

Jul 10, 2006

Numerous New Laws Affect Fire Districts & Companies

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In late July, the Governor signed several new laws. The purpose of the laws is to increase the accountability of fire districts and fire companies to the public.

Fire Districts now subject to Independent Audits

Fire districts with revenues of at least \$200,000 dollars must soon obtain an independent audit of its records by an independent certified public accountant or public accountant. The report must be presented to the fire district and each town board served by the district. The audit must include not only the district's financial condition and resources but other such items as the Comptroller may require. The legislation indicates that the audit might require a review of the adequacy of the purchases of the fire district, such as whether the district should have purchased a new vehicle or not.

Fire districts that must obtain an independent audit must use a competitive request for proposals when contracting for the audits. No contract for audits may exceed five years.

In response to the comments of the audit, the fire district must prepare a corrective plan in response to the findings. The plan must be instituted within ninety (90) days of the receipt of the report. Implementation must begin no later than the end of the next fiscal year after the report is issued.

The costs of the audits have also been added to the list of permissible fire district expenses and are exempt from the statutory spending limitation of the fire district.

The effective date of the legislation varies depending on the annual revenues of the fire district. Districts with revenues of one million dollars or more must comply in 2007. Districts with revenues of \$500,000 to \$999,999 have until 2008 to comply and districts with revenues of less than \$500,000 have until 2009 to comply.

Mandatory Training for New Fire Commissioners

A new section added to New York State Town Law (176-e) will now require fire commissioners to attend and successfully complete a commissioner-specific, state approved training course. The course must be completed within 270 days of taking office. The course will contain training regarding legal, fiduciary, financial, procurement and ethical responsibilities of fire commissioners. The Comptroller will be in charge of establishing rules for the manner, frequency and duration of the course.

Brad Pinsky has been offering a 6 hour training course for fire district commissioners for several years throughout the state and such courses are planned for January and February, 2007.

Mandatory Referendums Required to Establish Reserve Funds

This new law, effective January 1, 2007, forces a fire district to obtain voter approval before it establishes a capital reserve fund. The legislators believed that fire districts established

reserve funds and avoided utilizing bonding in order to avoid obtaining public approval. The new law does not establish any limits on the amounts of the reserve funds.

Capital reserve funds are those funds used to purchase items such as equipment, machinery and apparatus, to purchase land and to construct or reconstruct buildings.

If a specific item is known to be purchased at the time of the establishment of the reserve fund, such as a pumper vehicle, the maximum cost of the item to be purchased must be set forth in the resolution. This is not the case if only a general type of reserve fund is established, such as to purchase "fire vehicles" and not a specific type of vehicle.

The secretary and the attorney for the fire district are required to prepare the proposition to be voted upon at the election. Notice of the election must be given in accordance with other new laws passed this year (discussed in this newsletter).

The expenditure of funds from the capital reserve funds are subject to permissive referendum, despite the fact that the fund was initially approved by the voters. Thus, if a sufficient number of voters petition for a mandatory referendum, any specific expenditure from a reserve fund will still have to be subject to approval by voters.

The remainder of the rules for capital reserve funds have remained the same. They are still complicated however, and advice from an attorney experienced with representing fire districts can be invaluable.

Adoption of a Code of Ethics

Fire districts and fire companies must adopt a code of ethics no later than June 1, 2007. Sample codes of ethics will be distributed to registered persons at www.emsfirelaw.com and will be available on line under the "articles" section at that website. Such policies are also available in the "Fire Department Law and Management Resource Manual", authored by Brad Pinsky.

Codes of ethics govern all line officers and executive officers of fire companies and all commissioners and officers of a fire district. They are an attempt to prevent these officers from making decisions, contracts, purchases and investments in order to benefit themselves financially. The codes must be drafted to limit holding of investments in conflict with official duties and private employment in conflict with official duties. The codes must also relate to future employment and such other standards relating to the conduct of officers and employees as may be deemed advisable. Such codes may provide for the prohibition of conduct or disclosure of information and the classification of employees or officers. The code must require the disclosure of any interest of an officer or their family or employer in any present or proposed contract of the fire department.

Elections to be held on Tuesdays

The laws regulating special fire district elections have been amended to require all special elections to be held on Tuesdays, unless that Tuesday falls on a public holiday. The purpose of this new law is to prevent fire districts from scheduling elections at dates and times as may discourage public participation, such as immediately prior to a public holiday.

The law also requires that the special election be conducted in a manner that encourages and maximizes public participation. Although the law does not provide insight into what these efforts may be, fire districts should consider the following:

- Placing signs on the front of the building advertising the election;
- Consider placing more obvious newspaper advertisements in addition to the required notice;
- Keeping the entrance to the election well lit during the polling hours.

Notices of Public Hearings and Elections

Beginning January 1, 2007, fire districts will be required to cause a notice of any upcoming hearing or regular or special election to be posted on a fire district website, if one exists. Fire districts have elections for officers, bond matters, purchasing resolutions and much more. Apparently, the government believed that the present laws requiring notice to be posted in the newspaper was insufficient. The new law requires notices of elections and hearings to be posted on fire district and town websites, if they exist, and to be posted in the local town clerk's office and town's bulletin board.

Notices must be posted at least 15 days prior to a hearing or election and may not be posted any sooner than 20 days before a hearing or election. If the fire district maintains a sign board, a copy of the notice must also be posted on the sign board for the same time period.

Additionally, each fire district secretary must provide a notice of any upcoming hearing or election to be posted on the municipal website of any town in which the fire district is located or with any town with which the fire district provides protection pursuant to a contract for primary fire protection. If the towns do not maintain the website, no posting is required.

The town clerk must also post on the town bulletin board in the clerk's office and on the sign board maintained by him pursuant to law a copy of the notice. The clerk is required to cooperate with the fire district to ensure that the notification is posted in a timely manner, as required above.

The notice must specify the time when and the place where the hearing or election will be held. The notice, if regarding an election, must state the officers to be elected, the terms of office and details regarding other matters to be voted on, as well as the hours during which the polls will be open for the receipt of ballots.

Fire districts are already required to provide this same notice to the newspaper.

District budgets now due to towns in November and requires public hearings

Effective January 1, 2007, fire districts will be required to submit their budgets to the towns by November 20th and not in September, as in prior years. The budgets of fire districts located in Monroe and Westchester counties remain due in October. The fire district budget will then be attached to the annual town budget, instead of the tentative town budget. The town is still not permitted to make any change to the budget.

On the third Tuesday in October in each year, fire districts will also be required to provide the public with the opportunity to attend a public hearing to discuss the contents of the budget. At least five days notice will be required to be given to the public by way of the official newspaper of the district. The date is not flexible, so as to permit the public to expect the hearing date each year.

The notice must state the time when and the place where the public hearing will be held, that the purpose of the hearing is to take public comment on the proposed budget of the fire district and that a copy of the proposed budget is available for inspection at the office of the town clerk and the fire district secretary during office hours. The town clerk will be required to post the notice on the signboard of the town and a website of the town if one exists, at least 5 days prior to the hearing.

At the hearing, any person may be heard regarding the proposed budget.

Mileage allowances for conference attendance limited

A section of law that permits commissioners and fire chiefs to attend conferences has been amended to limit the reimbursement for travel to the standard mileage allowance for business related travel adopted by the Internal Revenue Service.

Out of State Training of Firefighters Restricted

The General Municipal Law has been amended in an attempt to restrict unnecessary, out of state training of firefighters. The law presently requires the approval of the governing board of the municipality or fire district in charge of the fire department for any firefighter to attend a training course outside of the county. The law has been amended with regard to out of state training. Any firefighter interested in attending training out of state must obtain the authorization of the governing municipal board. Such board must find that the out of state training course or school is necessary, is in the public interest and is not available within a reasonable distance and time period in New York State.

The chief officer of the fire department must provide the Office of Fire Prevention and Control with notice and proof of attendance of any out of state training attended. The purpose of this notice is to permit the Office to compile a list of out of state training attended by the firefighters in this state.