

# FIRE COUNSEL NOTES



## Is An ESD Right For You?

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**I**t is no secret in the emergency services community that in much of Illinois today the emergency medical service (EMS) component is challenged (a euphemism for “a problem” or in the case of Illinois EMS, “a mess”). Lack of qualified personnel, lack of adequate funding, high equipment costs, and a strict regulatory framework have all contributed to make EMS a severe problem in many parts of the state. Whether service is being provided to a community by a for profit private provider, a public provider (municipality [city or village], county, or fire protection district), or a not for profit nongovernmental provider, in many places emergency ambulance operations are struggling and, in some cases, shutting down. Why is this pertinent to fire protection districts and their governing boards of trustees? Because of one sentence in Section 22 of the Fire Protection District Act which states:

*(3) That, in the event adequate and continuing emergency ambulance services do not exist, fire protection districts should be authorized to provide, and shall cause to be provided, ambulance service as a public responsibility. (70 ILCS 705/22(a)(3))*

This wording arguably creates an obligation on fire protection districts to act as a backstop for the provision of emergency ambulance service. Notably, the corresponding provision regarding ambulance service in the Counties Code (55 ILCS 5/5-1053) contained wording

identical to that above when the same statutory language was first made part of the Counties Code by the legislature, but it was later removed and replaced with language stating exactly the opposite—that counties have no responsibility for emergency ambulance service. Undoubtedly, the language was removed at the behest of counties who did not want this obligation. This is also why, when a problem of inadequate EMS arises, counties often turn to fire protection districts to fix the problem.

While the foregoing language does not necessarily mean that a fire protection district must itself provide emergency ambulance service as an operational part of its fire department, it does likely mean that in the case of no available emergency ambulance service, the district board of trustees has some obligation to address the situation and, regardless of the language in Section 22, it is often the natural tendency of the public and other units of government, when an EMS inadequacy occurs, to look to the fire service to take up the task. But undertaking to provide emergency ambulance service or even just financially supporting it by an ambulance tax levy can be problematic. Providing EMS, even at the EMR/First Responder non-transport level, requires that the district join an EMS system in its area making it subject to regulation by the Illinois Department of Public Health and the local Medical Director and Resource Hospital. Moving to EMS transport takes the foregoing requirements to an even

higher level of compliance as personnel licensure and ambulance vehicle licensing mandates apply. Additionally, going into EMS at any level can have collateral impacts on the fire and rescue side of district fire department operations if fire department personnel are involved in the provision of EMS. Members who are willing to serve on the EMS side of a department’s operation may be even more difficult to find and retain than on the fire/rescue side. Districts may have to move from a volunteer operation with a structure of nominal, if any, compensation to a paid operation on a full or part time basis in order to adequately staff the EMS operation. Where fire department members serve to provide EMS in addition to fire and rescue, some districts find that training on the fire side drops off due to stringent EMS educational and training requirements for licensure and, if the department operates on a call system, it may experience a drop off in the member response rate to calls due to burnout from the much more frequent EMS calls. The bottom line is that many fire protection districts do not want to enter into the world of emergency medical services. So, what to do?

With the passage of Public Act 103-134 effective January 1, 2024 there may now be an answer to the dilemma of how to tackle the problem in an area without adequate ambulance service. PA 103-134 converted an existing statute, the Rescue Squad Act, into the Emergency

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Services District Act which is codified at 70 ILCS 2005/1 *et seq.* The General Assembly essentially rewrote the Rescue Squad Act into a legislative authorization for a new form of local government, the Emergency Services District, with added provisions concerning taxing authority for ambulance service (rescue squads, like fire protection districts, had authority under the prior law to provide ambulance service, but without an adequate financing mechanism. In structure, an emergency services district looks a great deal like a fire protection district. It is created by referendum after a voter petition and court procedure to place the question of forming an emergency services district made up of a defined territory on the ballot. It has a governing board made up of 5 appointed trustees. There are provisions for an elected board to be created by referendum. The ESD has authority to provide emergency ambulance service

and to tax at an initial rate of .40% for the service (the same as fire protection districts under Section 22). If the ESD provides ambulance service, it has the same regulatory authority over ambulance service within its jurisdiction as does a fire protection district which has passed a referendum for a separate ambulance tax. (Under the current ESD Act, an ESD may not be formed in a territory which is in a fire protection district that provides ambulance service, however, a proposal is before the General Assembly now which would allow overlapping fire and ESD districts which provide ambulance service if the governing body of the fire protection district agrees not to levy its tax for ambulance service and to allow the ESD to provide and tax for ambulance service in the overlapping area.)

Why would a fire protection district board of trustees faced with a situation of inadequate or, perhaps, nonexistent, emergency ambulance service in its district consider advocating for the creation of a new, separate unit

of government to provide that service? Certainly, many fire protection districts successfully provide both fire/rescue services and emergency ambulance service within their borders directly or by supporting another provider financially to provide that service. Shouldn't other fire protection districts, given the language of Section 22 quoted above, undertake, with the approval of their voters, take this task on do so? Perhaps, but maybe not. There are a couple of key considerations which district boards need to address before embarking on the addition of EMS to its responsibilities.

First, a fire protection district undertaking transport EMS will almost certainly need the approval of its voters for the additional property tax authorized by Section 22 by referendum. Financially supporting a new service responsibility such as transport EMS will require more than most fire district budgets could handle without additional funding. This

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means, of course, that the voters must be persuaded of the need for the new tax which will take time and an educational process. It may also make other efforts to obtain voter approval for additional financial support on the fire and rescue side more difficult. Given the aversion to real estate taxes, districts seeking ambulance funding may have a harder time convincing voters of the need for a rescue tax, for example.

Second, and perhaps more importantly, as noted above, EMS, operationally, adds an entirely new dimension to the district's structure. Because of the nature of the service, medical care, the volume of EMS related calls will generally far exceed the number of fire/rescue calls for most districts. Additionally, it is usually necessary for optimal EMS coverage to have personnel on duty or very close standby to respond to medical calls. Depending on the district's finances, this may require hiring people

which will raise the operating costs of the district. New and different equipment will have to be procured. Licensure and training requirements and costs will likely be incurred and even finding qualified personnel can be difficult. Adding EMS, in part because of the number of calls, can cause burnout if the EMS operations are going to be carried out by the same members of the department who do fire and rescue. As noted above, some districts doing EMR/First Responder have encountered this and found that training and call participation suffers. If doing EMS will cause a deterioration in the department's ability to provide fire/rescue service, should the district embark on it? Who else is available to fight fires and extricate victims from crashed vehicles? Will adding EMS cause a loss of focus or become a distraction from the fire/rescue responsibilities of the district? Could the fire and rescue capabilities of the department suffer? In short, would the community be better served by having another provider handle the EMS function? If so, and if there is a lack of available and adequate EMS

in a fire protection district, it may make better sense to support and advocate for the formation of an emergency services district dedicated to the provisions of emergency ambulance service. One of the strengths of fire protection districts is that they have a clear focus on the service to the public they serve. While Illinois is routinely criticized for the type and number of local governmental units it has, one benefit of such a structure is that these specialized units and their governing bodies have a single purpose or a limited number of purposes to address and to which to direct their attention. They are not necessarily competing with other functions of the government provider for financial resources. In short, in many cases, they are likely able to do it better than a unit of government managing multiple and competing functions. Having an emergency services district handle EMS may allow a fire protection district board to concentrate on the district's fire/rescue function while the ESD board handles emergency medical services. Just something to think about.

As always, good luck. ■

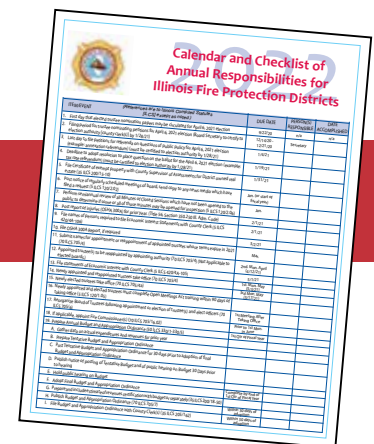
# COMPLIANCE CORNER

## Calendar / Checklist Reminders

Fire Protection District Boards Should Check On The Following Annual Calendar & Checklist Compliance Items During the Spring and Early Summer of 2025:

- ❖ Verify that Board appointments & reappointments have been submitted to the appropriate Appointing Authority and appointments made
- ❖ Verify that Economic Interest Statements have been submitted by all trustees and any other District personnel required to file by May 1

- ❖ Perform semi-annual review of Closed (Executive) Session Minutes, if applicable
- ❖ Check 2024 Tax Levy Extension Report from County Clerk(s) to verify that the extension figures are correct & match the 2024 tax levy filed by the district. Contact the County Clerk(s) regarding any discrepancies
- ❖ Initiate/complete Annual Budget & Appropriation process for districts with fiscal years beginning in the first half of 2025



- ❖ Complete and file Annual Financial Report (AFR) and Statement of Receipts & Disbursements for fiscal years ending in 2024 if not already completed

NOTE: The foregoing list is not necessarily complete for all districts. Other requirements may apply and districts should confer with their legal counsel to assure compliance. ■