

Legal Q&A
By Bill Longley
TML Legislative Counsel

What is an emergency services district?

An emergency services district (ESD) is a political subdivision established pursuant to Chapter 775 of the Texas Health and Safety Code. An ESD generally supports or provides local emergency services, which can include emergency medical services and fire protection services.

An ESD has the ability to impose both a sales and use tax and a property tax to support or provide emergency services within the district. *See* TEX. HEALTH AND SAFETY CODE §§ 775.074, 775.0751. An ESD's sales and use tax rate can range from anywhere between one-eighth of one percent to two percent. *Id.* § 775.0751(a). An ESD's property tax, meanwhile, may not exceed ten cents per \$100 of valuation. *See* TEX. CONST. art. III, §. 48-e.

Can an ESD be created in a city's territorial limits or extraterritorial jurisdiction without city consent?

No. Before an ESD may be created that contains territory in a city's limits or extraterritorial jurisdiction (ETJ), the proponents of the ESD must submit a written request to the city council to include the territory in the ESD. TEX. HEALTH AND SAFETY CODE § 775.014(a). The territory in question may not be included in the ESD unless the city council gives its written consent on or before the 60th day after the date the request is received. *Id.*

If the city council does not approve the request, a majority of the qualified voters and the owners of 50 percent of the property in the city limits or ETJ that would have been included in the ESD may petition the city council to make the emergency services available. *Id.* § 775.014(b). The petition must be submitted not later than the 90th day after the date the city council received the initial request. *Id.* If the city council refuses or fails to act on the petition within six months after the petition is received, the council's refusal or failure to act constitutes consent for the territory to be included in the district. *Id.* § 775.014(c).

If the city council consents to the creation of the ESD within territory located in the city limits or ETJ, or if consent is inferred due to inaction on the petition, several steps—including an election ordered by the county commissioners court—must still take place in order for the ESD to be created.

Once a city consents to having its territory included in an ESD, can the city later remove the city territory from the ESD?

Likely not. There is no clear authority in Chapter 775 of the Health and Safety Code for a city to remove itself or a portion of its territory from an ESD after it initially consented to the inclusion of its territorial or extraterritorial jurisdiction when the ESD was formed.

When a city annexes, can it remove territory from the jurisdiction of an ESD?

Yes, but only if certain conditions are met. A city that annexes territory that is included in an ESD may remove the territory from the ESD if the city completes all procedures necessary to annex territory in the district and if the city intends to become the sole provider of emergency services to the annexed territory by the use of city personnel or by some method other than by use of the ESD. *Id.* § 775.022(a). The city must send written notice by certified mail to the secretary of the ESD board of directors notifying the ESD of the annexation and intent to provide emergency services. *Id.* Upon receipt of the notice, the ESD board must immediately change its records to show that the territory has been disannexed from the ESD and shall cease to provide further services to the residents in the newly-annexed area. *Id.*

A city that removes annexed territory from an ESD must compensate the ESD immediately after annexation in an amount equal to the annexed territory's pro rata share of the ESD's bonded and other indebtedness. *Id.* § 775.022(b). In addition, at the ESD's request, a city that removes annexed territory from an ESD must purchase from the ESD at fair market value any real or personal property used to provide emergency services in the annexed territory. *Id.* § 775.022(d).

Can an ESD expand its boundaries into the city limits or a city's ETJ without city council approval?

This issue has been the source of some debate amongst ESDs and cities in recent years. Texas Health and Safety Code Section 775.051 contains the legal guidelines for expansion of ESD territory. In short, the statute provides that at least 50 percent of the qualified voters who own taxable real property in a defined area may petition the ESD board of directors to hold an election on the question of including the defined area in the ESD. *Id.* § 775.051. Section 775.051 of the Health and Safety Code makes no specific mention of the ESD's need to receive city council approval when expanding its territory to include an area located in a city's corporate limits or ETJ. That being said, an ESD must get council approval when initially *creating* an ESD within the corporate limits or ETJ of a city (as detailed above), so some cities argue that city council approval should similarly be sought when *expanding* an ESD into city territory.

In 2013, legislation was filed to bring some clarity to the issue. H.B. 1798 would have provided that an ESD must follow essentially the same procedure for receiving city council approval when it expands its jurisdiction as it follows when the ESD is initially created. H.B. 1798 did not pass, so the statute remains silent on the question of city council approval for expansion of the ESD into city territory.

When a city annexes territory also served by an ESD, does the city's sales and use tax apply in the newly annexed area?

The answer to this question depends on the ESD's sales and use tax rate in the area annexed by the city. Section 321.102 of the Texas Tax Code governs the application of the city sales and use tax in the event of a change in a city's boundaries. With some limited exceptions, that section provides that a city sales tax displaces the sales tax of another entity (like an ESD) that previously levied a tax within the annexed territory. TEX. TAX CODE § 321.102(e). In the event of annexation, the ESD's tax in the annexed area is automatically reduced to an amount which,

when added to the municipal sales tax, does not exceed the local cap of two percent. *Id.* In many cases this reduces the ESD's tax to zero, but if the annexing city had a tax rate of less than two percent the ESD is allowed to continue to levy whatever portion of its tax that would not exceed two percent in combination with the city tax.

However, when the sales tax of an ESD is reduced as a result of city annexation, the ESD is kept whole by the comptroller's deduction of a corresponding amount from the sales and use tax of the annexing city. *Id.* § 321.102(f). The deducted amount is then paid to the ESD. *Id.* This is the provision that ESDs rely on to continue to obtain the sales and use tax revenue they were receiving prior to the city annexation. For example, under current law, if both a city and an ESD have a sales tax of two percent, the comptroller would withhold two percent from the city and pay that amount to the ESD. As a result, the city would not be able to keep any sales tax revenue in the newly annexed area. More commonly, a city will collect some sales and use taxes in the newly-annexed area, but not the entire amount that would otherwise be collected if there was not an overlapping ESD serving the area.

What tools are available for cities and ESD's to share sales tax revenue in a newly-annexed area that is also served by the ESD?

The inability of some cities to collect some or all of their sales and use taxes in newly-annexed territory due to the imposition of an ESD sales and use tax brought about legislation in 2013 that helped address how sales and use taxes are divided between cities and ESDs. The legislature passed H.B. 3159, which authorizes a city and ESD to work together and enter into a written agreement on how to allocate the revenue from the sales and use taxes imposed in the annexed area. *See* TEX. HEALTH AND SAFETY CODE § 775.0754. Cities cannot prohibit an ESD from collecting its sales and use taxes in a newly-annexed area, and also cannot require an ESD to enter into an agreement splitting sales and use tax revenue with the city. Nevertheless, since taking effect in 2013, cities and ESDs have used the new law to reach some consensus on how sales and use tax revenue is to be divided in newly-annexed city territory that is also served by an ESD.