

SUBJECT: County commissioners removal of appointed ESD board members

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 6 ayes — Coleman, L. Gonzales, Gooden, Hamilton, W. Smith, White

2 nays — Marquez, Paxton

1 absent — Jackson

WITNESSES: *(On original version):*

For — Lisa Birkman, Williamson County; Bill Gravell; Donald Lee, Texas Conference of Urban Counties; *(Registered, but did not testify):* Mike Higgins, Texas State Association of Fire Fighters; Mark Mendez, Tarrant County Commissioners Court)

Against — Clay Avery, Howard Katz, Texas State Association of Fire and Emergency Districts (SAFE-D); *(Registered, but did not testify):* Mike Howe, Travis County Emergency Services District #2; Keith Lewis, Comal County ESD #3)

BACKGROUND: In 2007, the 80th Legislature enacted SB 1207 by Hegar, permitting county commissioners courts to remove appointed members of various special district boards for misconduct, which was defined as violating a law relating to the duties of a board member or misapplying anything of value owned by the district.

Emergency services district (ESD) boards were among those affected by the new law. ESD board members typically are appointed for two-year terms to oversee fire protection and other emergency services for rural and unincorporated areas.

Local Government Code, sec. 87.011 defines “incompetency” as:

- gross ignorance of official duties;
- gross carelessness in the discharge of those duties; or
- unfitness or inability to promptly and properly discharge official duties because of a physical or mental defect that did not exist when the officer was elected.

“Official misconduct” is defined as intentional, unlawful behavior relating to official duties and including intentional or corrupt failure, refusal, or neglect to perform a lawful duty.

In 2009, the 81st Legislature enacted HB 527 by Leibowitz, which required ESD board members to provide a written report by February 1 on the district’s proposed budget, tax rate, and debt service upon request of the county commissioners court. It also authorized the commissioners court to remove by majority vote one or more of the ESD board members if the report was not submitted within 91 days of the deadline. The commissioners court must provide a 60-day notice to ESD board members being considered for removal, but the removal process does not affect the validity of a board action during that time.

DIGEST:

(This analysis reflects the author’s proposed floor substitute.)

The floor substitute for HB 1917 would allow a county commissioners court to remove by majority vote an ESD board member for incompetency, official misconduct, or misconduct, as defined in the Local Government Code. It also would delete the statutory reference to removal of an ESD board member for failure to submit the financial report.

The bill as substituted would require the county commissioners court to give the affected ESD commissioners at least 30 days’ notice of a hearing on their removal. The deliberation on the removal would not have to be held in an open meeting.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

SUPPORTERS
SAY:

The floor substitute for HB 1917 would establish a clear legal standard to help ensure accountability in the appointed officials who manage ESDs. Guarding the integrity of ESD operations would restore citizens’ faith that their safety was protected and their tax money spent properly. County commissioners should be able to take bold action in cases of misconduct by local ESD officials. The misdeeds of just one person can shake confidence in the entire organization. Citizens can become angry and frustrated if the ESD board refuses to clean house, and county commissioners should have the power to correct the situation.

The bill as substituted is part of a continuing effort to standardize and professionalize the finances and operations of ESDs. These districts now typically serve rapidly urbanizing portions of counties and have more in common with full-time paid municipal fire departments than with volunteer fire departments. The districts collect money from property taxes, not from bake sales and barbecues. Their budgets can consist of hundreds of thousands and even millions of dollars. Texans have traditionally insisted on accountability in providing such vital government services as fire protection.

The status of ESD commissioners as “public officers” is not well determined in law, despite a 1992 attorney general’s opinion that attempted to define it (Attorney General Opinion DM-114). The underlying principle in Texas is “at-will” employment, and no one has a vested property right in public employment, especially as an appointed official.

County commissioners routinely appoint dozens of officials and occasionally have to remove them for malfeasance or incompetence. State policymakers have granted a degree of independence to board members overseeing ESDs and hospital districts, but that autonomy is not absolute. The county commissioners should not have to wait until the end of a two-year term to remove an incompetent or corrupt ESD official.

The ESD board is a subdivision of the county, and HB 1917 would not hinder the district’s ability to borrow, sell bonds, contract, or do its duties.

**OPPONENTS
SAY:**

Both HB 1917 and the proposed floor substitute are unnecessary because existing law provides sufficient ways to remove an ESD board member. The commissioners court could choose not to reappoint an incumbent. Current law already provides a procedure for removing appointed ESD commissioners for misconduct. The Legislature should not allow local disputes to affect policies for all ESDs.

Prosecutors and the courts should retain the authority to remove ESD directors because they are “public officials,” as defined by the attorney general (Attorney General Opinion DM-114). The attorney general’s opinion differentiated them from county employees who could be dismissed by a county commissioners court. The opinion concluded that a commissioners court “does not have authority to discharge members of the governing boards of the emergency service district ... [because] members

of these boards are county officers, subject to removal only by a district court judge.”

HB 1917 could unintentionally undermine the independent status of ESDs and negatively affect the district’s ability to borrow, sell bonds, contract, or perform their other functions.

NOTES:

The floor substitute differs from HB 1917 as introduced and reported from committee in specifying incompetency, official misconduct, and misconduct as grounds for removal, while the original bill would not have specified the grounds for removal. The substitute also would add a notice requirement not included in the original bill.