELECTED BOARD MEMBER. (a) This section applies only to a board member who:  (1) is elected; or  (2) is appointed to fill a vacancy in an elected board member position.  (b) A board member may be removed using the procedures provided by Chapter 87, Local Government Code, for:  (1) incompetency, as defined by Section 87.011, Local Government Code;  (2) official misconduct, as defined by Section 87.011, Local Government Code;  (3) intoxication, as described by Section 87.013, Local Government Code; or  (4) misconduct, as defined by Section 178.001, Local Government Code.  (c) The validity of a board action is not affected because it is taken when a ground for removal of a board member exists. | SECTION 9. Same as House version. |  |
| No equivalent provision. | SECTION 10. Section 775.056(a), Health and Safety Code, is amended to read as follows:  (a) After a hearing, a district may make mutually agreeable changes in boundaries with another district, [~~or a district created under Chapter 776,~~] provided that the maximum tax rate authorized for such a district does not exceed the maximum tax rate previously authorized for any territory added to that district. The districts shall agree on an effective date for the changes in boundaries. |  |
| SECTION 5. Section 775.074, Health and Safety Code, is amended by adding Subsection (d-1) to read as follows:  (d-1) The board may not set the tax rate for a fiscal year before the date the board adopts a budget for that fiscal year. | SECTION 11. Same as House version. |  |
| SECTION 6. Section 775.082, Health and Safety Code, is amended by adding Subsection (e-1) to read as follows:  (e-1) When a district located wholly in one county fails to complete and file the audit report by September 1 of each year and a county auditor is not ordered to prepare the report, the president and treasurer of the board are removed from the board and the commissioners court shall fill the vacancies as provided by Section 775.034. | SECTION 12. Same as House version. |  |
| SECTION 7. Subchapter C, Chapter 776, Health and Safety Code, is amended by adding Sections 776.0355 and 776.0356 to read as follows:  Sec. 776.0355. BOARD TRAINING. (a) An emergency services commissioner shall 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.  (b) Continuing education instruction required by Subsection (a) must be certified by an institution of higher education as defined by Section 61.003, Education Code.  (c) For purposes of Subsection (a), an emergency services commissioner may 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.  (d) For purposes of removal under Section 776.0356, "incompetency" includes the failure of an emergency services commissioner to comply with Subsection (a).  Sec. 776.0356. REMOVAL OF BOARD MEMBER BY COMMISSIONERS COURT. (a) This section does not apply to a district unless the commissioners court of the county in which the district is located adopts this section by resolution.  (b) The commissioners court of the county in which a district is located, by an order adopted by a majority vote after a hearing, may remove a board member for:  (1) incompetency, as defined by Section 87.011, Local Government Code;  (2) official misconduct, as defined by Section 87.011, Local Government Code; or  (3) misconduct, as defined by Section 178.001, Local Government Code.  (c) Section 551.0745, Government Code, applies to a deliberation regarding a removal of a board member in the same manner as that section applies to a deliberation regarding a dismissal of a member of an advisory body.  (d) Not later than the 30th day before the date on which a hearing is held, a commissioners court seeking removal under this section must:  (1) notify the board members that it is considering that action; and  (2) provide the board member with an opportunity to show cause why the board member should not be removed.  (e) The validity of a board action is not affected because it is taken when a ground for removal of a board member exists. | No equivalent provision. |  |
| SECTION 8. Section 776.075, Health and Safety Code, is amended by adding Subsection (d-1) to read as follows:  (d-1) The board may not set the tax rate for a fiscal year before the date the board adopts a budget for that fiscal year. | No equivalent provision. |  |
| No equivalent provision. | SECTION 13. Section 775.085, Health and Safety Code, is amended by adding Subsection (d) to read as follows:  (d) Section 775.077 does not apply to a loan secured under this section, including a loan made before the effective date of this subsection. |  |
| No equivalent provision. | SECTION 14. Section 344.051(c), Local Government Code, is amended to read as follows:  (c) Except as provided by Subsection (f), a district may be created inside the boundaries of an emergency services district operating under Chapter 775 [~~or 776~~], Health and Safety Code, only if the governing body of the emergency services district gives its written consent by order or resolution not later than the 60th day after the date the governing body receives a request for its consent. |  |
| No equivalent provision. | SECTION 15. Section 323.101(f), Tax Code, is amended to read as follows:  (f) The provisions of this chapter govern the application, collection, and administration of a sales and use tax imposed under Chapter 285 or [~~,~~] 775, [~~or 776,~~] Health and Safety Code, to the extent not inconsistent with the provisions of those chapters. Provided, however, that Subsection (b) shall not apply to a tax authorized under those chapters. |  |
| No equivalent provision. | SECTION 16. Chapter 776, Health and Safety Code, is repealed. |  |
| No equivalent provision. | SECTION 17. (a) On the effective date of this Act, a district created under Chapter 776, Health and Safety Code, is converted into a district operated under Chapter 775, Health and Safety Code. A district converted under this section continues in existence and is subject to Chapter 775, Health and Safety Code.  (b) An emergency commissioner of a district created under Chapter 776, Health and Safety Code, is an emergency services commissioner of the converted district under Chapter 775, Health and Safety Code, and shall 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. |  |
| SECTION 9. This Act takes effect September 1, 2011. | SECTION 18. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011. |  |