

# FIRE COUNSEL NOTES



## The “Yin and Yang” of New Laws Will Impact Illinois Fire Protection Districts

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According to Wikipedia, “Yin (or Ying) and Yang” basically means the balance between “good and bad”. This is an apt description for several new laws which will likely take effect following the recent conclusion of the spring session of the Illinois General Assembly. This article will discuss some, but not all, of the more significant legislative developments of which fire protection trustees and administrators need to be aware.

### Bidding/Section 11k

On the plus side, two bills, House Bill 271 and House Bill 2473, were passed by the General Assembly and amend Section 11k of the Fire Protection District Act (70 ILCS 705/11k). Section 11k, which took effect in 2015 mandates that for expenditures in excess of \$20,000.00 by fire protection districts, competitive sealed bidding must be used as the method for the purchase. House Bill 271, which has been approved by the Governor and is now in effect as Public Act 101-0041, will change one of the requirements under Section 11k to allow publication of the required newspaper notice to bidders to occur in a non-daily newspaper. Previously, Section 11k required use of a daily newspaper to publish the required notice. In some parts of the state this has proven to be difficult due to the lack of a nearby daily newspaper and often has resulted in notices being published at a significantly higher cost than would be the case with a local non-daily publication. House Bill 2473, which has received

the Governor’s approval as Public Act 101-0139, effective 7/27/19, will modify Section 11k to expressly allow districts to make purchases in excess of \$20,000.00 through a joint purchasing program instead of using sealed bidding so long as the joint purchasing program requires a competitive solicitation process as part of its procurement procedures. This has been a frequent request and item of inquiry by fire protection districts which have sought to use out of state purchasing programs in lieu of competitive sealed bidding. Such programs would now be eligible for use so long as they include the required competitive bidding aspect.

### Prevailing Wage

Until this year, fire protection districts have been required, along with all other units of local government, to adopt an annual “prevailing wage determination”. This involved passing an ordinance or adopting a resolution in June of each year to set the “prevailing wage schedule” for all public works performed for the district by contractors. (Note that the Prevailing Wage Act does not have applicability to firefighters.) Under Senate Bill 203 (Public Act 100-1177) which became effective June 1, 2019, this annual prevailing act determination requirement has been eliminated. The prevailing wage determination made by the Illinois Department of Labor on a county by county basis throughout the state will now be the required prevailing wage schedule with which contractors

will be required to comply in performing public works for units of local government. Districts will still be required to include a prevailing wage clause in any written contract for work which is subject to Prevailing Wage Act or to give notice of the applicability of the Prevailing Wage Act in any oral (unwritten) contracts for such work. Likewise, contractors will still be required to submit certified payroll reports to districts in connection with such work and districts will be required to retain those reports for five years following the completion of the work. This change should, however, result in some cost savings to districts in that the cost of preparation and the publication of the notice of determination will no longer be required.

### Fire Investigation Act Changes

House Bill 105 will modify the procedures for local fire chiefs to notify owners of property violations of the Life Safety Code. It allows for electronic mail notification as well as traditional means and makes it clear that the Office of the State Marshal as well as local fire protection districts will have concurrent jurisdiction for enforcement. This bill, along with Section 11m of the Fire Protection District Act (70 ILCS 705/11m), will provide more flexibility and efficiency in enforcement of Life Safety Code violations by Districts and their fire chiefs. The bill has been approved by the governor as Public Act 101-0082 and will be effective 1/1/20.

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### Recreational Cannabis

As most readers are likely aware, the legislature passed the Cannabis Regulation and Tax Act (House Bill 1438) (Public Act 101-27) which has now been signed into law by the Governor and will allow recreational use of cannabis in Illinois. As in the case of medicinal use of cannabis, which was approved previously, the allowance of such use will create potential personnel issues for fire protection districts. As part of the law, the Right to Privacy in the Workplace Act (820 ILCS 55/5) is amended to prohibit an employer from discriminating against an employee for the use of cannabis off premises and during non-working and non-call hours. The law also, however, provides that an employer is not prohibited from adopting a reasonable zero tolerance policy or drug-free workplace policy. The law also provides that it is not to be construed to limit or interfere with an employer's ability to comply with any other state or federal law or to cause it to lose federal or state funding. It expressly prohibits firefighters on duty from using cannabis. Even with these restrictions, fire protection districts likely will need to implement new procedures in connection with drug testing and fitness for duty procedures. Because of the nature of cannabis and the length of time it can remain in a person's system, post-accident and similar common impairment testing procedures may need to be reconsidered. There will be additional discussion and consideration of this topic in future issues of the *Fire Call*.

### Workplace Transparency Act.

Senate Bill 075 will impose a new reporting requirement on fire protection districts as well as all other employers in the state. It will also likely require that policies prohibiting harassment in the workplace be modified. (Fire Protection Districts, like all units of local government in Illinois, are mandated already to have a policy prohibiting harassment, however, some of the language in the Workplace Transparency Act will likely require that these policies be revised in certain aspects.)

This law will also require documented annual training of all members of the fire protection district organization. The bill was approved by the Governor on 8/9/19 as Public Act 101-0221. Some parts of the bill will be effective 1/1/20 and other provisions will take effect on 7/1/20.

### First Responder Suicide Prevention Act

House Bill 2766 applies to peer support counseling programs established by an emergency services provider, union, or any other entity. The Act will regulate the use of confidential information obtained as part of the peer counseling process and it creates a cause of action for employees for the use by their employers of such confidential information in taking an adverse employment action against their employees. This law will make it important for districts to assure compliance with the confidentiality aspects of any type of counseling program of this type which the district may establish or in which its members participate in order to avoid claims being made against the district by employees based upon the improper use of such confidential information. The bill also would amend the Fire Protection Training Act to add a training requirement for recognition of and responses to stress, trauma, and post-traumatic experience by firefighters. The bill is pending the governor's approval.

### School Code Amendment

Senate Bill 1371 makes changes to the School Code with regard to "doorlocking security means" utilized by schools in the event of an incident which would necessitate a lockdown of a school facility. The bill sets requirements for such types of systems and includes a notification requirement to local fire departments regarding the systems and their operation by the school. It will be important to districts to ascertain whether any schools located within their jurisdiction have such systems in place since this may impact the manner of response by the fire department to calls for emergency services at the facility. The bill is pending the governor's approval.

### Senate Bill 37

Senate Bill 37 creates another new reporting requirement for certain districts. This legislation, which was the subject of significant controversy and legislative activity by fire service organizations, amends Article 4 of the Pension Code. The bill will require a "secondary employer" of a firefighter to report injuries, illnesses, or exposures incurred by a "secondary employee" to the "primary employer" of the secondary employee. This bill is directed at career firefighters who work on a part-time basis for other noncareer fire departments when off duty from their primary employment. For purposes of the law, a primary employer is defined to include a fire protection district which has in place an Article 4 Pension Fund and employs the full-time firefighter working on a part-time basis for another fire department. A district which has a population of 5,000 or more and employs a "primary employee" (a career firefighter earning credit under the primary employer's pension fund) is required to make an annual report of injuries or exposures to the primary employer. For those districts to which this bill will apply, this will be an added reporting requirement. The bill has been sent to the governor for consideration.

### House Bill 2028

House Bill 2018, approved as Public Act 101-0028 and effective 1/1/20, will increase the burial benefit under the Line of Duty Compensation Act from \$10,000 to \$20,000.

Additional pending bills which will be approved or vetoed by the governor will be covered in the annual Legislative Update this fall, but the foregoing are those bills which appear to be the most important to fire protection districts. A fuller exposition regarding some of the bills after their expected approval by the governor will be forthcoming in future issues of the *Fire Call* and the summaries contained in this article are intended only to provide district trustees and administrators with a "heads up" about the bills. There will also likely be other items of legislation considered by the General Assembly in the veto session this fall and those will, likewise, be the subject of a further report later in the year. ■