Welcome to SAFE-D's 2025 Annual Conference!

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SAFE-D 2025 Annual Conference

Conference credit:

https://www.safe-d.org/2025Conference/

DEADLINE: March 31

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SAFE-D 2025 Annual Conference

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DEADLINE MARCH 31

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Up Next

ESD 101

SAFE-D
Annual Conference
February 6-8, 2025

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ESD 101

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How we got here…

ESD HISTORY, AUTHORITY AND THE BOARD OF COMMISSIONERS

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What is an ESD?

- ESDs are local political subdivisions that may provide fire, rescue, EMS and other emergency services
  - Governed by 5 commissioners appointed by County Commissioners Court - except in Harris, Smith and Orange Counties and all but one multi-county ESD, where they are elected
  - Primarily funded by property taxes not to exceed $0.10

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Why are ESDs created?

- ESDs ensure adequate funding of local fire, EMS, rescue and other emergency services
- ESDs spread funding for emergency services among everyone who might receive those services

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ESD Statistics

- Over 350 known ESDs in Texas
- More than 295 are SAFE-D members
- Approx. One-Third have Tax Rates >$0.09/$100
- Approx. 155 ESDs collecting Sales Tax

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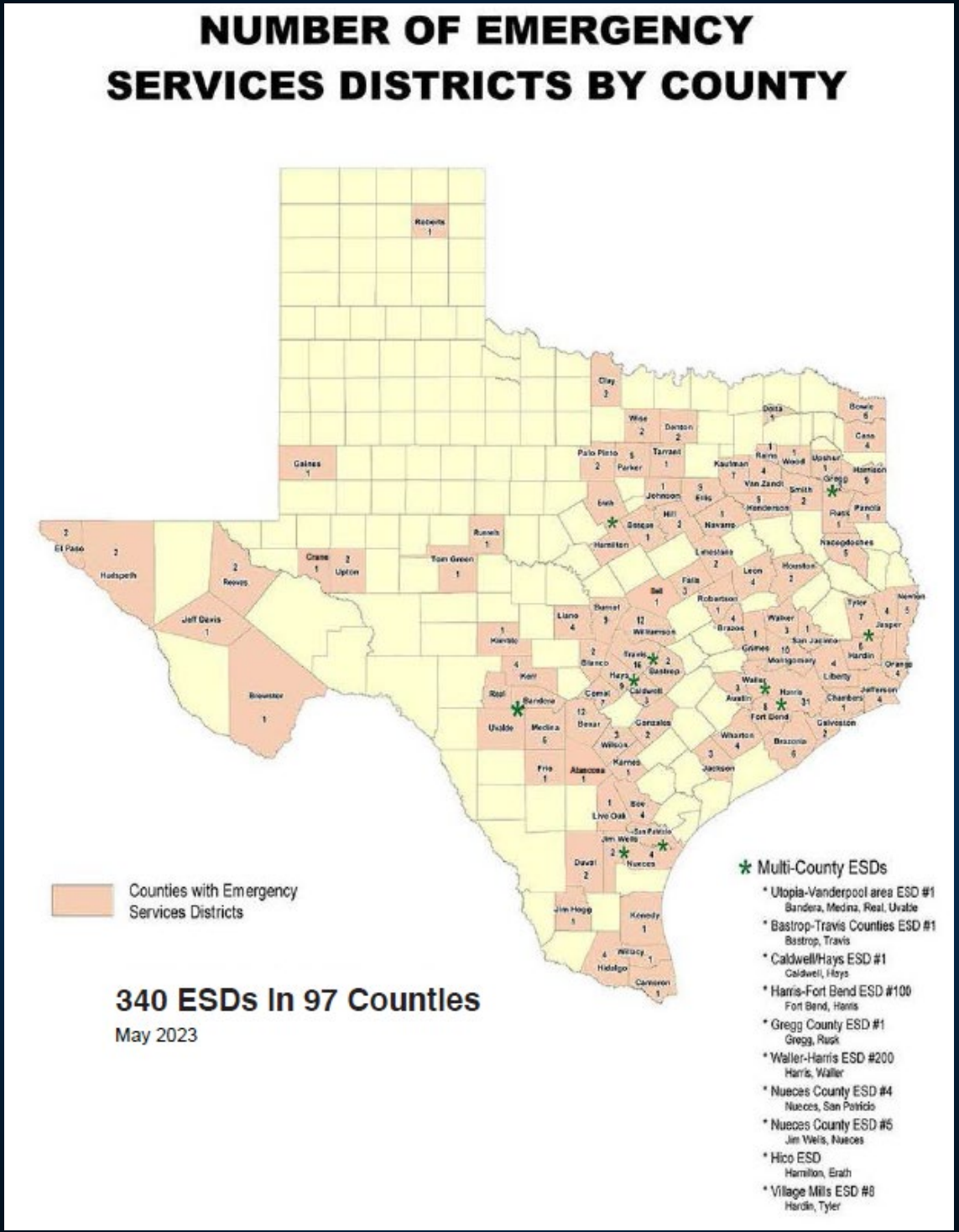
Most Current Map of ESDs in Texas



Texas State Association of Fire and Emergency Districts

2023

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History

- Rural Fire Prevention Districts Amendment to Constitution Approved November 1949
  - Tax Cap of $0.03
  - Enabling Statute Adopted in 1957
- According to the Interpretive Commentary, the Texas farm bloc supported the creation of a special district to purchase modern fire-fighting equipment and reduce insurance rates by decreasing response times in rural areas – even envisioning fire fighting via helicopter response to rural areas

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History

- Emergency Services Districts Amendment to Constitution Approved November 1987
  - Tax Cap of $0.10
  - Enabling Statutes Adopted same year

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ESD AUTHORITY AND LIMITATIONS

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ESD Authority

- Emergency Services Districts are creations of the Texas Legislature through statutes
- Legislature derives its authority to create ESDs from the voters through the Texas Constitution
- ESDs do not have any powers except those expressly provided by the Statutes

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Constitution

- Laws may be enacted to
  - provide for the establishment and creation of special districts to provide emergency services and
  - to authorize … a tax on the ad valorem property situated in said districts not to exceed Ten Cents (10¢) on the One Hundred Dollars ($100.00) valuation for the support thereof;
  - provided that no tax shall be levied in support of said districts until approved by a vote of the qualified voters residing therein.
    - Texas Constitution, Article III, Section 48-e

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Constitution

- Authorized services
  - emergency medical services
  - emergency ambulance services
  - rural fire prevention and control services, or
  - other emergency services authorized by the Legislature.

    - Texas Constitution, Article 111, Section 48-e (cont.)

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The Statutes

Texas Health & Safety Code

- Chapter 775 – ESDs
- Chapter 776 – ESDs in Counties with less than 125,000 population – repealed in 2011 (all ESDs operate under 775)
- Chapter 794 – Rural Fire Prevention Districts – repealed in 2003 (all RFPDs converted to 775 ESDs)

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Important Records from ESD Creation Process

- Petition by Qualified Voters
  - Consent of City Required if Area includes ETJ or City Limits
- Records of Petition Acceptance by County Commissioners Court
- Order for Election
- Ballot Language
- Order Canvassing Election
- Order Creating the District

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Important Records from ESD Creation Process

- No Articles of Incorporation for ESDs
- No Bylaws for ESDs
- ESDs are local government entities governed by Texas statutes

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The Board of Commissioners

YOU'RE CREATED…WHO RUNS THE SHOW?

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ESD Commissioners

- Board of five commissioners.
- Appointed by Commissioners Court for 2 years
  - at least 18 years of age; and
  - a resident citizen of the state that is:
    - a qualified voter within district; or
    - owner of land subject to taxation in the district.
- Commissioners of most multi-county and all Orange and Harris County ESDs are elected at-large for 4 years
- Commissioners of Smith County are elected, but the law requires single-member districts (SB 1265 from 2013 Legislative Session)

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Commissioner Appointment

- The commissioners court shall consider relevant factors in determining the individuals to appoint as emergency services commissioners, including whether the individuals have knowledge that relates to fire prevention or emergency medical services and that is relevant to the common policies and practices of the board.
    - Health & Safety Code §775.034(g)

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Elected Commissioners

- In Harris County (39 ESDs), Smith County and Orange County, you are not eligible to be an ESD commissioner if :
  - you are related within the third degree to:
    - someone providing professional services to the district;
    - a commissioner of the district; or
    - someone who is an employee or volunteer of an organization providing emergency services to the district;

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Elected Commissioners

- In Harris County (39 ESDs), Smith County and Orange County you are not eligible to be an ESD commissioner if (cont.) :
  - you are employed by a district commissioner, or an attorney or other person providing professional services to the district;
  - your serve in a professional capacity for the district or an organization providing emergency services to the district; or
  - you fail to maintain the qualifications required by law to serve.

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Elected Commissioners

- In Smith County
  - "As soon as possible after the district is created, the commissioners court of the county in which the district is located shall divide the district into five numbered single-member districts."
  - "A person must be at least 18 years of age and a resident of that single-member district."

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COMMISSIONER ELECTION PROCEDURES

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Election Procedures

- Contract with County to Conduct Election?
- Notice for Applications for Place on Ballot
- Call Election (78th Day Before Election Day)
  - Voting Rights Issues
- Deadline for Candidate Applications (62nd Day Before Election Day)
  - Cancel Election if Unopposed
- Ballot Place Drawing and Notice to Candidates
- Notice to County Clerk of Election

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Election Procedures

- Notice of Agent for Election Information
- Publish and Post Notice of Election
- Candidate Withdrawal
- Early Voting Period (12 days – 4 days before election day)
- Election Day (2nd Saturday in May or 1st Tuesday in November)
- Canvassing (3-11 days)
- Records Retention (6 months)

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"The money rules."

FUNDING AND EXPENDITURES

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Funding ESD Operations

- *Ad Valorem* Taxes
- Sales Taxes
- Fees and Billing Revenue

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Learning to live with the property tax process…

AD VALOREM TAXES

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Property Tax Process

- Process revised by SB 2 in 2019
- Changed from petition-based elections to mandatory elections for tax increases
- Lowered threshold for tax elections from 8% to 3.5% for nearly all government entities
- Left old process and threshold in place for low tax rate entities

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Property Tax Process

- Deadlines in Tax Process
  - July 25 deadline for Appraiser to submit Certified Appraisal Roll
  - August 1 deadline for Assessor to submit total appraised, assessed, and taxable values of all property and the total taxable value of new property
  - August 7 deadline for tax rate calculations **AND posting on taxing unit website**
  - Mid-August (71 days before November election date) deadline to adopt tax rate and call election to exceed the Voter-Approval Tax Rate (August 25, 2025)
  - September 30 deadline to adopt tax rate at or below Voter-Approval Tax Rate

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Property Tax Calculations

- Impact divided into three categories of ESDs
  - ESDs with M&O property tax rate of $0.025/$100 or less (Category 1)
  - ESDs with M&O property tax revenues of more than $14,285,714 (Category 2)
  - All other ESDs (Category 3)

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Category 1

Special Taxing Units
Less than $0.025 tax rate

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Category 1

- "Special Taxing Unit"
  - a taxing unit, other than a school district, for which the maintenance and operations tax rate proposed for the current tax year is 2.5 cents or less per $100 of taxable value;
  - a junior college district; or
  - a hospital district

- Tax Code Sec. 26.012(19)

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Category 1

- Currently ~30 ESDs in the State are Special Taxing Units
- 8% Voter Approval Rate

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Category 1

- 8% "Voter-Approval Tax Rate"
  - NO-NEW-REVENUE TAX RATE = (LAST YEAR'S LEVY – LOST PROPERTY LEVY) / (CURRENT TOTAL VALUE – NEW PROPERTY VALUE)

  - VOTER-APPROVAL TAX RATE = (NO-NEW-REVENUE MAINTENANCE AND OPERATIONS RATE x 1.08) + CURRENT DEBT RATE

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Category 1

- Calculation of M&O Rate
  - 1.08 X Last year's maintenance & operations expense
    - Means amount spent for maintenance and operations from property tax and additional sales and use tax revenues in the preceding year (ESDs do not have additional sales and use tax)
  - Divided by Current Total Value less New Property Value
    - Current Total Value means total taxable value of property listed on the appraisal roll for the current year, including all appraisal roll supplements and corrections as of the date of the calculation, less the taxable value of property exempted for the current tax year for the first time
    - New Property Value generally means the total taxable value of property added to the appraisal roll in the current year by annexation and improvements listed on the appraisal roll that were made after January 1 of the preceding tax year

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Category 1

- Calculation of Current Debt Rate
  - Same as Category 3 (below)

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Category 1

- Election Required if ESD adopts tax rate that exceeds Voter-Approval Tax Rate

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Category 2

M&O Revenues Exceed $14,285,714

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Category 2

- If property tax revenues exceed $14,285,714 then a $500,000 *de minimis* increase in property tax revenue would be less than 3.5%
- If property tax revenues are less than $14,285,714, then district could achieve more than 3.5% increase in revenues using *de minimis* (see Category 3)

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Category 2

- Applied to ~11 ESDs in the state in 2023
- 3.5% Voter Approval Rate
- But impact will grow as revenues grow
- 2023 Impacted ESDs:
  - Reeves County ESD #1
  - Reeves County ESD #2
  - Harris County ESD #9
  - Harris County ESD #1
  - Harris County ESD #11
  - Travis County ESD #6
  - Harris County ESD #48
  - Harris County ESD #7
  - Travis County ESD #2
  - Fort Bend ESD #4
  - Bexar County ESD #2

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Category 2

- 3.5% "Voter-Approval Tax Rate"
  - NO-NEW-REVENUE TAX RATE = (LAST YEAR'S LEVY – LOST PROPERTY LEVY) / (CURRENT TOTAL VALUE – NEW PROPERTY VALUE)
  - VOTER-APPROVAL RATE = (NO-NEW-REVENUE MAINTENANCE AND OPERATIONS RATE x 1.035) + (CURRENT DEBT RATE + UNUSED INCREMENT RATE)

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Category 2

- Calculation of M&O Rate
  - 1.035 X Last year's maintenance & operations expense
    - Means amount spent for maintenance and operations from property tax and additional sales and use tax revenues in the preceding year (ESDs do not have additional sales and use tax)
  - Divided by Current Total Value less New Property Value
    - Current Total Value means total taxable value of property listed on the appraisal roll for the current year, including all appraisal roll supplements and corrections as of the date of the calculation, less the taxable value of property exempted for the current tax year for the first time
    - New Property Value generally means the total taxable value of property added to the appraisal roll in the current year by annexation and improvements listed on the appraisal roll that were made after January 1 of the preceding tax year

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Category 2

- Calculation of Current Debt Rate
  - Same as Category 3

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Category 2

- UNUSED INCREMENT RATE
  - The Tax Rate that equals the greater of Zero or
    - YEAR 1 VOTER-APPROVAL TAX RATE less YEAR 1 ACTUAL TAX RATE, plus
    - YEAR 2 VOTER-APPROVAL TAX RATE less YEAR 2 ACTUAL TAX RATE, plus
    - YEAR 3 VOTER-APPROVAL TAX RATE - YEAR 3 ACTUAL TAX RATE.

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Category 2

- UNUSED INCREMENT RATE
  - Intended to not punish taxing units that adopt a tax rate that is lower than Voter-Approval rate
  - Begins to accrue in 2020
    - considered zero for all prior years
- Rate is added to 3.5% increase in M&O rate and Debt rate to determine Voter-Approval Rate

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Category 2

- Election Required if ESD adopts tax rate that exceeds Voter-Approval Tax Rate

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Category 3

M&O Revenues DO NOT Exceed $ 14,285,714

AND

NOT a Special Taxing Unit

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Category 3

- Subject to 3.5% Voter-Approval Rate same as Category 2.
- BUT only required to hold election if ESD adopts a tax rate that exceeds the greater of
  - the taxing unit 's voter-approval tax rate or
  - de minimis rate.

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Category 3

- "De minimis rate"
  - the tax rate equal to the sum of:
    - A taxing unit 's no-new-revenue M&O rate;
    - The rate that, when applied to a taxing unit 's current total value, will impose an amount of taxes equal to $500,000; and
    - A taxing unit 's current debt rate.
  - Allows for $500,000 increase in revenue without required election.
  - Comptroller may adjust yearly.

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Category 3

- Calculation of M&O Rate
  - Same as Category 2
- Calculation of Current Debt Rate
  - Same as Categories 1 & 2

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Category 3

- Calculation of Current Debt Rate
  - "Debt" means a bond, warrant, certificate of obligation, or other evidence of indebtedness owed by a taxing unit that is:
    - payable solely from property taxes in installments over a period of more than one year,
    - NOT budgeted for payment from maintenance and operations funds, and secured by a pledge of property taxes, or
    - a payment made under contract to secure indebtedness of a similar nature issued by another political subdivision on behalf of the taxing unit.

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Category 3

- Calculation of Current Debt Rate
  - Definitions changed in 2023
  - Current Debt Service Less Excess Collections
  - Debt Service means evidences of indebtedness that
    - is payable from property taxes in installments over a period of more than one year, not budgeted for payment from maintenance and operations funds, and secured by a pledge of property taxes; and

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Category 3

- Calculation of Current Debt Rate
  - meets one of the following requirements:
    - has been approved at an election;
    - includes self-supporting debt;
    - evidences a loan under a state or federal financial assistance program;
    - is a refunding bond;
    - is issued in response to an emergency under Section 1431.015, Government Code (related to anticipation note for emergency financing);

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Category 3

- Calculation of Current Debt Rate
  - meets one of the following requirements: is issued for designated infrastructure; (cont.)
    - is issued for renovating, improving, or equipping existing buildings or facilities;
    - is issued for vehicles or equipment; or
    - is issued for a project under Chapter 311, Tax Code, or Chapter 222, Transportation Code, that is located in a reinvestment zone created under one of those chapters;"

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Category 3

- Calculation of Current Debt Rate
  - Excess Collections means "the amount, if any, by which debt taxes collected in the preceding year exceeded the amount anticipated in the preceding year's calculation of the voter-approval rate"
  - Divided by Current Total Value X Collection Rate

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Category 3

- "De minimis rate"
  - BUT, if *de minimis* rate exceeds Voter-Approval tax rate and adopted tax rate is:
    - equal to or lower than the taxing unit's *de minimis* rate; and
    - greater than the greater of the taxing unit 's:
      - voter-approval tax rate calculated as if the taxing unit were a special taxing unit (8%); or
      - Voter-approval tax rate (3.5% plus Debt rate).
  - THEN, subject to voter petition for election.

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Category 3

- "De minimis rate"
  - Allows increase of revenues up to $500,000
  - If that increase exceeds 8% (old Rollback Rate), then same process as old Rollback Petition process

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Category 3

- "De minimis rate"
  - If M&O revenues are ≤ $6,250,000, then *de minimis* increase of $500,000 would be more than 8%
  - If M&O revenues are more than $6,250,000 but less than $14,285,714, then *de minimis* increase of $500,000 would be less than 8% but more than 3.5%

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Category 3

- **Election Required** if ESD adopts tax rate that exceeds *de minimis* Tax Rate
- **Subject to petition for election**, if ESD adopts tax rate that is less than *de minimis* Tax Rate but greater than both:
  - Voter-Approval Tax Rate (3.5% + Debt Tax + Unused Increment) and
  - Special Taxing Unit Voter-Approval Tax Rate (8% + Debt Rate)

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All Categories

- Required Election Ballot Language
  - "Approving the ad valorem tax rate of $_____ per $100 valuation in (name of taxing unit) for the current year, a rate that is $_____ higher per $100 valuation than the voter-approval tax rate of (name of taxing unit), for the purpose of (description of purpose of increase). Last year, the ad valorem tax rate in (name of taxing unit) was $_____ per $100 valuation."

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Disaster Relief Exception

- Election not required to approve the tax rate adopted by ESD for the year following the year in which the disaster occurs if:
  - Increased expenditure necessary to respond to a disaster (not including a drought) that has impacted the taxing unit, and
  - The governor has declared any part of the area in which the taxing unit is located as a disaster area
  - SB 1438 in 2021 clarified "disasters" under Chapter 26 of Tax Code – by requiring that at least one person receive relief from taxes as a result of property damage

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SALES TAX REVENUE

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Sales Tax

- Maximum 2% Local Sales Tax
- Increments of 1/8%
- Sales Tax Election
- Exclusion of area at 2% cap – the "Carve Out"

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Sales Tax Conflicts

- "Who's on First?"
  - First come first serve
- Post sales tax "carve out"
  - Unique to ESDs
- Municipalities
  - Surrounded by ESD sales tax/Annexation issues
- Overlapping jurisdictions

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Funding ESD Operations

- *Ad Valorem* Taxes
- Sales Taxes
- Fees and Billing Revenue

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Fees

- A district, or a person authorized by contract on the district's behalf, may charge a reasonable fee for emergency services performed for or on behalf of a person or entity, including a fee for responding to a false alarm or for a fire code inspection.
- Provide notice and conduct public hearing to adopt false alarm fees (penal in nature).

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Break

Please return in 10 minutes

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Financial Basics

"Taking Care of Public Money"

- Audits
- Payment of District Funds
- Annual Reports
- Depositories
- Public Funds Investment Act
- Public Funds Collateral Act
- Buying and Selling Property

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Audits

(not Harris County)

- Prepare and file annually with the County commissioners court on or before June 1
- Auditor must be an independent certified public accountant or firm of certified public accountants licensed in this state.

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Audits

(not Harris County)

- Failure to file the audit report by September 1st AND
- County auditor is not ordered to prepare the report, THEN
- President and Treasurer are **automatically** removed, and the commissioners' court is required to fill the vacancies.
- Does not apply for elected commissioners.

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Audit Exemption

(not Harris County)

- ESD may prepare COMPILED FINANCIAL STATEMENTS if:
  - No more than $250,000 in revenues in prior year
  - No more than $250,000 in cash and investments in previous year; and
  - No outstanding debt or liabilities secured by taxes with a term of more than one year.
  - IF choose this option, then must post past three years on ESD website

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Audits for Harris County ESDs

- Deadline: July 1 of each year
- Prepared at the expense of the district.
- Available for review and inspection at the administrative office of the district.
- Filed with the clerk of the county commissioner's court within 30 days after receipt by the board.

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Payment of District Funds

- District funds may be disbursed only by check signed by the treasurer or assistant treasurer and countersigned by the president or vice-president.

- If the necessary combination is absent or unavailable, checks must be signed by at least three board members.

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Depositories

- Must designate one or more banks to serve as depositories for district funds.
- Must deposit all district funds in a depository bank, except:
  - may deposit funds pledged to pay bonds or notes with banks named in the trust indenture or in the bond or note resolution; and
  - shall remit funds for the payment of the principal of and interest on bonds and notes to the bank of payment.

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Depositories

- May not deposit funds in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation unless the excess funds are secured in the manner provided by law for the security of county funds. (Currently $250,000) – See FDIC rules for more details.
- May require that any or all of the funds must be secured by obligations of or unconditionally guaranteed by the federal government.

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Public Funds Collateral Act

- Government Code, Chapter 2257
- A deposit of public funds shall be secured by eligible security to the extent and in the manner required by Chapter 2257.
- A public entity may contract with a bank that has its main office or a branch office in Texas to secure a deposit of public funds.

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Public Funds Investment Act

- Government Code, Chapter 2256
- A district may invest funds **only** in:
  - obligations of, or guaranteed by, governmental entities,
  - certificates of deposit and share certificates
  - or investment pools

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Public Funds Investment Act

- **UNLESS** the treasurer, chief financial officer (if not the treasurer), and the investment officer of the district attend and successfully complete the training requirements under the Act.
  - PFIA requires all above to attend at least one training session, ten hours in length, within 12 months after taking office and take eight hours of instruction every two years after the initial training session.

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Public Funds Investment Act

- A district must adopt by rule, order, ordinance, or resolution, as appropriate, a **written investment policy** regarding the investment of its funds and funds under its control.
- A district must **review** its investment policy and investment strategies not less than **annually**.

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Public Funds Investment Act

- A district must **designate**, by rule, order, ordinance, or resolution, as appropriate, one or more officers or employees of the district as **investment officer** to be responsible for the investment of its funds consistent with the investment policy adopted by the entity.

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Public Funds Investment Act

- Not less than **quarterly**, the investment officer shall prepare and submit to the district a written **report of investment transactions** for all funds covered by this chapter for the preceding reporting period.
- **Often overlooked**

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Buying and Selling

- Statutory Rules for Both
- Limited to process allowed in statutes

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Acquiring Property

- A district may acquire, purchase, hold, lease, manage, occupy, and sell real and personal property or an interest in property.

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Acquiring Equipment

- A district may lease, own, maintain, operate, and provide emergency services vehicles and other necessary or proper apparatus, instrumentalities, equipment, and machinery to provide emergency services

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Sale of Property

- Shall sell the property using the method of sale that the board determines is the most advantageous to the district under the circumstances
- May reject any or all bids or proposals for the purchase of the property.
- Cannot give away property acquired with public funds

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Sale of Property

- May use procedures authorized under certain County authority for real property:
  - Sealed Proposals
  - Public Auction
  - Using Broker
- May use the procedures authorized for County disposition of surplus and salvage property
- May use the procedures for ESDs to dispose of surplus and salvage property

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Sale of Property

- May use an Internet auction site.
  - Must post the property on the site for at least 10 days.
- May contract with a private vendor to assist with the sale of the property.

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Personal Property Option

- "Salvage property" is personal property … that because of use, time, or accident is so damaged, used, or consumed that it has no value for the purpose for which it was originally intended.
- "Surplus property" is personal property that is in excess of the needs of its owner, that is not required for the owner's foreseeable needs, and that possesses some usefulness for the purpose for which it was intended or for some other purpose.

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Personal Property Option

- May sell surplus firefighting equipment to any VFD or district in this state for fair market value if the equipment:
  - met the National Fire Protection Association Standards at the original time of purchase; and
  - at the time of the sale meets NFPA Standards in effect at the original time of purchase; or meets the NFPA Standards in effect.

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Personal Property Option

- May contract to supply surplus property to any VFD or district in this state at fair market value
- May sell salvage property to any person in this state for fair market value. If unable to sell the property… , the district may destroy or otherwise dispose of the property as worthless

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Four letters….

DEBT

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Limitation on Indebtedness

- A district may not contract for an amount of indebtedness in any one year that is in excess of the funds then on hand and anticipated revenues for the year except through bonds or authorized loan.

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Bonds

- A district may issue bonds or notes secured by a pledge of ad valorem taxes, other revenues or both for up to 40 years.
  - The "Pledge" allows a bond holder to force District to levy tax to make debt payments
- A district must hold an election to authorize the issuance of bonds or notes.

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Loans

- The district may borrow money and make other financial arrangements to purchase real property or emergency services equipment or construct emergency services facilities in the amount and subject to a rate of interest or other conditions the board considers advisable.
- Loans are different from bonds.

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Loans

- A loan may be secured by **tax revenues or funds on hand** that are not otherwise pledged to pay a debt of the district or the real property acquired or improved or equipment acquired with the borrowed money.
- Certain loans do not require voter approval

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Loans

- Limits
  - 20 years for real estate
  - 10 years for personal property
- Subject to Appropriations Issues
  - Any "pledge" of future ad valorem tax revenues must be subject to appropriations
  - Loan section allows pledge of "tax revenues or funds on hand"
  - No Attorney General or Court Decision on this Issue Yet

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"How do we buy stuff?
Lots and lots of stuff…"

BIDDING

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Bidding

- A district must submit to competitive bids an expenditure of more than $50,000 for one item or service or more than one of the same or a similar type of item or service in a fiscal year.
  - A district may solicit bids for lesser amounts as well.

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Bidding - Exceptions

- the purchase or lease of real property
- an item or service that the board determines can be obtained from only one source
- a contract for fire extinguishment and suppression services, emergency rescue services, or ambulance services
- purchase of vehicle fuel
- the purchase of insurance

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Bidding - Exceptions

- purchase of bunker gear
- an emergency expenditure
- contract with state to participate in general services commission state purchasing program
- purchases made pursuant to local government co-op purchasing program
- purchases made under federal supply schedules of the United States General Services Administration

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Bidding - Options

- Solicit at least three bids
- Advertise for Bids – Local Government Code Chapter 262 or Government Code, Chapter 2269
- Public Works (ie Buildings) – Must Use Government Code, Chapter 2269, Contracting and Delivery Procedures for Construction Projects

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Bidding – Chapter 2269

- Competitive Bidding
- Competitive Sealed Proposals
- Construction Manager-Agent Method ("CMA")
- Construction Manager-At-Risk Method ("CMAR")
- Design-Build Contracts
- Job Order Method

Government Code Chapter 2269

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Bidding - Prohibitions

Professional Services Procurement Act

- Accounting
- Architecture
- Landscape architecture
- Land surveying

Prohibits bidding professional services

- Medicine
- Optometry
- Professional engineering
- Real estate appraising
- Professional nursing

  – Government Code Chapter 2254

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Bidding – Professional Services

- Select most qualified provider on basis of demonstrated competence and qualifications
- Attempt to negotiate contract at fair and reasonable price
- If negotiations fail
  - Formally end negotiations
  - select next most highly qualified provider
  - attempt to negotiate contract at fair and reasonable price
  - continue process until contract is entered

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Construction Projects

- Payment and Performance Bonds
  - A governmental entity making a public work contract must require the contractor, before beginning the work, to execute to the governmental entity:
  - a payment bond, if the contract is in excess of $25,000 (guarantees payments to subcontractors)
  - a performance bond where contract is in excess of $100,000 (guarantees completion of project)

Government Code Chapter 2253

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Construction Projects

- Prevailing Wage Rates
  - District must pay prevailing wage rates for public work construction contract (not maintenance)
  - Must either:
    - Survey wage rates prevailing in the area; or
    - Use wage rates determined by US Department of Labor under Davis-Bacon Act
  - Must specify wage rates in bid solicitation and contract documents
  - Show compliance through adopting a resolution

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Form 1295

- Required for all contracts with (private) business entities approved by the Board, or a contract over $1 million.
- Electronic form; entity contracting with ESD fills out form electronically and forwards with proposed contract (no longer has to be notarized)
- ESD electronically accepts Form 1295 within 30 days of contract acceptance
- Texas Ethics Commission maintains database https://www.ethics.state.tx.us/filinginfo/1295/

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Laws that Apply to ESDs

- The Texas Constitution, Art. 3, Section 48-e
  - Emergency Services District Constitutional Authority
- Health and Safety Code, Title 9, Subtitle B, Chapter 775
  - Emergency Services District Enabling Legislation
- Local Government Code, Title 5, Subtitle C, Chapter 171
  - Conflicts of Interest
- Local Government Code, Title 8, Subtitle C, Chapter 271
  - Purchasing Property
- Government Code, Title 5, Subtitle A, Chapter 551
  - Open Meetings Act
- Government Code, Title 5, Subtitle A, Chapter 552
  - Public Information Act
- Government Code, Title 10, Subtitle F, Chapter 2253
  - Public Work Performance and Payment Bonds
- Government Code, Title 10, Subtitle F, Chapter 2254
  - Professional Services Procurement
- Government Code, Title 10, Subtitle F, Chapter 2256
  - Public Funds Investment Act
- Government Code, Title 10, Subtitle F, Chapter 2257
  - Public Funds Collateral Act
- Government Code, Title 10, Subtitle F, Chapter 2258
  - Prevailing Wage Rates
- Government Code, Title 10, Subtitle F, Chapter 2269
  - Building construction

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You've seen one ESD…

ESD SERVICE MODELS AND OVERSIGHT

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Types of ESD Operations

"If you have seen one ESD, you have seen one ESD"
– Don Grogg, Former SAFE-D President

- Volunteer Departments
  - Volunteers have other jobs in local community
- Combined Departments
  - Paid staff to cover shifts when volunteers are out of community at work
- Employee Departments
  - Insufficient volunteer manpower to meet call volume demands of service area

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Organization Structure

- Contracted Service Providers
  - ESD serves as financing and contract manager for 3rd party service providers, which can be:
    - Volunteer Fire Departments;
    - Volunteer EMS Organizations;
    - For Profit EMS Organizations; and
    - Other Local Government Entities.
- Interlocal Agreements
  - Multiple Agencies joining to provide services
- District Personnel
  - ESD employs its own personnel to provide services to the community

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CONTRACTING FOR SERVICE

- Interlocal Agreements
  - With other governmental entities
- Service Provider Contracts
  - With private entities

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The Allure of Forms

Pros

- Quick
- Lest costly up front
- Standardized model of operation

Cons

- Likely won't fit your situation
- May be more costly down the road
- May end up confusing
- Cuts off access to a complete understanding of the needs of both parties

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The Alternative

- The goal is to:
  - Build consensus about the needs of the community;
  - Create a common vision for success; and
  - Memorialize that common vision in a document for future stakeholders to understand.

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Start by Creating a Plan

- Envision What you Want for your Community
  - What do you see?
  - What do others see?
  - What is the common ground?

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Start by Creating a Plan

- Specifically Define your goals
  - What services do you need?
  - Who could provide those services?
  - How do you pay for those services?
  - How do you determine success?

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What?

- Determine **What** Services You Need
  - Define your mission
  - Be Specific
  - Consider Community Expectations
  - Establish expectations (aka Performance Measures)

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Who?

- Determine **Who** Could Provide Those Services
  - Historical/Community Provider
  - Neighboring entities
  - New entities

  - Current Capability vs Potential

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The Cost?

- Determine How Much You Can Afford to Pay
  - What are tax revenues?
    - Property
    - Sales
  - Other Sources of Revenue?
    - Billing
    - Fees
  - BUT don't forget about other District administrative expenses!

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Success?

- Determine **How** Much Oversight is Necessary
  - How much time and energy can board commit to oversight?
  - What is leadership of potential providers capable of handling?

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Service Providers

- Volunteer Departments/Organizations
  - Usually helped create the ESD
  - Generally have long history of serving the Community
  - Many volunteers who invest time and energy in service
  - Have had to rely upon donations and County handouts
  - Historically make decisions without oversight
  - Sometimes conflicts between multiple service providers
- Transitioning to a Contract Relationship with ESD can be difficult

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Service Providers

- Other Governmental Entities
  - Have their own culture
  - Have their own obligations
  - Governed by others whose vision may be different from yours

- Learning to work with another governmental entity can be difficult

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Service Providers

- Private Contractors
  - Private Business are in place to make a profit
  - Public service will not be the primary concern
  - Controlled by others, perhaps even one person, whose goals may be very different from yours

- Challenges:
  - Oversight
  - Performance Standards

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Specific Goals

- Performance Criteria
  - service area
  - types of services provided
  - regulatory compliance/operations standards
  - response time (how to measure, etc.)
  - personnel (training, number of people, etc.)
  - compliance with ESD policies/laws
  - ownership and maintenance of assets
  - records and reporting to ESD and others

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Specific Goals

- Financial Provisions
  - Audit requirements
  - Ownership of Assets
    - §775.073(d) Requires ESDs to Retain of Assets Purchased with ESD Funds
    - Purchasing limitations/requirements
  - Budgeting and Strategic Planning
  - Payments\ Process

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Specific Goals

- Insurance
  - Covering Risk
  - Tort Claims Act maximum liability limits for local governments and "emergency service organizations"
    - $100,000 for each person
    - $300,000 for each single occurrence for bodily injury or death, and
    - $100,000 for each single occurrence for injury to or destruction of property.

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Specific Goals - Liability

- Assigning Risk or Assuming Liability
  - Tort Claims Act waives immunity from liability for employees of governmental "units" in certain situations.
  - A "governmental unit" includes "emergency service organizations," i.e. VFDs
  - TTCA does NOT apply to "employees" responding to emergency calls, if response is not in compliance with the law or is done recklessly or with "intentional disregard"

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Specific Goals

- Length of Relationship
  - Term of Contract
  - Termination
  - Assignment

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What to do with the people…

EMPLOYEES AND VOLUNTEERS

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ESD Employee and Volunteer Issues

- NOT provided through contract or interlocal agreement
- Employed by or Compensated by ESD
- Regulatory Environment
  - US Dept of Labor (FLSA)(all employees)
  - TCFP (firefighters)

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ESD Policies

- Personnel Manual
- SOPs/SOGs
- Insurance
  - Health
  - Disability
  - Liability
- Payroll Systems

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Compensating Volunteers

- "A *fire department* may not compensate, reimburse, or provide benefits to a person the department has designated as a volunteer … to the extent that the person would be considered fully paid fire protection personnel."
- Tex. Gov. Code sec. 419.0322(c)

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Paid Firefighters

- Paid fire protection personnel are required by state law to be certified by the Texas Commission on Fire Protection.
- Volunteers and individuals not affiliated with a paid or volunteer department can choose to be certified by the Commission on a voluntary basis.
- The Commission certifies fire protection personnel to multiple levels (basic, intermediate, advanced and master) in several different disciplines.
- Additionally, the Commission certifies training facilities.
    - From the TCFP Compact with Texans

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Paid Firefighters

- The Texas Commission on Fire Protection does not regulate volunteer firefighters.
- Commission's statute limits only the number of hours a *part-time* fire protection employee can work to maintain his/her *part-time* status.
- Part-time firefighter = not more than 24hrs/wk or 500hrs/calendar year
- Full-time firefighter = more than 24 hrs/wk or 500 hrs/calendar year

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The Fair Labor Standards Act

- Originally enacted in 1938 to set a national minimum wage, provide for overtime pay and prevent child labor.
- Has been amended many times
- Is the cornerstone for determining wage and pay issues
- The Act covers private, as well as federal, state and local government employers.

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Wage and Hour Opinion Letters

- The US Department of Labor, Employment Standards Administration, Wage and Hour Division interprets the FLSA and publishes opinion letters based on questions posed to the DOL.
  - These letters are posted online at https://www.dol.gov/agencies/whd/opinion-letters/request/existing-guidance

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Nominal Fee

- Individuals do not lose their volunteer status if they receive a nominal fee from a public agency.

- A nominal fee could be paid on a per call or per assignment basis to a volunteer.

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Nominal Fee – the Simple Test

- There is no absolute dollar value assigned to the term "nominal."
- Would the payments cause any volunteer (including a volunteer firefighter) to earn more than 20% of the amount a paid employee (or firefighter) working that same number of calls/shifts would earn?

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AGENCY OVERSIGHT AND OTHER ASSISTANCE

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State Agencies with Oversight

- Texas Commission on Fire Protection
  - for entities with paid fire fighting staff
- Texas Department of State Health Services
  - for entities providing EMS services
- Texas Attorney General
  - for Open Government and Records Issues
- Texas Department of Emergency Management
  - for ESD Reporting

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Organizations / Agencies for Assistance

- SFFMA (Volunteer Departments)
- Texas Forest Service (Grants/Equipment)
- State Library and Archives Commission (Records)
- Texas Comptroller (Sales Tax/Property Tax)
- Texas Secretary of State (Elections)

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Helpful Websites

- TX State Assoc. of Fire & Emergency Districts
  - safe-d.org
- Texas Attorney General
  - texasattorneygeneral.gov
- Texas Comptroller of Public Accounts
  - comptroller.texas.gov
- Texas Secretary of State
  - www.sos.state.tx.us
- Texas Division of Emergency Management
  - www.tdem.texas.gov

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BREAK!

See you in 10 minutes!

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Training and Best Practices

SO YOU ARE AN ESD COMMISSIONER…NOW WHAT?

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Board of Commissioners Requirements

- Oaths of office and statements for Commissioners for each new term of office
- Open Meetings and Open Records Training to be completed by all Commissioners.
  - Must be completed within 90 days of taking office
  - Certificates are issued by the Attorney General or the training provider

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Sworn Statement

"I, _____, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God."

- Texas Constitution, Article XVI, Section 1.

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Official Oath

"I, (State your Name), do solemnly swear (or affirm), that I will faithfully execute the duties of the office of _____ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God."

- Texas Constitution, Article XVI, Section 1

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Open Government Training

- **Since January 1, 2006**, elected and appointed public officials are required by a state law to receive training in Texas open government laws.
- The law requires at least two hours of open government training, consisting of:
  - a one-hour educational course on the Open Meetings Act and
  - one-hour educational course on the Texas Public Information Act.
- Officials who are elected or appointed have **90 days** within which to complete the required training.
- https://www.texasattorneygeneral.gov/faq/og-open-government-training-information

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Being an open book… aka

TRANSPARENCY

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Required Training

- The Short Course
  - This presentation
  - Does not satisfy the requirements of the law!
- The Long Courses
  - which do satisfy the requirements
  - This Afternoon: 2-3pm (Open Meetings) and 3-4pm (Public Information)
  - Saturday: 9:45-10:45am (Open Meetings) and 11am-Noon (Public Information)
  - Or – online at https://www.texasattorneygeneral.gov/open-government/governmental-bodies/pia-and-oma-training-resources

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Open Meetings Act

- According to the Attorney General, "The Texas Open Meetings Act was enacted to ensure the Texas government is transparent, open, and accountable to the people."
    - From the 2024 Edition of the Open Meetings Handbook

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Open Meetings Act

- Chapter 551, Texas Government Code
- Public Officials are Required to Have Attorney General-Approved Training
- Open Meetings Handbook
  - texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/openmeetings_hb.pdf

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Open Meetings Generally

- 72 hours notice of meeting (unless emergency)
- Notice (agenda) must state time, date and place of meeting
  - ESDs post agenda with County Clerk (or on Website) and at ESD administrative office
- Notice must describe matters to be discussed sufficiently
- Public has right to attend, and now has the right to speak on *every* agenda item
- Board can establish rules for public comments

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Open Meetings
Common Closed Sessions

- Consult with District's attorney
- Real Property Acquisition
- Personnel Matters
- Gifts to District
- Other Exceptions

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Telephone Conference Call

- Meeting may be held by teleconference call <u>only</u> if:
  1) emergency or public necessity exists; and
  2) it is difficult or impossible to convene a quorum at one location, or
  3) the meeting is held by an advisory board
- Subject to same notice requirements
- Meeting must be held in same place as regular meetings

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Telephone Conference Call

(cont.)

- Identity of each speaker must be clearly stated prior to speaking.
- Meeting must be set up to provide two-way communications.
- All portions (other than executive session) must be audible to public.
- Meeting must be tape-recorded & a copy made available to public.

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Videoconference Call

- Allowed if:
  - Presiding officer is physically present at location of space for public
  - Members and employees participating by video conference have live video and audio feed
  - Public has access to space to attend meeting that has camera and microphone to allow participation
  - Public participation must be allowed as if the meeting were being held without video conference

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Videoconference Call (cont.)

- Notice of meeting must specify location where public may attend
- Each participant must be clearly audible and visible to all participants and to public at all times.
- Must meet audio & video quality requirements of Section 551.127 of Government Code.
- The entity must at least make an audio recording of the entire meeting that is made available to the public.

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Public Information Act

- Chapter 552, Texas Government Code
  - formerly the Open Records Act
- Applies to Districts and VFDs/Service Providers
- Attorney General Training Required Within 90 days of Taking Office
- Public Information Act Handbook
  - texasattorneygeneral.gov/publicinfo_hb.pdf

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Public Information

- Districts and "the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds " are subject to the Act.
- Unless excluded, all public information is subject to disclosure under the act.

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Public Information

- VFD records that involve expenditures of public funds are subject to the Act. However, the portion of the entity that is not supported by public funds is not necessarily subject to the Act.

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Public Information

- Must "Prominently Display" Sign
  - In administrative offices
  - Must use Attorney General Form
  - At least 8 ½"x14"
  - English and Spanish
  - texasattorneygeneral.gov/open-government/governmental-bodies/pia-poster

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Public Information

- Making a Request
  - A request for records or information triggers the Act.
- Creating Records to Respond to Request
  - The Act does not require a governmental body to create new information, to do legal research, or to answer questions.

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Public Information

- Charges to the Requestor
  - Generally no charges allowed to view or inspect records and information. Charges may be allowed for copies and certain staff time.
- Amount of Charges
  - All charges must comply with the Texas Attorney General's rules.

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Public Information

- Exceptions to the Act
  - the governmental body generally must, within ten business days of receiving the open records request, refer the matter to the Office of the Attorney General (the OAG) for a ruling.

- Questions or Complaints.
  - (877) 673-6839
  - (877) OPEN TEX

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MORE TRAINING!

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Training

- Since 2011, ESD Commissioners must obtain **at least six hours of certified continuing education at least once in a two-year period** and may carry forward not more than three hours from one period to the next.
- For purposes of removal of a commissioner, "incompetency" includes failure to comply with training requirements.
- Training must be certified by an institution of higher education

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What Kind of Training?

- Training topics under HB 1619 as originally filed:
  - district responsibilities;
  - board responsibilities;
  - government administration;
  - ethics laws relating to public officers; and
  - the governance and management of emergency services.
- HB 1619 did not pass and these requirements are not in current law, but serve as guidance for SAFE-D

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Other Training

- Public Funds Investment Act Training
  - If investing in certain types of investments
- Cybersecurity Training
  - Employees, elected officials, and appointed officials who have access to a local government computer system or database and use a computer to perform at least 25 percent of their duties.
  - Must be certified by Tx DIR

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Other Training

- NIMS 100
- NIMS 200
- NIMS 700
- NIMS 800
  - All needed to comply with terms of federal grants

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Certified Emergency Services Commissioner

- Completion of at least two years as an ESD commissioner.
- Be a member of SAFE-D at the time of application and during the time the 25 hours of training outlined below are completed.
- Be current on the required minimum training hours as specified in Chapter 775.0365 of the Texas Health & Safety Code.
- Attendance at a minimum of one SAFE-D Annual Conference during the preceding two years of service as an ESD commissioner.

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Certified Emergency Services Commissioner

- Completion of a minimum of 25 hours of accredited, SAFE-D-provided ESD commissioner training including, but not limited to:
  - ESD 101 (3 hours)
  - Ethics course (at least 1 hour)
  - Strategic Planning course (at least 1 hour)
  - Records Retention/Management course (at least 1 hour)
  - Robert's Rules course (at least 1 hour)
  - Financial Reporting course (at least 1 hour – ESD 203, ESD 205)
- Proof of timely submission of the candidate's ESD audit reports during the time of applicant's service as an ESD Commissioner

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Certified Emergency Services Commissioner

- https://www.safe-d.org/cesc/

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"Who is looking over your shoulder?"

COMMISSIONER ACCOUNTABILITY

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Ethical Issues

- Conflict of Interest
- Nepotism
- Dual Office Holding/Incompatibility

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"Growing beyond the apple box…"

DISTRICT OPERATING REQUIREMENTS

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Offices and Meetings

- Establish District Administrative Office and publish notice of location in newspapers within 60 days of Commissioner qualification.
- Election of President, Vice President, Treasurer, Secretary and Assistant Treasurer.

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Budget and Tax Rate

- Schedule meetings and public hearings on Budget and Tax Rate to comply with Truth-in-Taxation requirements (Tax Code Chapter 26).
- Adopt Budget by appropriate deadline.
- Adopt Tax Rate by appropriate deadline.
  - Beware of Tax Assessor deadlines too…

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Miscellaneous Financial Issues

- Adopt Resolution Establishing District Fiscal Year.
- Establish District Depository.
- Open District bank account(s), and investment account(s) with Depository Agreements
- File Audit with County
- Adopt Investment Policy

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Reporting and Registrations

- Obtain a federal tax identification number for the District.
- Obtain a taxing unit identification number from the Texas Comptroller

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ESD Annual Report

- On or before January 1 of each year, a district shall file with the Texas Division of Emergency Management an annual report that includes the following:
  - the district's name
  - the name of each county in which the district is located
  - the district's business address
- Filing info at https://tdem.texas.gov/response/state-operations-center

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ESD Annual Report

- the name, mailing address, and term of office of each commissioner
- the name, mailing address, and term of office of the district's general manager, executive director, and fire chief
- the name of each legal counsel or other consultant for the district; and
- the district's annual budget and tax rate for the preceding fiscal year.

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Comptroller Annual Reports

- **Special Purpose District Financial and Tax Report**
  - Applies to all special purpose districts if the District:
    - is authorized to impose an ad valorem tax or a sales and use tax, to impose an assessment, or to charge a fee;
    - during the most recent fiscal year, had bonds outstanding, gross receipts in excess of $250,000, or had cash and temporary investments in excess of $250,000; **AND**
    - is not a municipality, county, junior college district, independent school district, or political subdivision with statewide jurisdiction.

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Comptroller Annual Reports

- **Special Purpose District Financial and Tax Report**
  - Report includes:
    - name of the district
    - name of each commissioner
    - contact information for the main office
    - tax assessor/collector contact information
    - information on any bonds, and
    - information on ad valorem tax and sales and use taxes for the most recent tax year.

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Comptroller Annual Reports

- **Special Purpose District Financial and Tax Report**
  - This report must be completed through the Comptroller's eSystems online portal.
  - Instructions for logging on and submitting the report can be found at: https://comptroller.texas.gov/transparency/local/sb625/online-reporting.php
  - 90 day submission window – reporting period begins annually January 1st and reports are due by April 1st
  - District that fails to submit the data placed on a noncompliance list and subject to penalty of ≤$2000

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How can you prove what you have done?

KEEPING RECORDS OF DISTRICT ACTIONS

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Recordkeeping

- Approve a Records Management Program, including:
  - Order Establishing Records Management Program, Appointing Records Management Office, and Appointing Public Information Coordinator; and
  - Declaration of Compliance with Records Scheduling Requirement of the Local Government Act.
  - File with State Library and Archives Commission.

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Records of District Actions

- Minutes
- Resolutions
- Orders

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Meetings & Minutes

- The Board shall:
  - hold regular monthly meetings and other meetings as necessary.
  - keep minutes and records of its acts and proceedings.

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Record of Open Meeting

- Open Meetings Act Requirement:
  - A governmental body shall prepare and keep minutes or make a recording of each open meeting of the body.
  - The minutes must:
    - state the subject of each deliberation; and
    - indicate each vote, order, decision and other action taken.

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Record of Open Meeting

- Public Record
  - The minutes and recordings of an open meeting are public records and shall be available for public inspection and copying on request to the governmental body's chief administrative officer or the officer's designee.

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Record of Open Meeting

- Recording by Others
  - A person in attendance may record all or any part of an open meeting of a governmental body by means of a tape recorder, video camera, or other means of aural or visual reproduction.
  - A governmental body may adopt reasonable rules to maintain order at a meeting, including rules relating to:
    - the location of recording equipment; and
    - the manner in which the recording is conducted.
  - The rules may not prevent or unreasonably impair a person from exercising a right granted to record.

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Records of Governing Bodies

- Agendas/Notices
  - (a) Open meetings. RETENTION: 2 years.
  - (b) Closed sessions. RETENTION: 2 years.
- Minutes
  - (a) Written minutes. RETENTION: PERMANENT
  - (b) Notes taken during meetings from which written minutes are prepared. RETENTION: 90 days after approval of minutes by governing body. (Except from destruction request requirement)

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Records of Governing Bodies

- cont...
- Minutes
  - (c) Audio tapes of open meetings, except as described in (d), for which written minutes are not prepared. RETENTION: PERMANENT
  - (d) Audio tapes of workshop sessions of governing bodies in which votes are not made and written minutes are not required by law to be taken. RETENTION: 2 years

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Records of Governing Bodies

- cont...
- Minutes
  - (e) Audio tapes of open meetings for which written minutes are prepared. RETENTION: 90 days after approval of minutes by the governing body (Exempt from destruction request requirement)
  - (f) Audio tapes of closed meetings. RETENTION: 2 years [by law – Government Code, Section 551.104(a)]
  - (g) Supporting documentation – One copy of each document of any type submitted to a meeting of a governing body for consideration, approval, or other action; if such action is reflected in the minutes of the meeting. RETENTION: 2 years.

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Resolutions & Orders

- Resolutions
  - Used to more formally record actions of the Board beyond just a recitation in the minutes (eg. adoption of budget, policy statement, etc.)
- Orders
  - Used to adopt rules, regulations and other formal actions that may require enforcement in court or other proceedings (eg. levying taxes, issuing debt, etc.)

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Things to strive for…

BEST PRACTICES

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Working with Others

- Legislators
- County Officials
- City Officials
- Others
  - Council of Governments
  - State Regulators

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Open Government

- Accessible Notices and Documents
  - Courthouse
  - Meeting locations
  - On-Line
- Accessible Documents
- Convenient Meetings

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Community

- Citizen Communications
- Community Outreach
- Long Range Planning to meet Community Goals

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Staying Informed

- Education
  - Conferences
  - Webinars
  - On-Line Training
- Networking
- SAFE-D Resources

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Questions?

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ESD 101

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SAFE-D 2025 Annual Conference

Conference credit:

www.safe-d.org/2025conference

DEADLINE: March 31

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SAFE-D 2025 Annual Conference

FOR CONFERENCE CREDIT

SCAN ME

DEADLINE MARCH 31

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