

BILL ANALYSIS

Senate Research Center
77R8857 MXM-F

C.S.S.B. 1167
By: Madla
Intergovernmental Relations
3/28/2001
Committee Report (Substituted)

DIGEST AND PURPOSE

Under current law, an emergency services district (ESD) is a special district, established under Article III, Section 48-e (Emergency Services Districts), Texas Constitution, and Chapter 775 (Emergency Services Districts), Health and Safety Code, to provide health and safety related services to persons and property within its boundaries. C.S.S.B. 1167 sets forth certain provisions relating to emergency services districts, such as eliminating ambiguity regarding qualification of a district board member; allowing for a district fire marshal and providing for the designation of such a position as a peace officer; expanding and clarifying the right of a district to charge for a hazardous material spill; and clarifying various other ambiguous or conflicting provisions existing in the statutes.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 775.031(c), Health and Safety Code, to prohibit an emergency services district, except as provided by Subchapter F, from commissioning a peace officer or employing a person as a peace officer.

SECTION 2. Amends Section 775.034, Health and Safety Code, to set forth guidelines regarding board member's eligibility.

SECTION 3. Amends Section 775.035, Health and Safety Code, by adding Subsection (i), as follows:

(i) Provides that Chapter 146C (Write-In Candidate in City Election), Election Code, applies to a write-in candidate for emergency services commissioner under this section in the same manner it applies to a write-in candidate for a city office under that subchapter.

SECTION 4. Amends Section 775.036(b), Health and Safety Code, to authorize the board to adopt and enforce a fire code that does not conflict with a fire code adopted by any county, rather than another political subdivision, that also contains within its boundaries any portion of the land contained in the district. Prohibits the board of a district located wholly within a county with a population of three (rather than 2.4) million or more from adopting a fire code or a fine for a violation of the district's fire code unless the commissioners court of the county consents to the adoption of the code or fine.

SECTION 5. Amends Chapter 775, Health and Safety Code, by adding Subchapter F, as follows:

SUBCHAPTER F. FIRE MARSHAL

Sec. 775.101. CREATION. Authorizes a district to create the office of district fire marshal if

a county in which the district is located does not have a county fire marshal. Requires the district to appoint an individual to serve in the office of fire marshal.

Sec. 775.102. TERM. Provides that the fire marshal serves a two-year term.

Sec. 775.103. BOND. Requires the fire marshal to post a bond in the amount required by the district and conditioned on the faithful and strict performance of the fire marshal's duties under this chapter.

Sec. 775.104. CONFLICT OF INTEREST. Prohibits the fire marshal from having a direct or indirect financial interest in the sale of fire-fighting equipment or being engaged in the business of fire insurance.

Sec. 775.105. ADMINISTRATIVE SUPPORT. Authorizes the district to provide facilities, equipment, transportation, employees, and other services and assistance to the fire marshal, including investigators.

Sec. 775.106. JURISDICTION. Prohibits the fire marshal, except as provided by Section 775.107 or 775.115, from exercising the powers granted under this subchapter in certain territories. Provides that this subchapter does not change or otherwise limit the authority of any state agency to prevent and extinguish forest and grass fires.

Sec. 775.107. TRANSFER OF JURISDICTION. Provides that this section only applies under certain conditions. Provides that, not later than the 30th day after the creation of the county or municipal fire marshal, the jurisdiction of the district fire marshal in that county or municipality ceases. Requires the new county or municipal fire marshal to assume control over any pending investigations, court proceedings, or other matters being handled by the district fire marshal in the county or municipality.

Sec. 775.108. GENERAL POWERS AND DUTIES. Sets forth guidelines concerning the powers and duties of the fire marshal.

Sec. 775.109. INVESTIGATIONS. Requires the fire marshal to begin an investigation within 24 hours after notification of a fire. Provides that the 24-hour period does not include Sunday. Authorizes the fire marshal to investigate attempted fires.

Sec. 775.110. INSPECTION. Authorizes the fire marshal, at any time of day, to enter and inspect certain properties.

Sec. 775.111. INSPECTION FOR FIRE HAZARDS. Defines "fire hazard." Authorizes the fire marshal, in the interest of safety and fire prevention, to inspect for fire hazards certain structures, appurtenances, fixtures, or real properties. Authorizes the fire marshal, if the fire marshal determines the presence of a fire hazard, to order the owner or occupant of the premises to correct the hazardous situation.

Sec. 775.112. RECORDS. Requires the fire marshal to keep a record of each fire that the fire marshal is required to investigate. Requires the record to include the facts, statistics, and circumstances determined by the investigation, including the origin of the fire and the estimated amount of the loss.

Sec. 775.113. ADDITIONAL INVESTIGATION POWERS. Authorizes the fire marshal, if the fire marshal determines that further investigation of a fire or of an attempt to set a fire is necessary, to perform certain functions. Authorizes the fire marshal, as part of an investigation, to perform certain functions.

Sec. 775.114. INSURANCE. Provides that an action taken by the fire marshal in the investigation of a fire does not affect the rights of a policyholder or of an insurer regarding a loss caused by the fire. Prohibits the results of an investigation by the fire marshal of a fire from being admitted in evidence in the trial of a civil action brought under an insurance policy. Prohibits the results of an investigation by the fire marshal of a fire from being admitted in evidence in the trial of a civil action brought under an insurance policy. Prohibits statements made by certain persons to the fire marshal or marshal's representative regarding the cause of a fire from being admitted in evidence or made the basis of a civil action for damages.

Sec. 775.115. COOPERATION WITH OTHER FIRE MARSHALS. Requires the district fire marshal to cooperate with the state fire marshal to conduct certain activities and investigations. Requires the district fire marshal to aid or conduct an investigation in a municipality or a county if requested by the municipality or the county.

Sec. 775.116. LIMIT ON LIABILITY. Provides that the fire marshal and any district employees assisting the fire marshal are not liable for any acts or omissions in the performance of their duties, except for gross negligence or wilful malfeasance.

Sec. 775.117. ENFORCEMENT. Requires the fire marshal to file in court a complaint charging arson, attempted arson, conspiracy to defraud, or any other related crime against a person the fire marshal believes to be guilty. Requires the fire marshal to file charges in court against a witness who refuses to cooperate with the investigation.

Sec. 775.118. SERVICE OF PROCESS. Authorizes a constable or sheriff to serve process under this subchapter. Requires the process to be signed by the fire marshal.

Sec. 775.119. CRIMINAL PENALTY; CONTEMPT OF FIRE INVESTIGATION. Provides that a person commits an offense if the person is a witness in connection with an investigation by the fire marshal and meets certain other requirements. Provides that an offense under this section is a misdemeanor punishable by a fine of not more than \$25.

Sec. 775.120. CRIMINAL PENALTY; FAILURE TO COMPLY WITH ORDER. Provides that the owner or occupant of real property who is subject to an order issued by the fire marshal commits an offense that is a Class B misdemeanor if the person fails to comply with the order and that each failure to comply with an order is a separate offense.

SECTION 6. Amends Chapter 775, Health and Safety Code, by adding Subchapter G, as follows:

SUBCHAPTER G. HAZARDOUS MATERIALS.

Sec. 775.151. DEFINITIONS. Defines "hazardous material" and "responsible party."

Sec. 775.152. HAZARDOUS MATERIALS SERVICE. Authorizes a district to provide hazardous materials services, including a response to an incident involving hazardous material that has been leaked, spilled, or otherwise released, or abandoned.

Sec. 775.153. FEE FOR PROVIDING HAZARDOUS MATERIALS SERVICE; EXCEPTION. Authorizes a district, or a person authorized by contract on the district's behalf, to charge a reasonable fee to a responsible party for responding to a hazardous materials service call. Provides that an individual who is a responsible party does not have to pay the fee under certain conditions.

Sec. 775.154. EXEMPTION FOR GOVERNMENTAL ENTITIES. Provides that this subchapter does not apply to hazardous materials owned or possessed by a governmental entity.

SECTION 7. Amends Article 2.12, Code of Criminal Procedure, as amended by Chapters 90, 322, 882, and 974, Acts of the 76th Legislature, Regular Session, 1999, to redefine what constitutes a peace officer.

SECTION 8. Effective date: September 1, 2001.

SUMMARY OF COMMITTEE CHANGES

SECTION 1. No change.

SECTION 2. No change.

SECTION 3. No change.

SECTION 4. Amends As Filed S.B. 1167, Section 775.036(b), Health and Safety Code, to authorize the board to adopt and enforce a fire code that does not conflict with a fire code adopted by any county, rather than another political subdivision, that also contains within its boundaries any portion of the land contained in the district.

SECTION 5. Omits original proposed SECTION 5 amending Section 775.0741(a) and (c), Health and Safety Code. Redesignates text from original SECTION 6 as SECTION 5. Amends redesignated proposed Section 775.106 to provide that this subchapter does not change or otherwise limit the authority of any state agency to prevent and extinguish forest and grass fires.

SECTION 6. Redesignates text from original SECTION 7 as SECTION 6. No changes in text.

SECTION 7. Redesignates text from original SECTION 8 as SECTION 7. No changes in text.

SECTION 8. Redesignates text from original SECTION 9 as SECTION 8. No changes in text.