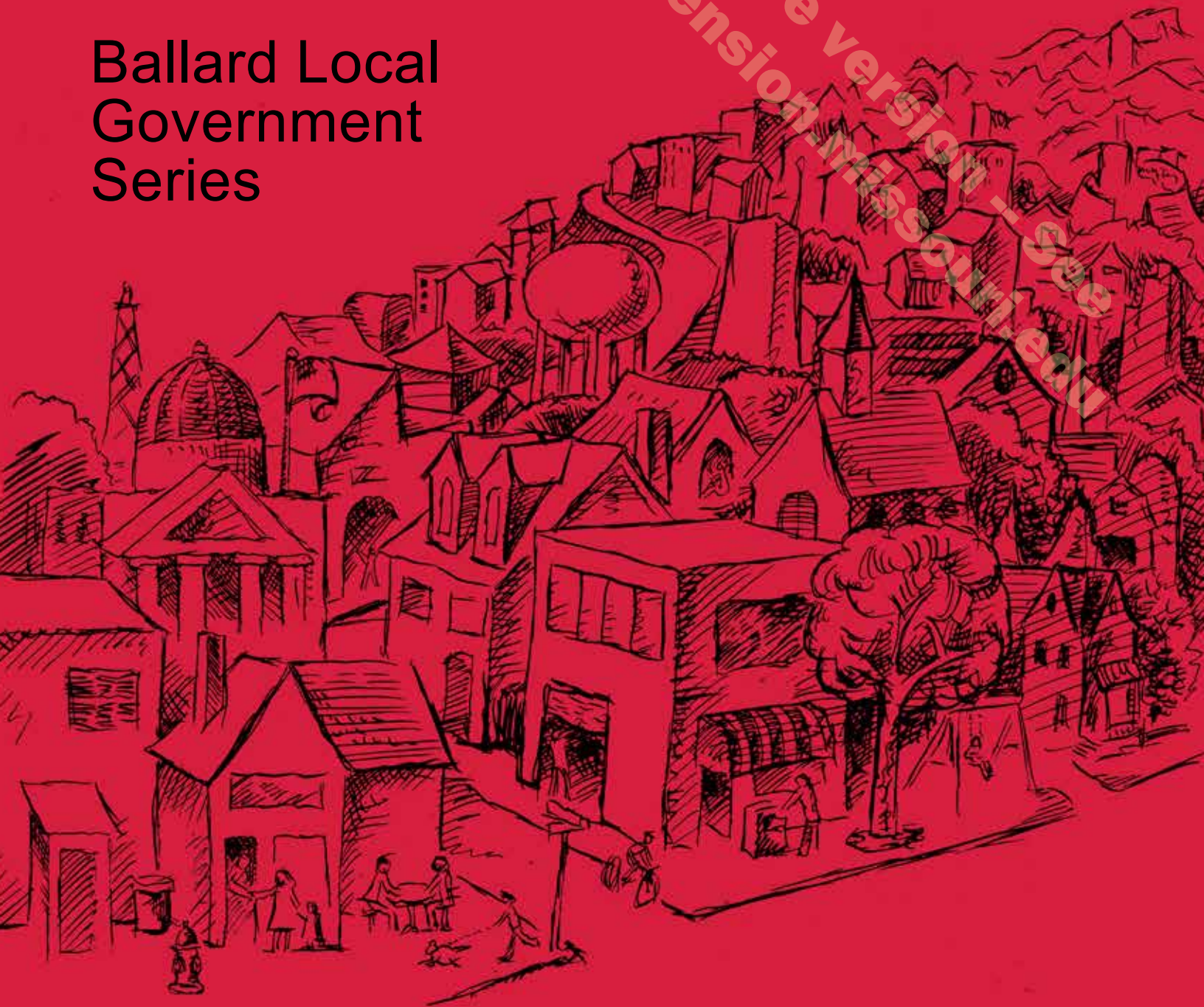


Rules for Missouri **Fire Protection Districts**

Ballard Local
Government
Series





John Ballard

John Ballard was a lifelong resident of Missouri. He attended the University of Missouri, earned a master's degree in community development in 1971, and then worked for University of Missouri Extension as a local government specialist for 21 years.

During his tenure with MU Extension, he earned statewide recognition for his vast knowledge of state, city and county politics. After he retired in 1992, he continued to play an active role in Missouri government by operating a private consulting firm, Governmental Services, through which he published a monthly newsletter for more than 300 subscribers in the state.

Rules for Missouri Fire Protection Districts

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Ballard Local Government Series

Monte Olsen

Second Edition by Patrick Cronan

First edition by John Ballard

Cover art by Dennis Murphy

University of Missouri Extension and
Local Government Partnership of East-West Gateway
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extension.missouri.edu/lgs



Acknowledgments

The purpose of this manual is to help fire protection district officials understand and comply with the state's requirements. It is, first and foremost, the work of the late John Ballard. This edition would not be possible without the original manual that John conceived and wrote.

The effort to continue John Ballard's work depends on many people. First, John's family led the effort by making his work available to University of Missouri Extension. Patrick Cronan, attorney, revised and updated Mr. Ballard's original for the second edition. The third edition was revised and updated by Monte Olsen, an instructor for the Fire and Rescue Training Institute, University of Missouri Extension. He received advice and comments from Frank Vatterott, partner, Vatterott, Harris, Devine, Dwentus, PC; Jason White, MPA, EMS consultant, Mid-America Regional Council; and Robert Patterson, executive director, Mercy Emergency Medical Services.

Attorney Douglas B. Harris of Harris, Harris, & Gilbert, LLC, in Warrensburg, Missouri, completely reviewed the manual. We owe him many thanks.

Judith I. Stallmann, emeritus professor of agricultural and applied economics and public affairs, University of Missouri, is the editor of the series. Dennis Murphy provided the original art for the cover, and Sharon Wood-Turley provided the final editing and layout. We express our deepest appreciation to all who contributed to this work. They provided the quality; any errors are ours alone.

It is hoped this effort is useful to those who make local government work. Readers should recognize that the topics covered in this manual can rapidly change due to court decisions and new federal and state legislation. The advice or recommendations contained herein may not, therefore, be completely up-to-date or accurate at all times. We recommend that districts engage legal counsel as needed in order to ensure that planned actions are appropriate.

- After the effective date of Missouri legislation each year (Aug. 28), fire protection district officials are urged to check the Missouri Legislature's website to identify new laws affecting districts at:
<https://www.mo.gov/government/legislative-branch>.
- Some, but not all, changes that affect districts would likely be found online at:
<https://revisor.mo.gov/main/OneChapter.aspx?chapter=321>.
- Missouri Sunshine Law changes would likely be found online at:
<https://revisor.mo.gov/main/OneChapter.aspx?chapter=610>
or *<https://ago.mo.gov/missouri-law/sunshine-law>*.

Judith Stallmann

May 2020

Rules for Missouri Fire Protection Districts

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(Parenthetical numbers in the text refer to sections of the current Revised Statutes of Missouri, abbreviated as RSMo. The chapter number precedes the decimal point, and the section number follows it. Most laws relating specifically to fire protection districts, also known as FPDs or fire districts, are in Chapter 321. The Revised Statutes of Missouri can be viewed online and printed copies can be purchased at <https://revisor.mo.gov/main/Home.aspx>.)

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Greatly simplifies creation of the financial statement

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I. Background and Formation

Formation of FPDs

A general law dating back to the mid-1900s authorized the formation of fire protection districts (FPDs) in Missouri. The purpose of FPDs is to “supply protection by any available means to persons and property against injuries and damage from fire and from hazards which do or may cause fire” (321.010.1). FPDs have been further empowered “to render first aid for the purpose of saving lives, and to give assistance in the event of an accident or emergency of any kind” (321.010.1).

An FPD must be entirely joined or contiguous. An FPD may include all or part of a county or counties, and it can include incorporated cities within its boundaries. FPDs may also be formed to cover the boundaries of a single city or village (321.010.1).

The law permitting formation of FPDs resulted from citizens wanting a higher level of protection than volunteer fire associations could provide. Nearly every FPD in Missouri began as a volunteer fire protection association (FPA) before it became a political subdivision of the state. Because volunteer fire protection associations and political subdivisions operate under different rules, FPDs often face unique organizational problems. Changing from a volunteer fire protection association to an FPD requires changes in the mode of governance

Volunteer associations usually make their own rules. State law gives volunteer fire protection associations permission to fight fires of nonmembers, bill nonmembers for services and sue for nonpayment (320.300-310). Beyond that, voluntary fire protection associations set their own rules following the Nonprofit Corporation Law (355). Meetings may be open or closed, purchases follow whatever rules the association has established, and many legal requirements generally do not apply.

An FPD, unlike a voluntary fire protection association, must comply with all the generic state statutes that apply to political subdivisions or municipal corporations. Also, unlike a voluntary fire protection association, membership in an FPD is mandatory instead of voluntary; every person within its boundaries becomes a tax-paying member. Also, FPDs may do only what the Missouri Revised Statutes specifically permit and may not do things the statutes forbid.

Categories and accountabilities

It is important to understand the uniqueness of FPDs and the difference between an FPD and a fire department (FD) or other governments such as a city or county. Dependent entities, such as fire departments, are accountable to a political subdivision. The rules for a dependent entity are largely determined by the political subdivision, and not statutes.

Background and Formation

- Formation of FPDs
- Categories and accountability
- Sovereignty
- Formation procedures
- Election requirement
- Terms
- Checks and balances
- County classifications

Dependent Entities

Accountable to a political subdivision

Independent or Special Purpose Entities

Are political subdivisions

For a more detailed explanation of the process of forming an FPD, go to the Missouri Association of Fire Protection Districts (MAFPD) website, <https://www.mafpd.org>, and click on “Resources” and then on “How to Form a Fire District”

Independent or special purpose entities are political subdivisions. Statutes largely determine the rules for independent entities. Because of different governing statutes, administration of an FPD is different from a fire department, and this is why a meeting of the FPD board of directors (BOD) is sometimes run differently from a Board of Aldermen or Village Trustees

Sovereignty

Sovereignty means the FPD has supreme, independent authority and power to rule and make law related to its statutory mission within a geographical area. Historically, sovereignty was connected to a government's ability to guarantee the best interests of its own citizens. Therefore, an FPD is typically not beholden to a city or county. For example, a county cannot require the FPD to have an occupancy or building permit; however, city and counties do have state-given jurisdiction regarding sewers, drinking water, traffic control, etc. Sometimes the geographic area of two governmental entities overlaps (such as a county and an FPD). Regulation of one entity over another's facilities and activities, or of two entities over the same citizens, is a complex area of the law. Both political and legal issues will be in play at the same time, and often with competing answers. Both governing board and legal counsel must be consulted in these situations for guidance. For a more complete discussion of intergovernmental regulation, see *Engelage v. City of Warrenton*, 378 S.W.3d 410 (Mo. App. 2012) and *Community Fire Protection Dist. of St. Louis County v. Board of Ed.*, 315 S.W.2d 873 (Mo. App. 1958).

Formation procedures

Establishment of an FPD in Missouri begins with a petition signed by 100 or more registered voters within the proposed FPD boundaries. The petition, which must be filed with the circuit clerk, has six parts:

1. A name that ends with the words "fire protection district";
2. An estimate of the FPD's population, assessed valuation and taxable intangibles¹;
3. An estimate of the costs to form the FPD;
4. A general description of the boundaries indicated on a plat map (so that an owner can determine with certainty whether a property is in or out);
5. Other information that will help a judge decide whether forming the FPD is necessary;
6. A prayer for organization, which is a legal term for the petition wording, "We, the undersigned, hereby pray the court grant our request for the formation of a district" (321.040).

¹Missouri no longer taxes intangible personal property (bank accounts, stock portfolios, etc.), so intangibles do not need to be evaluated and can be left out of the petition.

If the proposed boundaries cross county lines, the petition may be filed in any county in which part of the proposed district is situated (321.030). Because every question put before the FPD's voters will have to appear on the ballots of all counties in which the proposed district is located, it is good to establish positive relations with all counties involved at an early stage. Court costs of \$100 must accompany the petition when it is filed (321.060). Additional costs imposed by other statutes related to court operations will apply.

After the filing, the court may allow corrections it deems necessary to the petitions, such as correcting errors in land descriptions and ensuring notice of the hearing to be published, and the circuit clerk sends a copy by registered mail to each city and county within the proposed boundaries (321.070). The judge before whom the petition is filed will not be automatically disqualified for being a property owner within the proposed FPD (321.080).

Between the date of filing and the date set for the hearing, protest petitions may be filed. A petition must come from one or more landowners and must state why incorporating the FPD is not desirable or claim that facts set out in the original petition are misstated. The court considers each petition filed before the hearing date at the time of the hearing (321.090).

At the hearing, the court finds that the facts of the petition either justify or do not justify incorporation of the FPD. If incorporation is justified, the court orders the FPD incorporated, subject to the consent of the voters (321.100). If incorporation is not justified, the court orders the matter dismissed and allocates costs among those who signed the original petition proposing the FPD (321.110).

Election requirement

Even when a court orders an FPD incorporated, the order does not become final until FPD voters consent to it in an election. This first FPD election is especially important, with three separate issues to be decided:

1. Shall the FPD be incorporated?
2. Who shall be the directors?
3. Shall the FPD have authority to levy a tax of 30¢ per \$100 of assessed value?

The last question is crucial. If voters say, "Yes, incorporate," but "No, don't tax," matters could be worse than if firefighting had remained a volunteer fire protection association. Firefighting would still be without funding, but now, as a political subdivision, firefighters would no longer operate under their own rules. One ingenious election authority solved this dilemma by stating the incorporation and taxing questions together with a single pair of "Yes" and "No" boxes, so that voters' consent to incorporate was also consent to being taxed. One FPD tried to argue that the consent to incorporate implied permission to tax, but the courts did not agree.

Election Authority

- County clerk (in most cases)
- Board of election commissioners (BOEC) (in a few large counties and cities)
- Secretary of state (SoS) (state-wide elections)

Biennial Elections

Every two years

First Election Issues

1. Shall the FPD be incorporated?
2. Who shall be the directors?
3. Shall the FPD have authority to levy a tax of 30¢ per \$100 of assessed value?

Checks and Balances of a Fire Protection District

Judicial Branch

- State court system
- Circuit
- Appeals
- Supreme

Legislative Branch

- FPD Board of Directors
- Chair
- Directors
- Officers
- Advisers

Executive Branch

- President of the FPD
- Fire chief
- Firefighters

Once the election authority certifies the results, the court issues its order to officially incorporate the FPD and the FPD is in business. The board elected at the same time becomes empowered to act. Within 30 days of incorporation, copies of all court orders, findings and decrees incorporating the FPD must be filed with the recorder of deeds and the county clerk in each county in which the FPD has territory. The fee for recording these forms is \$1. (312.150).

A fourth issue of expanding the board size to five members may be submitted to the voters as well, but is not required.

Terms

FPD board members serve six-year terms, with biennial elections — every two years. However, to stagger terms so that all board members are not up for election simultaneously, special rules apply to the first board (321.120). For the first board, if the three-member option is taken, the member who receives the highest number of votes serves six years, the second highest serves four years, and the third highest serves two years.

If the five-member option is taken, the member who receives the highest number of votes serves six years, the second and third highest serve four years, and the fourth and fifth serve two years. Elections are held every two years. After the first set of terms is completed, board members serve six-year terms. A few FPD board members serve four-year terms (321.687).

FPDs are a political subdivision in which certain persons are prohibited from holding office. For information on these exceptions, see *Chapter III. Officials and Board Operations* and *Chapter XVIII. Elections*.

Checks and balances

By high school, everyone should have learned that the American model of government contains three branches: judicial, legislative and executive branches. Each of the branches of government have “checks and balances” over the other branches, which by design, means that a certain amount of healthy friction is a part of the system.

An FPD does not have its own judicial branch, but uses the state system of circuit, appeals and supreme courts. An FPD’s legislative branch is its board of directors — the congress of the FPD so to speak. The officers of the board are part of the legislative branch.

Just as the vice president of the United States is in the legislative branch, as president of the United States Senate, and in the executive branch, as a backup to the president, the board of directors elects one of its own to chair the board, but also to head up the executive branch by being the president of the FPD. However, the president of the FPD is often more of a figurehead chief executive officer, with the fire chief (FC) usually performing as the chief operating officer on a day-to-day basis. Firefighters are part of the executive branch. For information on the chair and president, see *Chapter*

III. Officials and Board Operations. For more information on the fire chief, see *Chapter XII. Personnel.*

County classifications

Knowing the county classifications of the county (or, counties) in which an FPD is located is important because many FPD laws are written specific to county classification. For instance, a law might say a requirement applies to “any FPD located in a third or fourth class county” or “any FPD wholly located in a first class charter county.”

The four county classifications are determined by law (48.020).

County Class Map

A state map with color-coded county classifications is on the Missouri Association of Counties website:
<https://www.mocounties.com>;
click on “County Info”

FPD Powers and Duties

- List of powers
- Joint powers
- Other public protection duties
- Ordinance power
- Bylaws

Short-Term Debt

Board-approved Notes Payable

Long-Term Debt

Voter-approved Bonds

II. FPD Powers and Duties

List of powers

By becoming a political subdivision, an FPD receives many specific powers. (The statutes that outline these powers and duties are in RSMo. 321.220 for most FPDs and 321.600 for FPDs located in first class counties.) As authorized by the state, these powers are:

1. To have perpetual existence.
2. To have and use a corporate seal (also 321.170).
3. To sue and be sued, which is part of being a political subdivision.
4. To contract for district affairs and facilities or services to control or prevent fires (including water supply, hydrant and alarm systems), provided it takes bids for expenditures of \$10,000 or more (limited by 321.506).
5. To borrow money with voter approval and issue bonds and notes.
6. To acquire and finance fire stations and equipment.
7. To refund bonds without holding an election (if better interest is possible).
8. To manage the affairs of the FPD.
9. To hire agents, employees (including part-time or volunteer firefighters), engineers and attorneys.
10. To condemn private property for public use under eminent domain laws.
11. To receive gifts to the FPD and to return them in certain cases.
12. To adopt bylaws and protection-and-prevention ordinances, with violations being misdemeanors.
13. To pay court costs and election costs.
14. To have rights and powers necessary, incidental to or implied to or by the specific powers granted.
15. To provide health, accident, disability and retirement benefits to salaried department members and their families.
16. To contract to provide fire protection to an adjoining city or village for a negotiated fee (also 321.223).
17. To provide insurance benefits for volunteers.
18. To contract with volunteer departments to provide insurance benefits for their volunteers.

FPDs also have the power to levy and collect taxes (321.230) and by law (190.205.1; 190.250; 190.827; 321.220[16]; 321.226; 321.228.3[3]; 321.322) may, with limitations, also assess and collect fees for services

such as ambulance services (see *Service Fees* in *Chapter VIII. Property and Sales Taxes and Fees* for more details).

Joint powers

Like all political subdivisions, FPDs also have power to cooperate or contract with other governmental units for joint powers such as authorization to buy surplus property of United States government (70.100); payment by the United States in lieu of taxes (70.170); centralized emergency dispatching system (70.225); LAGERS — the Missouri Local Government Employees' Retirement System (70.605); contracts for mutual aid (MA) services (44.090; 70.837; 190.107; 320.090); and required memorandum of understanding (MOU) between a dispatch agency and an ambulance service (190.134) or between an emergency response agency (EMRA) and ambulance service providers (190.133.1[4]).

Other public protection duties

The list of powers, while extensive, might seem to be quite limiting because it restricts FPDs' authorities to these things only. These mandates have proven not to be as limiting as they appear, however. FPDs have been able to provide hazard mitigation (HazMat) response, first responder operations, respond to chemical spills and fish kills, and other public protection situations unheard of when FPDs first were authorized. In addition to these powers, any FPD has the authority to operate an ambulance service, if voters approve (321.225 or 321.620); however, FPDs not in first class counties must operate only an emergency ambulance service.

If voters approve, an FPD also has the authority to support an ambulance service, and partial or complete support for an emergency medical technician defibrillator program, or an emergency medical technician paramedic first responder program (321.225.6)

FPDs authorized by the voters and licensed by Missouri to provide ambulance services may participate in ambulance reimbursement allowance programs such as MO HealthNet (190.818-190.827) and regulate and/or operate stretcher van services (190.528).

(See *Chapter XIX. Ambulance and Emergency Medical Services* for more information regarding FPD-based ambulance and emergency medical services.)

Ordinance power

The list of powers includes FPDs fining people and putting them in jail. However, the question an FPD should ask is: "Should we adopt ordinances?"

The county prosecutor prosecutes FPD ordinances; however, many county prosecutors' offices are overloaded with more serious crimes. Sometimes a county prosecutor is willing to appoint the FPD's attorney

EMRA

Uses paramedics and/or Emergency Medical Technicians (EMTs) but does not transport patients

RSMo 321.225

"Emergency Ambulance"

RSMo 321.620

"Ambulance"

Ordinances

- Adopted following Sunshine Law
- In writing and identified as an ordinance
- Without words such as “should” or “may”
- Limited to fire protection
- Show in the minutes how each member voted
- Signed by the Chair if passed by a board majority
- Provide for punishment

Special Rules of Order

- Supplement or modify the parliamentary rules contained in the parliamentary authority adopted by a FPD
- Approval or amendment of Special Rules of Order requires advance notice and two-thirds vote
- May be suspended by a two-thirds vote except in the case of a rule protecting a minority of less than one-third of those voting

Standing Rules

Relate to the details of the administration of an FPD rather than parliamentary procedure. Robert’s Rules of Order states “Standing Rules are adopted by a majority vote at any meeting without notice at a previous meeting.”

Other districts can be a good resource for examples of bylaws.

as a special prosecutor to prosecute FPD ordinances (321.220.12 or 321.600.12). However, while the county pays the county prosecutor, the FPD usually has to pay the special prosecutor. In first class counties, the accused may pay a fine instead of going to court. If convicted, a judge can levy fines up to \$1,000, send someone to jail for up to six months or both. Any fines levied by the court are distributed to the school districts.

Bylaws

Bylaws are adopted only once by an FPD. A majority vote is required to adopt the FPD’s original bylaws. Once adopted, changes or amendments to FPD bylaws are usually subject to a two-thirds vote with notice at a previous meeting. Bylaws can never be suspended, so avoid specifics such as meeting times, locations, etc., in the bylaws.

While the concepts of bylaws may be familiar to many people, to develop bylaws, an FPD should consult with a Professional Registered Parliamentarian or with an attorney with experience in parliamentary or corporate law.

Bylaws that are appropriate for a business corporation or social organization may be redundant for an FPD due to the constitution or statutes. Redundancy can be particularly confusing if the constitution and/or a statute, or their interpretation, is changed and the bylaws become in conflict with constitutional or statutory change or interpretation.

Instead of having bylaws, FPDs may want to consider using special rules of order or standing rules.

III. Officials and Board Operation

Restrictions on who may serve on board

Section 8 of Article VII of the Missouri Constitution states that no person shall be elected or appointed to any office who is not a citizen of the United States. The Section also generally prohibits office holders who have not resided in this state for one year before their election or appointment. Section 9 of Article VII of the Constitution also says that no person federally employed shall hold any “office of profit” in this state, except for members of the National Guard or of the reserve corps.

No one can qualify as a candidate after pleading to, or being convicted of, a Federal felony or misdemeanor, a Missouri felony, or an offence in another state that is considered a felony in Missouri (RSMo 115.306.1).

A candidate who is a present or past corporate officer of any fee office can be disqualified from participating in an election if delinquent in payment of any State income taxes, personal property taxes, municipal taxes, real property taxes on residence, and/or taxes owed to the State (RSMo 115.306.2). However, once notified of delinquent or owed taxes, the candidate has 30 days to pay the taxes before being disqualified. Certification of this status is filed with the Department of Revenue on an affidavit provided for that purpose. Challenges to this affidavit are lodged with the Department of Revenue. Local officials are not empowered to make the determination. (115.306).

Candidates may not take office or file for subsequent elections until all Missouri Ethics Commission disclosure reports have been filed and assessed fees are paid (130.071).

A person must be over 24 years old to serve on an FPD board of directors (321.130).

The statutes (321.015) further restrict who may serve on an FPD board. Persons “holding any lucrative office or employment” under the state or any of its political subdivisions are prohibited in some FPDs, but it allows exceptions for FPDs within certain counties outlined in 321.015, and to those who serve in the military and the reserve corps, to public school employees and to notaries public. Other statutes define a political subdivision as any entity with power to levy taxes. Thus, if a sitting board member in one of these counties takes a job with a tax-levying entity, that member must resign and the seat is declared vacant.

Section 321.017 provides that the provisions of 321.015 notwithstanding, no employee of an FPD or ambulance district may serve on any FPD or ambulance district board, unless it is a voluntary district. Further, any FPD board member is ineligible for paid employment by the district served for a period of 12 months after leaving the board.

Officials and Board Operation

- Restrictions on who may serve on board
- Roles and responsibilities
- Oath of office
- Terms and perpetual existence
- Vacancies
- Bonding
- Ways to leave office
- Records to successor
- Pay for board members
- Meetings
- Quorum
- Majority voting
- Recusal
- Rules of procedure
- Special rules
- Training
- Individual liability
- Officers
- Pension board of trustees

“Lucrative office or employment”

Does not include retirement, expense reimbursement, or per diem that does not exceed \$75 per day.

Tip

Many school boards have adopted rules for public input — FPD boards could use school board rules as a starting point for the creation of their public input rules

FPDs must first define:

- Mission
- Critical Issues
- Vision
- Strategic Plan

Federal Posting Requirements

- Federal Minimum Wage Act (29 CFR § 516.4)
- Equal Employment Opportunity Act (29 CFR § 1601.30)
- Family and Medical Leave Act (29 USC § 2619[a][b])
- Uniform Services Employment and Reemployment Rights Act (38 USCA § 433[a])
- Employee Polygraph Protection Act (29 CFR § 801.6)
- Occupational Safety and Health Act (29 CFR § 1903.2[a][1])

Roles and responsibilities

As the Pledge of Allegiance reminds us, America is a republic, not a democracy, so the public does not have the right to participate in meetings of the FPD board of directors — it is a public meeting of the board, not a meeting of the public. However, it is the responsibility of the Board to solicit and receive public comments by adopting rules that allow public input, if any.

The board must make many decisions about the mission of the FPD, especially understanding why the FPD exists and deciding the scope of services and benefits the FPD will offer. As an FPD's mission is defined and understood, it is the board's responsibility to define the FPD's critical issues. For instance, an FPD with only large tracts of agricultural land may have a slightly different mission than a neighboring FPD with a busy railroad or highway carrying hazardous materials.

Once the mission and critical issues of an FPD are defined, the board's responsibility is to develop a vision of what the FPD should be doing. For instance, maybe an FPD only provides first aid now through first responders, but in the future, the FPD board anticipates it may need to provide basic life support through the use of Emergency Medical Technicians (EMTs). The board will need a strategic plan on how to fulfill its mission and achieve its vision.

Sometimes the board will need to take issues to FPD voters. Matters such as whether ambulance service, employee pensions, central dispatching or paramedic services are to be provided are presented as separate ballot questions. Expanding FPD boundaries may also require voter approval. Another example of deciding on the scope of services is whether or not the FPD is going to provide public health information and educational programs (190.200.1).

Additional responsibilities of an FPD board, many of which are discussed in greater detail in this manual, generally include:

- Ensuring compliance with state and federal laws, statutes, codes, rules and regulations
- Levying property and sales taxes and setting fees
- Allocating and being a steward for resources — managing risk too
- Monitoring progress towards fulfilling the mission and achieving the vision of the FPD, including compliance with laws, rules, statutes, regulations and standards
- Adopting bylaws, fire protection and prevention ordinances and other rules
- Ensuring staff are trained, educated and evaluated — investing in them
- Receiving and acting on petitions

- Judging appeals
- Adopting budgets, financial reports, and policies — making sure the Fire Chief adopts Standard Operating Procedures (SOPs) or Guidelines (SOGs)
- Making prudent purchases
- Retiring debts and prompt payment of bills
- Executing agreements and contracts
- Calling for and declaring elections
- Making decisions and documenting those decisions — minutes
- Ensuring records are open and accessible
- Ensuring organizational information is provided
- Choosing officers and filling vacancies (officers or directors)
- Meeting regularly with notice and in the open

Oath of office

Before taking office, all civil and military officers in this state must subscribe an oath or affirmation to support the U.S. and state constitutions, and to demean themselves faithfully in office. How soon this is done after declaration of an election is the board's decision. However, the oath of the director is to be filed within 15 days of election with the circuit clerk, along with proof of issuance of a \$1,000 surety bond covering that person or position (321.160; 321.210). The oath of other FPD officers is filed with the FPD.

Outgoing officials retain their authority until the incoming officers are sworn in. The county clerk, a notary public, a certified court reporter, a certified shorthand reporter, court judge, court justice or court clerk can administer the oath (51.140; 486.250; 492.010). This oath is important because it serves to remind the board members elect that they are public officials, subject to the associated legal requirements. Each officer sworn in should receive a written copy of the oath.

Terms and perpetual existence

Although the Missouri Constitution prohibits the term of any officer from being extended (Article VII, Section 13), an FPD has perpetual existence. This means, in practice, that officials serve until successors are "duly elected or appointed, or qualified." Expiration of a term does not relieve the official of FPD duties until a replacement is in place.

Bonding

Each member of an FPD board is required to be bonded under a surety bond for at least \$1,000 on file with the circuit clerk (321.160; 321.210). The FPD treasurer is required to have a corporate fidelity bond for at least \$5,000 on file with the county clerk (321.180). A bond is not intended as protection for the board member or treasurer, but as protection for taxpayers. If the bonded official steals money from the FPD, the bonding

State Posting Requirements

- Wages, Hours and Dismissal Rights (RSMo § 290.522)
- Notice to Workers Concerning Unemployment Benefits (RSMo § 288.130)
- Workers Compensation (RSMo § 287.127)
- Discrimination in Employment (8 CSR 60- 3.010[1])
- Discrimination in Public Accommodations (8 CSR 60- 3.010[3])
- Missouri Minimum Wage Law (RSMo § 290.522)
- Child Labor (RSMo § 290.060.1)

Oath of Office Article VII § 11

"Before taking office, all civil and military officers in this state shall take and subscribe an oath or affirmation to support the Constitution of the United States and of this state, and to demean themselves faithfully in office."

Example Oath

I, do solemnly swear (or affirm) that I will uphold the Constitution of the United States, of this state, and demean myself faithfully in office.

Filing Bonds

Director bonds must be filed with the Circuit Clerk having jurisdiction. The Treasurer bond must be filed with each County Clerk.

Only the FPD board of directors, county prosecuting attorney, Missouri attorney general, or a petitioner authorized to act by one of them may ask the court to remove a board member per Missouri Court of Appeals in *Inter City FPD v. DePung* 283 S.W.3d 277

A sheriff was removed from office, in part, for failing to file his bond on time through 1994 quo warranto petition in *State ex inf Robert L. Fuchs, Special Prosecuting Attorney v. Homer L. Foote, Jr., Sheriff* 903 S.W.2d 535

company will reimburse the taxpayers, up to the maximum amount of the bond. Each FPD should consider its own situation when bonding board members, for although the minimum bond required for the treasurer is \$5,000, that may not be enough to provide adequate protection for most FPDs. FPDs can chose to minimize risk by purchasing a dishonesty insurance policy; however, the treasurer must still have corporate fidelity bond of at least \$5,000.

Ways to leave office

Normally a director of an FPD is replaced by an elected or appointed successor (321.120; 321.687); however, there are other ways to leave office. A director of an FPD can resign or become unqualified — by moving or changing voter registration out of the FPD, for example.

Resigning from being an FPD director requires two steps: The board member offers to resign, and, assuming a quorum is present — not counting the resigning director who is recused — a majority of the board present accepts the resignation. The resigning official is not relieved of responsibility until the board has accepted the resignation. This is how perpetual existence of the FPD is maintained. Should resignations threaten the quorum; replacements must be appointed before more resignations can be accepted.

A director of an FPD could die, be recalled by the voters (see *Chapter IV. Initiative, Referendum and Recall* for more details) or the circuit court that declared the FPD incorporated may remove any or all board members “for good cause shown upon a petition, notice and hearing” (321.190).

Another way to leave office is through a quo warranto proceeding, a civil action challenging an individual’s right to hold office. Quo warranto is often the only proper legal remedy when someone has usurped a public office or someone who, through abuse or neglect, has forfeited an office to which he or she was entitled. The county prosecutor or Missouri attorney general initiates quo warranto proceedings.

Records to successor

Office holders may not keep records once they leave office (109.010-040). Records pertaining to any public office must be delivered to the FPD or the successor — if necessary, by the executor in the event of the office holder’s death. Failure to deliver records to the FPD or the successor could result in the forfeiture of \$100 to \$1,000. If necessary, a judge may issue a warrant for the sheriff to seize the records and deliver the records to the FPD or successor.

Vacancies

When a vacancy occurs on an FPD board, either by no one being elected, by the one elected failing to qualify, by relocation, by death or for any other reason except recall, the remaining elected (not appointed)

board members appoint someone to fill the vacancy (321.200.2). If fewer than two elected board members remain, the law requires appointments to be made by the circuit court of the county containing most of the FPD. An appointee serves until the next biennial election (held in April of either an odd- or even-numbered year depending on when the FPD normally elects directors), at which time a director will be elected to fill the remaining term, if any, of the vacancy.

Pay for board members

By law (321.190; 321.603) every FPD board member may receive an attendance fee of \$100 for attending any regular or special board meeting, if the board authorizes such payments. Payments are limited to two meetings per month. In first class charter counties, the members may receive up to \$200 per meeting for a maximum of four meetings per month. No board member may receive payment for more than one meeting in a calendar week. The chair receives an additional \$50 dollars for each meeting, but the limit is two per month. A board member who also serves as secretary, treasurer or combined secretary/treasurer may receive additional pay as set by the board, limited to \$1,000 annually for secretary or treasurer or \$2,000 annually for combined secretary/treasurer (321.190).

The attendance fees should be paid after the meeting, not before, and taxes should be withheld and reported on IRS Form W-2; however, an FPD does not pay state unemployment taxes on the attendance fees.

Board members who do not receive the state-mandated training are ineligible to receive pay (see the *Training* section in this chapter).

With appropriate documentation, board members may be reimbursed for actual expenditures on behalf of the FPD, including the cost of the surety bonds (321.190).

Board members may not give themselves raises while in office.

Meetings

In addition to the Missouri Sunshine Law (see *Chapter IX. Meetings, Records and Votes*), the board must follow meeting laws specific to FPDs (321.200.1). The board must meet at least monthly at a building designated by the board that is within the FPD, with notice of the regular meeting times and location continuously posted at the firehouse or firehouses. When special meetings are necessary, each board member must be formally notified. Minutes of every board meeting must be available to any member of the public.

The chair of the FPD board is responsible for ensuring proper decorum is maintained during board meetings. Because the board has important business to discuss and decide at its meetings, disorderly conduct such as interruptions, cursing, etc. should not be allowed — after all, disorderly conduct is a misdemeanor. The chair can have disorderly members of the board or public removed from the meeting by local law enforcement.

Article VII § 13

Board members are prohibited by the Missouri Constitution from giving themselves raises during the current term of office

Internal Revenue Code Subtitle C, Chapter 24, Subchapter A, Section 3401(c):

For purposes of this [Collection of Income Tax at Source on Wages] chapter, the term “employee” includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

5-Member FPD Board

- If four or five members attend, a majority of three is needed to act
- If only three members attend, a majority of two is needed to act

Absentee Voting

Voting without being present except by audio or video conferencing

Proxy Voting

Power given by one person to another to vote in his/her place

Recusal

Can't vote

Abstention

Doesn't want to vote (dereliction of duty?)

When not in conflict with law, the FPD board may adopt parliamentary rules, such as the current edition of *Robert's Rules of Order*. The public library likely has a copy.

Robert's Rules of Order is typically written for large organizations; however, there is a section for small boards that could be very helpful to FPD boards, for example, motions do not have to be seconded; the chair can make motions; and consensus motions may result in shorter meetings.

Quorum

"A majority of the members of the board shall constitute a quorum," and no business may be transacted until a majority is present (321.200.1). In a three-director FPD, at least two officials must be present for a meeting. In a five-director FPD, at least three must be present.

Majority voting

It takes a majority vote of those present for the FPD board to decide to do something. A tied vote is not a majority vote. The chair is expected to vote. Proxy is not allowed and absentee voting is limited (610.015).

Recusal

There are times when a board member must recuse oneself from voting, but these should be kept to a minimum. Each member has made a commitment, under oath, to represent the FPD on all questions. Unless voting would create a conflict of interest or constitute nepotism, all members should vote on all issues. If recusing oneself, the member should leave the room and not participate in the discussion before the vote. Recused board members cannot be included to establish or maintain a quorum — it is as if the board member temporarily is not in attendance.

Abstention and recusal are not the same; abstention is when a board member just does not want to vote and is potentially a dereliction of duty.

Rules of procedure

As a public governmental body, the board must comply with Missouri's Sunshine Law regarding meetings, records and votes (see *Chapter IX. Meetings, Records and Votes*). Each public body must, however, adopt a written sunshine law procedure and designate a custodian of records (610.023.1 and 610.028.2)

In addition, the board should consider adopting and publishing its own rules of procedure that define the regular time, date and place of meetings: the order in which business will be conducted, whether members of the public attending meetings will be permitted to speak and under what limitations, and other housekeeping matters (321.220.12 or 321.600.12). Establishing such procedures and using them consistently can help the board operate in a fair and orderly way. Having procedures in place before an issue draws a large number of attendees who might be upset will smooth operations considerably.

Special rules

The state has special rules for possible public redress of FPD actions. These rules are nearly alone among the multiple types of political subdivisions in Missouri. With few exceptions, such as ambulance districts, and cities that have adopted similar charter provisions, only FPDs have the options for initiative, referendum and recall actions included in their generic statutory charter. Although these rules are rarely applied, all FPD

officials should understand them (see *Chapter IV. Initiative, Referendum and Recall*).

Training

All FPD board members elected after Jan. 1, 2008, must undergo training that has been approved by the state fire marshal (321.162.1). An untrained director cannot receive compensation for attending meetings (321.162.2).

In addition, the federal government requires training for all board members in the National Incident Management System (NIMS): course #100, Introduction to NIMS. After Hurricane Katrina, the Federal Emergency Management Agency (FEMA) established requirements for this training to improve communication between federal and local government officials. Failure to participate in the required training makes an FPD ineligible for reimbursement for emergency response costs and for federal grants.

Individual liability

Individual FPD board members are generally not civilly liable for reasonable mistakes made while performing their official duties — as long as their obligations were not clear. This concept is known as “qualified immunity.” However, if a law is clear and an FPD board member violates the law, then there could be individual liability — even if the FPD board member was not actually aware that what was done or not done was wrong.

If an FPD board member purposefully violates or ignores a law, most “Errors and Omissions” insurance policies will not compensate or defend the FPD, FPD board member, or FPD board in any resulting lawsuit.

Officers

By law (321.170), the first duty of a new FPD board is to elect a director to be both the chair of the board and president of the FPD. Then the board elects a secretary and a treasurer, appoints a custodian of records (610.23.1) and designates a budget officer (67.20). The latter positions may be combined, and none except the chair and president has to be a board member, though they may be. Keep in mind, however, that Missouri has a common law restriction on public officers holding inconsistent positions. The duties assigned by the bylaws might make certain combinations of offices improper. A president that must approve bills for payment and sign checks, for example, could not also hold the position responsible for signing the checks the second time and disbursing the funds. For more information about the biennial reorganization of an FPD board, see *Chapter XVIII. Elections*.

Separate chapters in this manual cover the duties of the secretary and treasurer. The only stated duty for the chair is to preside over meetings. The chair also has the power to vote as a member of the board and should always do so.

Tip

Certified Fire District Board Training course offered by the University of Missouri Fire & Rescue Training Institute (<https://extension2.missouri.edu/programs/mu-fire-and-rescue-training-institute>) satisfies the training requirement.

NIMS Training

Type “NIMS” in search box on FEMA website (<https://www.fema.gov>), or U.S. Fire Administration website (<https://www.usfa.fema.gov>).

The Missouri Fire & Rescue Training Institute offers NIMS training: <https://extension2.missouri.edu/programs/mu-fire-and-rescue-training-institute>

Useful NIMS Info

State Emergency Management Agency: <https://sema.dps.mo.gov>

Required Officers

- Board Chair/FPD President
- Secretary
- Custodian of Records
- Treasurer
- Budget Officer

Consult with the FPD's attorney

What is not yet determined is whether 321.800 creates a power in the board of trustees that overrides the FPD directors' statutory power. For now, the power 321.800 grants the pension trustees the power to "administer" the plan, which does not appear to supersede the power granted to FPD directors to establish a pension plan (321.220[15]; 321.220[17]; 321.600[15]; 321.600[16])

Pension Board Training

Several private organizations offer pension board training.

Sometimes the bylaws, rules or policies of an FPD will assign other duties to the president. These duties might entail authorizing expenditures beyond the authority given to the fire chief or suspending, pending the next board meeting, an employee or volunteer from his or her job. The bylaws or rules of an FPD might also have additional officers such as a Vice Chair or Vice President.

To ensure an FPD has lawfully serving officers, the FPD board should ensure constitutional restrictions are followed on who may serve as officers and that officers are sworn in and bonded, as well as following any other legal requirements.

Pension board of trustees

In 2007, the Missouri Legislature established by statute (321.800) a requirement to create a pension board for some FPDs. The law says that an FPD that has a "retirement plan or other benefits-related plan" must "administer" its plan through a separate five-member pension board of trustees.

Whether the "benefits" mentioned in the statute relate to health insurance, disability insurance, etc., in addition to the FPD's pension plan is unclear. The composition of the pension board, however, is clear: three members of the FPD board of directors and two "participants" in the pension plan. These participants could include retirees. The pension plan participants elect three of their members and submit the names to the FPD board of directors. The directors then select two of the three to serve on the five-member pension board. An FPD with a pension plan should establish a pension board of trustees as soon as possible.

Another new law (105.666) requires the pension board members to attend six hours of education classes within six months of becoming a trustee and establishes the curriculum for those classes.

IV. Initiative, Referendum and Recall

Initiative and referendum

Voters of an FPD may act on behalf of the board or reverse any action taken by the board, though they rarely do. The procedures are complicated and require a petition that meets stringent criteria followed by a simple majority vote at the polls. FPD officials need to be aware of the statutes that give voters this power (321.490–321.500).

Petitions

A form for initiative or referendum petitions is provided in the statutes (321.495). It begins with a warning that it is a felony to sign someone else's name, sign more than once or sign without being a registered voter. Then, addressing the board, it says that the persons undersigned order the described measure be referred to the people of the FPD for approval or rejection and gives the date for the election. The measure that petitioners want adopted, or the board passed measure they want repealed, must be attached. Each person signs on a numbered line and gives his or her voting address. Each sheet of signatures must have a sworn oath by the signature gatherer at the bottom, verifying that the persons listed signed the petition in the gatherer's presence and that the gatherer believes they are all registered voters who reside in the FPD. The form must be signed by the petition circulator, and that signature notarized.

If verified signatures equal the number of votes cast in the last FPD election, the issue goes before the voters when specified. A simple majority adopts the proposed measure in an initiative petition or repeals a measure the board had adopted in a referendum petition.

The petition process should be taken seriously. In one known instance, the description of what petitioners proposed was faulty, even though they had paid for legal advice to help prepare the petition, and so the issue never came to the ballot. However, when the signatures were being verified, at least eight names were found that did not match those of FPD residents or registered voters. The felony warning noted above is a felony election offense. Conviction of such a violation permanently severs a citizen's voting rights. Had the issue on the petition gone to the ballot, eight persons could have permanently lost their right to vote.

Recall and exemptions

Any or all members of an FPD board are subject to recall and removal from office by FPD voters. However, several restrictions apply, including those listed below under Who may not be recalled. Although recall is rare, it has been used successfully, so a board should be familiar with the rules that govern it (321.701 321.716).

Initiative, Referendum and Recall

- Initiative and referendum
- Petitions
- Recall and exemptions
- Who may not be recalled
- Notice of intent
- Change in number of board members

Who may not be recalled

Board members are exempt from recall during the first 180 days and the final 180 days of their terms. If a member has been the subject of a recall election during the term and survived, that member is exempt for the rest of that term. This means all board members are subject to being recalled by FPD voters if they are not in the first half of their first year or the last half of their final year, or unless they have survived a recall vote that term.

Notice of intent

A notice of the intention to circulate a recall petition must be either handed personally to, or sent by certified mail to, the board member who is the subject of the recall. A copy is filed with the election authority along with a sworn statement that the notice was served on the board member. Each member whose removal is sought must receive a separate notice.

The notice must contain the board member's name, a statement of the reasons for the proposed recall no longer than 200 words, and names and addresses of one to five recall proponents. The board member has seven days to file a response with the election authority, and, if a response is filed, the board member must send a copy to at least one proponent by certified mail or personal service.

Recall petitions include a request for election, a copy of the notice of intention's complaint, the member's response or a note that no response was made, and lines for each signer's signature, printed name and address. Each petition requires a sworn certification from the signature gatherer and must be completed and turned in within 180 days from the date of filing the notice of intent.

The signatures must equal 25 percent of the people who voted for governor within the FPD in the last general election. The election authority has 20 days to verify signatures. If signatures fall short of the required total, petitioners have 10 days to collect more. If numbers are still insufficient, no action is taken and the petition stays on file with the election authority.

If enough signatures are gathered, a certificate is sent to the FPD board before its next meeting with the board member's name, the number of signatures required, the total number of signatures on the petition and the number that were valid. Upon proof that the board has received the certificate, the election authority schedules the election for a regular election day (115.123). Up to 42 days before the election, the member can resign and have the question removed from the ballot. The resigned member may not be appointed to the vacancy.

Once the recall election has been scheduled, candidate(s) to replace the board member, if he or she is recalled, nominate themselves by filing a statement of candidacy with the election authority. Any new member of the board shall qualify in the same manner as the members of the first board

qualify (321.210). For more information on these qualifications, see *Chapter III. Officials and Board Operations*.

Costs of the recall election are billed to the FPD. The election must be held no less than 45 days and no more than 120 days after the FPD board receives the recall petition. Because the law (115.123) restricts the days on which elections may be held, determine possible dates for the election as soon as a notice of intent has been filed. A simple majority decides the recall question. One more than half of the total votes cast ousts the member. One vote short of half the total, and the board member stays.

Change in number of board members

Except in St. Louis County, the law (321.120.5) allows for the FPD board of directors to make a motion to increase the number of FPD directors to five; however, the voters must approve the increase. In St. Louis County, the number of FPD directors can only be increased through consolidation (see *Consolidation and shared services* section under *Chapter VII. Changing FPD Boundaries* for more information about FPD consolidations).

If the voters approve the increase of the FPD board to five directors, then at the next election of board members, the voters select two additional FPD directors. The FPD director candidate that receives the highest number of votes will hold office for six years and the candidate that receives the second highest number of votes will hold office for four years.

The terms of the FPD directors in office when the board is expanded are not affected (321.120.6).

Secretary Powers and Duties

- Options for selection
- Duties
- Secretary pro tem
- Custodian of records
- Record keeping

Other Secretary Duties and Responsibilities

- Keep an up-to-date roll of directors, FPD officials and their terms of office
- Certify director attendance if requested by treasurer for paying attendance fees
- Notify officers, committees, and directors-elect of their election or appointment
- Make a record of all committees; notify members if they were named to a committee while absent
- Handle correspondence, and serve as liaison with county officials
- Preside at the meeting when the chair is absent (until election of a chair pro tem)
- Make reports and file reports in the proper place
- Keep policies, resolutions, and ordinances properly organized
- Call roll when requested by the chair
- Notify directors of special meetings or changes in meeting dates or times

V. Secretary Powers and Duties

Options for selection

The FPD board elects a secretary and a treasurer, or one person to serve as both, who may or may not be board members (321.170). Electing a nonmember as secretary has advantages. For example, board members have agreed to represent the residents of the FPD when making policy decisions, but the secretary may have difficulty participating fully in such discussions while trying to compile accurate minutes. The tasks required of the secretary, outlined below, represent office manager duties that may be more than an FPD board should expect of a board member.

A director who is also the secretary maintains all director rights and responsibilities, for example, a director/secretary may introduce motions, discuss them, and vote on all measures.

Duties

The secretary's job is important and detailed; therefore it is important the secretary become familiar with and carry out each part of the job. A record lost, a list unmade or a report not filed can mean legal, financial or public relations trouble for an FPD. Details fall into place much better if the secretary is organized. This means doing jobs when they need to be done, having records when they are needed and knowing where things are.

The secretary's job is actually the chair's assistant; therefore, a secretary should always be prepared to explain what business is pending during a meeting.

The secretary's tasks include posting notices of meetings, certifying adopted property tax levy rates to the county clerk, notifying the election authority of upcoming elections, making agendas publicly available, taking care of all FPD notifications, attesting to the accuracy of the FPD's records, and responding to record requests under the Sunshine Law.

The secretary is to be the caretaker and applier of the FPD seal (321.340).

When the board needs to report on matters of FPD concern, the secretary will likely be asked to prepare the report. Although the board may wish to prepare its own agendas, the secretary is the one who ensures they are publicly posted in a timely manner as required by law (see *Chapter IX. Meetings, Records and Votes*).

Statutes say the secretary "shall keep in a well bound book a record of all its [the board's] proceedings, minutes of all meetings, certificates, contracts, bonds given by employees and a record of corporate acts" (321.170). Because of this specific legal requirement, the secretary, typically, is also designated as custodian of FPD records (see more detail in *Custodian of records* and in *Chapter IX. Meetings, Records and Votes*).

Secretary pro tem

Because the secretary is required to keep board minutes, attendance at all board sessions is part of the job. If the secretary is unable to attend, the secretary should make sure the chair has access to the approved or unapproved minutes of the previous meetings. Provision should be made in FPD rules of procedure to designate a secretary pro tem, which means a temporary secretary, to temporarily fulfill the secretary's duties when the secretary cannot attend a meeting or perform other required duties.

Custodian of records

State open meetings and records laws require each political subdivision to formally appoint a custodian of records (610.023.1). The name and contact procedures must be publicly posted.

Custodian of records duties

The custodian of records maintains FPD records, approves removal of original public records, assures compliance with retention schedules under Chapter 109 and the associated local records board retention schedules, and acts upon requests for access to public records. The deadline to respond to requests for records is no later than the end of the third business day following the request and sooner if possible. If access is denied, the custodian must give a detailed explanation in writing within three days (see *Chapter IX. Meetings, Records and Votes*). Any official who refuses to permit inspection of public records can be removed from office, fined \$100, and/or go to jail for up to 90 days (109.180), and can face penalties under the Sunshine Law and assessment of legal fees (610.027).

Record keeping

Missouri governments' collective memory is housed in its permanent and historical records. Citizens have an ongoing need to access and obtain copies of these records. The Records Services Department of the office of the Secretary of State is responsible for managing both current and historical records of the state to ensure those records are accessible to Missouri citizens. It is also responsible for assisting local governments in records preservation and management.

As authorized by Missouri's Business and Public Records Law (109.200 310), the Local Records Board serves as the coordinating board to establish proper record retention schedules for all local governments.

An FPD custodian of records should become familiar with these rules and follow them. (The secretary of state calls these rules "guidelines," which implies they are not binding. However, most lawyers consider these guidelines to be the minimum required retention period. FPD boards should consider adopting an ordinance or policy that mirrors this schedule or includes longer retention periods.)

A resolution for designating the custodian of records is provided by the Office of the Attorney General: <https://www.ago.mo.gov/missouri-law/sunshine-law/sample-language-forms/resolution-sample>

Tip

Local Government Records Retention Schedule and schedules specifically for ambulance and FPD records can be found on the secretary of state's website: <https://www.sos.mo.gov/archives/localrecs/schedules>

Budget Records

Documents related to the budget must be kept on file for three years — these are public records, open to being viewed on request by anyone during reasonable times (67.060)

When records are destroyed, a report of the destruction should be recorded in the FPD board minutes.

(See *Record keeping for EMS and ambulance services* under *Chapter XIX. Ambulance and Emergency Medical Services* for more information on specific records for ambulance and emergency services.)

VI. Treasurer Powers and Duties

Options for selection

The treasurer does not have to be a member of the FPD board. If the board chooses to have the secretary be a non board member, it may want to consider combining the secretary and treasurer roles. Statutes specifically authorize this combination (321.170). The arguments for and against this are similar. Combining the administrative and financial operations is more efficient where they are operating well. But having a secretary and a treasurer who cross check one another also has merit. The board should discuss the pros and cons of these options.

Duties

As custodian of an FPD's money, the treasurer has the care and responsibility for all moneys coming in any manner to the FPD (321.180; 321.242.4; 321.246.4; 321.247.5) and keeping all moneys in the different funds required by law (105.662; 321.290) or authorized by the board. Because of this, bonding is required before the treasurer can function. The board establishes the amount of bond necessary, with a \$5,000 minimum set by statute. (For many similar public positions, this bond is set at the largest amount handled during any month of the preceding year plus 10 percent.) The FPD pays for the bond, which must be a "corporate fidelity bond" (321.180). Instead of a bond set at the largest amount handled by the treasurer, the board may choose instead to purchase an employee dishonesty insurance policy; however, the treasurer must still have the \$5,000 minimum bond.

"The treasurer shall keep strict and accurate accounts of all money received by and disbursed for and on behalf of the FPD in permanent records" (321.180). An example of an Accounts Payable and Payroll Check Register is provided in the Sample Forms section of this manual.

Financial statements and penalties

The treasurer should provide written, monthly reports to the board that include a report of revenues (money coming in) and disbursements (money going out), a balance sheet report (showing what is owned and owed), and comparisons of actual versus budget amount. Unlike the minutes prepared by the secretary, the board should never approve the treasurer's report otherwise the report becomes the board's report. Instead, the motion would be to receive the report and place it on file. The board should approve annual financial statements, but approval of the financial statements is usually based on the recommendation of its auditor, who often has malpractice insurance or may be subject to discipline from a state professional registry board.

Treasurer Powers and Duties

- Options for selection
- Duties
- Financial statements and penalties
- Bill paying
- Personal liability
- Collateral pledges
- State auditor concerns

Other Treasurer Duties and Responsibilities

- Keep accounts of FPD money received and disbursed in permanent records according to policies, regulations, statutes and generally accepted accounting principles (GAAP) — no comingling of funds, for example, pension, debt service, etc.
- Ensure all bank accounts, open merchant accounts and credit card accounts are reconciled timely (perhaps by the 10th of each month)
- If audited, prepare fiscal year financial reports for auditor and authorizes auditor access to bank account statements and other requested information
- Ensure filing of federal, state and local tax forms, for example, W-9, 1096, 1099, etc.
- Fulfill financial reporting covenants with lenders, bond holders, lessors and patrons

The state auditor (<https://auditor.mo.gov>) provides an electronic spreadsheet and printer-friendly format (PDF) financial form in the Local Government Forms and Reports section of its website: <https://auditor.mo.gov/local/politicalsubfincprpt>

Unless prepayment authority has been granted, the treasurer presents bills for board approval, informing the board if a bill will exceed the budgeted amount.

Two statutes require FPDs to file an annual financial statement (105.145 and 321.180). Found in different sections of the statutes, each has slightly different requirements. Combined, these requirements are:

- A “detailed financial statement” must be prepared (321.180) “in such summary form as the state auditor shall prescribe” (105.145).
- The annual financial statement must be filed by April 1 with the county clerk of each county in which the FPD has territory.

The annual financial statement is due to the state auditor’s office four months after the end of the fiscal year if unaudited, or six months after the end of the fiscal year if audited by a certified public accountant (CPA) (15 CSR 40.3.030). If the annual financial statement is overdue, beyond the four- or six-month deadline, no pay or expense reimbursement for members of the governing body is allowed while the statement is overdue (105.145.5).

Bill paying

Because government predates our modern banking system, the procedures that have evolved for government finance are often more complicated than modern banking practices and banks may not understand them initially.

Only the treasurer can write checks on the FPD’s account. To do so, however, the treasurer must receive instructions from the board. Traditionally, a “warrant” has been used to instruct the treasurer. The warrant sometimes takes the form of a “list of bills” and a “motion to pay the bills,” which are voted on by the board and then given to the treasurer, who writes the checks. In some traditional local governments, the board members or maybe the board secretary and board president sign a warrant that is given to the treasurer, who then writes and signs the checks. The multiple signatures discourage theft or financial mismanagement.

Some FPDs use a single document as both warrant and check, which must be signed by the secretary and countersigned by the president. It is a warrant, but it becomes a check when the treasurer signs it. Separate warrants and checks can be used, but using one document for both purposes is easier.

Some banks have balked at accepting checks with multiple signature lines. If an FPD’s bank complains, explaining that the two signatures are for FPD purposes usually suffices. Only the treasurer’s signature is needed on the bank’s signature card, but the additional signatures warrant that the expenditure was authorized and that the account on which it is drawn has sufficient funds.

Unless prepayment authority has been granted, the treasurer presents bills for board approval, informing the board if a bill will exceed the budgeted amount. If a bill falls within the specific amount approved by the

board in an annual budget, further board approval is not required, but can still be done as a matter of practice and internal control.

Personal liability

The treasurer of any local governmental body, including an FPD board, is personally liable for the safety of all public money, with two minor exceptions: (1) acts of God, including earthquakes, forest fires and floods; and (2) acts of a public enemy, such as the other side in a declared war. This means if the bank fails or the money is stolen, the treasurer can be personally sued to make up the loss. (Fortunately for a treasurer who is married, a spouse does not have the same liability and jointly owned assets cannot be seized to pay the debt.)

A corporate fidelity bond does not relieve the treasurer of this personal liability risk. The purpose of the surety bond is to protect the taxpayers, not the treasurer. Some homeowner's insurance may protect a treasurer who has financial responsibility for an FPD. Those who are considering this role should research their options. They may need to purchase a special policy or an additional rider on a homeowner's policy to protect themselves from the risks of this type of public service. Similarly, the treasurer should ensure that all recommendations from the FPD's audit are scrupulously followed, because doing so will reduce the treasurer's liability risk.

Collateral pledges

Because of this risk of personal liability, the treasurer should ensure that all moneys are promptly deposited in a bank and must ensure that the money is adequately insured by the Federal Deposit Insurance Corporation (FDIC), National Credit Unions Share Insurance Fund (NCUSIF), or by a bank's pledge of collateral for any money above the FDIC or NCUSIF coverage limit (110.010.1). (Regardless of how many different bank accounts an FPD has, the FDIC insurance limit applies only once, not to each separate account. In other words, the FDIC rules are different for government bank accounts than for individual accounts.)

To ensure FPD funds are not at undue risk, the law requires that the FPD can only accept collateral pledges that are also used for state funds (110.010.1). The FPD should require the bank to update the collateral schedule periodically, at least once a quarter.

The law for securing state funds lists 16 different types of collateral pledges plus FDIC/NCUSIF coverage (30.270):

- Bonds and other obligations of the US government, for example, treasury bills;
- Missouri bonds of cities with population over 2,000, counties, school districts, or special road districts;
- Bonds of any other state;
- Bonds, etc., issued by farm or agricultural credit banks;

The Story of the Fayette City Treasurer (City of Fayette v. Silvey, 290 S.W. 1019)

- Early in the 20th century, the depository bank failed that held the City of Fayette's funds. The City of Fayette sued its treasurer for return of the funds
- The courts found "... The general rule, which is the rule in this state is that one of the duties of a public officer intrusted with public money is to keep such funds safely, and that duty must be performed at the peril of such officer. Thus, in effect, he is an insurer of public funds lawfully in his possession."
- Some of the lost funds were from the City's electricity fees, but the court found that the treasurer was responsible for all public money, not just tax revenue
- The court did however, order the company that provided the treasurer's bond, to pay the City
- After paying the City, the bond company successfully sued the treasurer for repayment (the bonds protect the taxpayers, not the custodian of public monies)

- Bonds of, or irrevocable standby letter of credit issued by, the federal home loan banks;
- Bonds of any political subdivision established by the City and County of St. Louis section of the Constitution;
- Tax anticipation notes of first class counties;
- Surety bonds from highest-rated insurance companies;
- Out-of-state municipal bonds with highest-ratings;
- Certain mortgage securities.
- FDIC/NCUSIF coverage

Audit Petition Requirements

Last Election	% of Voters
0-999	25%
1,000-4,999	15%, but not less than 200
5,000-49,999	10%, but not less than 750
50,000+	5%, but not less than 5,000

An example of an inventory record is provided in the Sample Forms section of this manual.

Embezzlement

Without audits or an independent review of bank reconciliations, the treasurer for 15 years of the Wellington Napoleon Fire Protection District and the Wellington Napoleon Special Road District, was able to embezzle \$1,530,159. He was sentenced in 2014 to three years in jail without parole for two counts of mail fraud and ordered to pay full restitution.

State auditor concerns

The Missouri state auditor performs audits on public entities (29.200), including FPDs, randomly, by order of the Missouri governor, or when enough taxpayers have signed a petition for such an audit paid for by the FPD. Several FPDs have been audited based on such petitions (29.230). An FPD board of directors should review those audit reports, which are available on the Missouri State Auditor’s website, <https://auditor.mo.gov>.

The state auditor recommends that an FPD establish certain policies and good auditing practices that cannot be found in any Missouri statute. For example, the state auditor believes public entities should always have a current inventory of all their equipment and other property. That is good practice for any organization. An FPD should inventory not just its firefighting apparatus, but all the equipment owned by the FPD, including computers, chairs and file cabinets. Each item should be labeled and put on an inventory list, either electronic or paper, that is kept current. To establish a value threshold for what is put on an inventory list, the FPD board should work with its accountant to follow generally accepted accounting principles (GAAP) for governmental accounting set by the Government Accounting Standards Board (GASB).

In the reports, the state auditor has chastised FPDs for not having a travel reimbursement policy, not bidding health insurance every three years (as required by law) and not having a vehicle, credit card or wireless phone use policy. The auditor has also criticized FPDs for not keeping close records on maintenance for trucks and other vehicles.

The board might ask the FPD’s accountant to download some of these audit reports, which can be used to educate the directors and office employees on sound financial management. FPDs have suffered losses (including by embezzlement) when basic accounting practices were not followed, or when the FPD had little or no segregation of duties.

Some FPDs may be required to hire their own auditor (MO Constitution Article VI, Section 24 and RSMo 321.690); however, the grammar used in the law has led to some confusion about the requirement. Regardless of legal requirements, there may be practical reasons for a board to hire

its own auditor, for example, to ensure integrity of the FPD's accounting practices. Bond holders and organizations providing grants may also require audits.

The board should make sure to select a competent, insured auditor who specializes in governmental accounting and performs true audits, not just lesser "compilations" or "reviews." Check with the local school district or public water supply district to find out which auditors are being used by these districts.

Changing FPD Boundaries

- Petition to become part of a FPD
- Protest to an annexation
- Annexation by a city
- Petition for exclusion
- Consolidation and shared services
- Economic development impacts

VII. Changing FPD Boundaries

Petition to become part of an FPD

Several options for changing FPD boundaries are set out in the statutes (321.300). The procedures for expanding boundaries to include, or annex, an area are as follows:

- A petition to be included in the FPD must bear signatures equal to 25 percent of the most recent gubernatorial vote in the area asking to be included. If a city is partly in and partly out of the FPD, the entire city may choose to go either way. The petition follows the form for initiative petitions (see *Chapter IV. Initiative, Referendum and Recall*). The petition must include either property legal descriptions or, if more than 25 owners or registered voters sign, the addresses of the signers.
- All owners of land adjoining the FPD may file a petition to be included. No minimum number of signatures is required in this case. “All” of the owners of the property described could be just a single owner. In either case, signing the petition is presumed to give the consent of the owner to be annexed.

Special rules govern annexation for a city that is partly in and partly out of St. Louis County, where an FPD serves only part of that city.

The petitions are filed with the FPD board, which determines whether serving the petitioning area is practical and in the FPD’s best interest. The board may, if it decides doing so serves the FPD’s best interest, exclude part of the area petitioning. Upon granting the petition, the board files it with the court that incorporated the FPD, through the circuit clerk. An “all owners” petition automatically gets a court order. A “25 percent” petition must go through an election of those residing in the area proposed for annexation and receive a simple majority vote to pass.

(See *Petitions* in *Chapter IV. Initiative, Referendum and Recall* for information about why the petition process should be taken seriously.)

Protest to an annexation

“Any person aggrieved” by the decision to grant an annexation petition can appeal the board’s decision to the circuit court within 30 days after the board makes its decision. The court then hears the arguments and decides.

Annexation by a city

For many years, it has not been clear whether the FPD or the city is to provide fire protection and emergency medical services to property within the FPD that is annexed voluntarily into the city. The conflict results from the existence of two potentially applicable statutes, Sections 72.418 and 321.320, RSMo, because application of each yields a different result.

Section 72.418 provides that FPDs serving an area shall continue to provide fire protection and emergency services to an area annexed by a city with a fire department, while Section 321.320 does not. It should be noted that both sections permit the FPD to levy taxes on the property to pay bonded indebtedness that existed prior to annexation.

The Missouri Supreme Court resolved the question with an opinion handed down on March 17, 2009 (South Metropolitan, Res v. city of Lee's Summit, App, SC89558). The court held that Section 321.320 excludes from an FPD any property located in an FPD's boundaries and annexed by a city with at least 40,000 inhabitants that is not wholly located within an FPD. In order to harmonize the conflicting sections and give both meaning, the conflict was resolved by applying Section 321.320 to counties without a boundary commission and Section 72.418 to counties with a boundary commission. St. Louis County is currently the only county with a boundary commission.

In its opinion, the court also stated that the population language contained in Section 321.322.3 excludes its application in St. Louis County, currently the only county with a boundary commission. Other specific language contained in Section 321.322.4, in effect, authorizes Section 72.418 to apply to Harrisonville, a city in a county with no boundary commission. This application was drawn narrowly, providing further evidence that Section 72.418 is intended primarily to apply in counties with a boundary commission.

For cities with a population between 2,500 and 65,000, and which do not fall within the provisions of 321.320, consult section 321.322.

Petition for exclusion

Any owner of either real or personal property may file a petition with the board to be excluded from an FPD (321.310). A property description and a deposit sufficient to cover proceeding costs must accompany the petition. The board publishes a legal notice and sets a hearing date. The notice includes information about how to file a written protest against granting the request (321.310).

At the time set, the board hears the petition and any objections that may have been filed. The board considers whether the property can be served as a practical matter and whether excluding it is in the FPD's best interests. The board may decide the matter either way. If exclusion is granted to the petitioning property, a certified copy of the board's order is filed with the circuit clerk and the county clerk of each county affected. The circuit court has authority to reverse the board's decision if it finds the board acted improperly. The matter may be appealed in a circuit court action filed within 30 days (321.310 [2]).

The owners of excluded property remain responsible for the portion of the FPD levy committed to payments on loans (debt service levy) in effect

Consolidation Story

The City of Pleasant Hill had a municipal fire department while the surrounding rural area was in the Northeast FPD. The Pleasant Hill Ambulance District provided ambulance service within both the City of Pleasant Hill and the Northeast FPD. After consolidation of these two districts, the Pleasant Hill FPD now provides both fire protection and ambulance services within the City of Pleasant Hill and the surrounding rural areas.

at the time of exclusion. The property is exempt from being included in any bonded debt incurred after the exclusion (321.330).

Consolidation and shared services

Consolidation can be a way for FPDs to maintain or increase levels of service as well as more effectively and efficiently use taxpayer resources. Instead of full consolidation, some FPDs consider shared services arrangements — sort of broader mutual aid agreements (321.220.4; 321.600.4). Governmental agencies sometimes receive administrative support through nonprofit corporations that can provide services under a contract. Under Missouri law, these are considered quasi-public entities, at least to the extent of their assistance with governmental functions.

Shared services can even be provided by a quasi public organization set up by the FPDs (see *Management contracts* in *Chapter XIX. Ambulance and Emergency Medical Services* regarding potential voter approval for contracting for fire service).

Except for FPDs located in a first class county, two or more FPDs with at least a common boundary may consolidate by following this process:

1. Each FPD board included in the proposed consolidation adopts an FPD consolidation plan with the proposed consolidation name, legal description of the boundaries, outstanding bond amounts, list of firehouses and names of the FPDs to be consolidated (321.460.2).
2. The FPD's boards, separately or jointly, file a certified copy of the adopted FPD consolidation plan, signatures of those FPD directors that voted in favor of the FPD consolidation plan and a petition for consolidation with the circuit clerk, and pay a \$50 filing fee against court costs (321.460.3).
3. If the circuit court finds the FPD consolidation plan has been duly approved by the boards of the FPDs proposed to be consolidated, then the circuit court submits the question to the voters, including the property tax levy ceiling(s) of the proposed consolidated FPD, along with an election for three directors of the proposed consolidated FPD (321.460.5 321.460.7).
4. If a majority of voters favor the FPD consolidation, then the circuit court approves the FPD consolidation and designates the first board of directors of the consolidated FPD, with the director candidate collecting the highest number of votes receiving a six year term, the director candidate collecting the second highest votes receiving a four year term, and the director candidate collecting the third highest votes receiving a two year term (321.460.4; 321.460.8).

For FPDs wholly located in a first class county, but not in St. Louis County, two or more FPDs with at least a common boundary may consolidate by following this process:

1. The board of directors of each FPD passes a joint resolution to consolidate and submits the question to the voters.
2. The consolidation, if approved by the voters, becomes effective the following Jan.1, unless approved at a November election, in which case it becomes effective on the Jan.1 of the following calendar year (13 months later).
3. The board consists of all present board members of the prior FPDs, but may be reduced in size to not less than five as director's terms expire.
4. The resulting tax levy of the consolidated FPD is capped at the lowest levy rate of the constituent districts prior to consolidation.

For FPDs located in St. Louis County, two or more FPDs with at least a common boundary may consolidate by following the normal process in 321.420, except that 321.687 specifies the new board shall have five members, with terms allocated according to vote totals.

All the properties, rights, assets and liabilities of the consolidating FPDs become the properties, rights, assets and liabilities of the consolidated FPD (321.465; 321.688.4). The circuit court directs the circuit clerk to transmit certified copies of its order for filing to the county clerk(s) and recorder(s) of deeds, for which each clerk and recorder receives a \$1 filing fee (321.470).

Economic development impacts

Although borders are not changed, some economic development projects can affect FPDs by taking property tax revenue away from the FPD and giving the monies to cities, counties and developers. FPDs need to determine if such economic development truly benefits the community or if it will result in undue hardship — which in the case of an FPD, means protecting the economically developed property without all its tax money to do so. In either case, the FPDs would be well advised to seek legal counsel that specializes in economic development law.

There are three types of economic development projects for which the assessed valuation is frozen for years, even though through development, property values increase — in affect taking property tax revenue from the FPD.

The first type of economic development project is called Tax Increment Financing (TIF) in which the incremental tax revenue — from property value increases due to the economic development — is used for up to 23 years as part of the economic development of the property (99.800 99.865). TIF projects are meant to redevelop “blighted” properties, which in theory would not be developed without tax incentives. Decisions about a TIF project are made by a nine member commission that conducts studies, holds hearings and then creates an overall redevelopment plan, which is then sent to the city or county for its approval. The TIF law is loaded

FYI

In effect, consolidated FPDs in first class counties but not in St. Louis County, can have boards with five to ten members.

with exceptions and alternatives, but what follows is the most generic application of TIF law to school districts and so called “other taxing districts” such as FPDs.

The school districts in the redevelopment area agree on two members to be on the TIF commission. All other taxing districts in the redevelopment area agree on one member to be on the TIF commission. The six remaining members of the TIF commission are appointed by the chief elected officer of the city or county, for example, the mayor.

Once the redevelopment project is completed, or the redevelopment plan is approved by the TIF commission, the TIF commission appointed by the city or county can terminate the existence of the three members of the TIF commission representing the school districts and other taxing districts. However, school districts and other taxing districts need to pay attention as one metropolitan school district found out when it learned there was an attempt by a city to use leftover TIF project monies to build a soccer complex instead of distributing the leftover monies to the school district — monies the school district believed to be theirs, not the city’s.

Prior to 2004, taxing districts received none of the incremental tax revenue from property value increases due to the economic development during the 23 year life of a TIF project. Now, taxing districts such as FPDs receive at least 50% of the incremental tax revenue from property value increases in the district due to economic development (99.848). Further amendments in 2018 leave the boards of emergency service districts, such as ambulance and FPDs, the ability to receive up to 100% of the revenues lost to TIF. The new provision allows the board authority to determine the percentage of reimbursement annually, if that amount is set prior to payment being made into the TIF special allocation fund for the year. At first glance, one might wonder why a board would ever set the rate at less than 100%. This authority and flexibility, however, ought to give FPDs a greater voice in the initial formation of the TIF district, including the terms of the underlying development agreement, and perhaps even the total authorized duration of the TIF.

There are provisions for payments to the other taxing districts in lieu of property taxes (99.845.1[2]) as well as for surplus incremental tax revenue not used for redevelopment to be distributed to the taxing districts (99.820.1[12][b]).

The second type of economic development project is called an Enterprise Enhancement Zone (EEZ) in which 50% or more of the taxes on real estate property improvements is abated for anywhere from two to 25 years if those improvements create sustainable jobs in targeted industries in “blighted” areas (135.950-135.973).

Decisions about an EEZ are made by a seven member board that “conducts the activities necessary to advise” the city or county on the EEZ. The school districts in the EEZ agree on one member for the EEZ board, and all other taxing districts in the EEZ agree on another member — both

board members serve an initial five year term. The chief elected officer of the city or county — the mayor, for instance — appoints the five remaining members of the EEZ board .

The third type of tax diverting development tool is Chapter 100. In this process, a local government “owns” a development project for a specified period and leases it back to the developer. This causes the property to be removed from the tax rolls altogether for the life of the financing. Amendments adopted in 2018 give emergency service districts like FPDs the right to require reimbursement for up to 100% of lost revenues (100.050). The overall economic impact of the development to the affected community, and associated increases in other tax bases, ought to be considered and discussed early in the process between the FPD and the entity considering Chapter 100 incentives. Again, this new authority should give the FPD a place at the negotiating table when development agreements are being considered.

Property and Sales Taxes and Fees

- Assessed valuations
- Levy options
- Approval
- Procedures
- Adjustments
- Long-term debt and bond issues
- Sales taxes
- Service fees
- Reimbursements

ad valorem tax

Latin for “according to value.” An ad valorem tax is a percentage of the value of real or personal property

Example

A home with a \$100,000 market value has an assessed valuation of \$19,000, which means an FPD with a levy of 30¢ per \$100 of assessed value will receive \$57 per year from the homeowner

VIII. Property and Sales Taxes and Fees

Assessed valuations

One of the most common ways FPDs generate revenue is levying ad valorem property tax rates against all real (RP) and personal taxable property (PP) assessed in the FPD (321.230). Each county in Missouri is responsible to assess, which means to place value on, all real and personal property and update all real property assessments every other year, which is called reassessment. Reassessments are required to be based on market value, which is the price that a buyer will pay a seller — sometimes this is called fair market value (FMV) or the appraised value.

Once the county sets a market value, the type of property determines assessed value (AV), which is calculated as a percentage of market value:

Real Property	AV as a % of FMV	Personal Property	AV as a % of FMV
Residential	19%	Vehicle	33.5%
Commercial	32%	Antique vehicle	5%
Agricultural	12%	Crops/livestock	5%
RR and utility	State set	Other	33.5%

When assessed values rise, local governments may be expected to adjust their tax rates downward to keep down any increase in property tax bills (see the *Adjustment* section in this chapter). County assessors play no role in rate setting decisions. That responsibility belongs to governing boards of local governments like FPDs.

Missouri tax rates, each set by the governing board of the government entity, are expressed in cents or dollars per \$100 of assessed valuation. Some neighboring states like Arkansas, Iowa and Kansas express their tax levies in “mills,” so a 30¢ levy in Missouri would be 3 mills in another state.

There is also a surtax that county collectors must calculate and distribute to districts like FPDs. This surtax is a county wide assessment on commercial real property made at a preset tax rate of assessed valuation that replaces the tax revenues that were derived from the inventory surtax prior to 1985. The distribution of the replacement surtax is based on the percentage of lost revenue and total commercial value in the FPD. The percentage is based on total county lost revenue, total commercial value and actual present collections.

Railroad and utility assessed valuation, sometimes referred to as state assessed valuation, is also complex. Railroads and utilities self report to the state their property as expressed by miles of track, pipelines, or transmission lines in each taxing jurisdiction in the state. Each FPD receives a percentage of the railroad or utility company’s total tax bill based on the mileage in the FPD as a percentage of all the mileage in the state.

Levy options

Most special purpose districts, such as fire protection, ambulance, drainage and road districts, have only one operating levy. However, FPDs have numerous options as to services they may offer and taxes they may levy to support those services. Each FPD operating levy requires voter approval and stands permanently, though it must be recalculated every odd numbered year.

If FPDs have bonded indebtedness, they can use an additional debt service levy. Bonded indebtedness, which requires an additional debt service levy, is covered later in this chapter under *Long-term debt and bond issues*.

An FPD's basic levy options are outlined in the following table:

Basic Levies	Rate per \$100 AV	Authorization
Initial rate	Up to 30¢	321.240
Added rate	Up to 10¢	321.240
Added rate	Up to 25¢	321.241
Added rate after 8/13/82	Up to 10¢	321.241
Added rate after 9/28/85	Up to 25¢	321.241
Added rate	50¢	321.241
Maximum basic levies	\$1.50	

Beyond an FPD's basic levy options, there are the following levy options:

Additional Levies	Rate per \$100 AV	Authorization
Firefighter pensions	Up to 10¢	321.240
Emergency medical services	40¢	321.225
Emergency ambulance	30¢	321.225
Ambulance (first class counties)	30¢	321.620
Emergency dispatch	3¢	321.243
Additional dispatch (St. Charles County)	2¢	321.243(3)
Rollback exemption (rate reverts back)	Varies	321.244
Pension support in certain first class counties	40¢/25¢	321.610
First class counties	10¢	321.610

Approval

All tax rates require approval by a simple majority of voters. Bond issues (long-term indebtedness) require either two thirds or four sevenths voter approval (66.7% or 57.1%), depending on the election date as explained later in this chapter under *Long-term debt and bond issues*.

RSMo 67.110

- A public hearing is required before setting the tax rate
- Newspaper notice or public postings in three public places, of time and place, placed seven days before the hearing
- Notice shall include assessed valuation by category, new construction in dollar and percentage amounts, amount of revenue required in the annual budget, and proposed tax rates

To make assessed valuation comparisons and property tax calculations easier, the state auditor provides electronic spreadsheet versions of its forms in the Local Government Forms and Reports section of its website:

<https://auditor.mo.gov>

RSMo 137.073.7

“No tax rate shall be extended on the tax rolls by the county clerk unless the political subdivision has complied with the foregoing provisions of this section”

Procedures

Timing is crucial in order to get the FPD's property tax rate(s) on tax bills for the current year (321.250 and 67.110). Before a tax can be levied, the FPD board must set the rate(s) in a properly announced public session. Generally, the FPD board should have already approved at least a preliminary budget for the next fiscal year — otherwise, how does the board justify the property tax rates? The FPD must certify on forms supplied by the state auditor the total approved rate (all the rates added together) to the county clerk (or clerks for FPDs that cross county lines) before Sept. 1 or Oct. 1 for FPDs located in first class charter counties. The state auditor examines the rate set by the board against the tax rate ceiling to ensure compliance (137.073.6). The tax rate the state auditor says complies is levied against all real and personal taxable property assessed in the county or counties that lie within the FPD.

The penalties for failing to report levy information under the Chapter 137 deadlines can be extraordinary and can result in a loss of tax revenue for the year. Needless to say, failing to attend to these matters could be disastrous. (137.243).

Adjustments

Under constitutional requirement, each year's assessed valuation must be compared with that of the prior year. Excluding new construction and improvements, to the extent valuation exceeds last year's plus the federally calculated consumer price index (CPI), or cost of living, the tax rate(s) must be reduced to produce the same revenue as before, plus whatever amount new construction adds. New construction figures are furnished by the county (RSMo 137.073 and Missouri Constitution, Article X, Section 22).

The FPD must also make a second calculation. If the assessed valuation increased, a tax rate ceiling is established by statute (137.073). This tax rate ceiling is capped at either the most recent voter approved rate or the rate that was levied in 1984. The intent is to provide no more revenue from the new assessed valuation than was produced by the old, with growth in new construction and improvements excluded.

Long-term debt and bond issues

For capital expenditures, the FPD may issue bonds. Examples of capital expenditures include building an additional firehouse, purchasing new equipment that will last multiple years, and making other purchases or improvements of long term usability rather than normal annual operating expenses.

When certifying annual levies the FPD board needs to take into account a separate levy for the next year's installments and interest payments on bonds (321.260). The tax revenues from this separate levy must be deposited into a separate reserve fund for debt retirement (321.290), which

may have enough tax revenue for up to two years' of installments and interest payments. (See *Chapter XVII. Bond Issues* for more detail.)

Sales taxes

Three statutes authorize some FPDs to impose a sales tax. The legislature may expand this authority, so consult the current version of Chapter 321 and the most recent session laws to determine what sales taxes may be imposed. As of this writing, the sales tax authority is found in sections:

- 321.242 (¼% for perhaps a single qualifying FPD),
- 321.246 (½% for a few FPDs) and
- 321.552 (½% for all FPDs except those in Greene, Platte, Clay, St. Louis and St. Charles counties, with 50% of the sales tax committed to property tax relief).

Estimating the revenue an FPD might realize from a sales tax is difficult. The Department of Revenue (DOR) keeps its sales tax data by ZIP code, and ZIP code boundaries seldom coincide with FPD boundaries. A few years ago an FPD discovered that some of its merchants were mistakenly listed in a neighboring FPD. To ensure that merchants are listed in the correct FPD, FPDs with a sales tax should have an authorized person, like the treasurer, check the detailed sales tax reports every month to ensure that all merchants in the FPD are remitting the sales taxes. FPDs with a sales tax should also remember that some utilities, including telephone service, vehicles and other personal property such as boats are also subject to sales taxes. Any problems should be promptly called to the attention of the DOR.

Keep in mind that sales tax information is highly sensitive. Care must be taken by the FPD's authorized DOR liaison not to divulge any information that could reveal the sales tax information of any individual taxpayer. A violation is a criminal offense! (32.057)

Service fees

While local governments do not always like the limits on tax revenues required by the Hancock Amendment, covered earlier in this chapter under *Adjustments*, local governments do like another part of the Hancock Amendment (Missouri Constitution Article X, Section 16) that prohibits the state from requiring any new or expanded activity or service by political subdivisions, like FPDs, without full state financing. The Hancock Amendment also prohibits political subdivisions like FPDs from levying any tax, license or fees without voter approval (Missouri Constitution Article X, Section 22).

Passage of the Hancock Amendment by voters raised the question, "What is a tax, license or fee?" which was finally decided by the courts in *Keller v. Marion County Ambulance District* (820 S.W.2d301 Mo. en banc). This case determined increases in specific charges for services actually

provided by the ambulance district were not subject to the Hancock Amendment because the charges were user fees, while the constitution refers to fees that are really taxes in everything but name. The following table might be helpful when FPDs consider new taxes, licenses or fees.

Question to Ask	Probably Requires a Taxpayer Vote	Probably Requires Just a Board Vote
When paid?	Periodic basis	Only when goods or service provided
Who pays?	All or almost everyone	Only those using goods or services provided
Is it proportional to level of goods and services provided?	No	Yes to level of goods and services provided
Goods or services provided by FPD?	No	Yes
Activity historically government provided?	Yes	No, especially if the private sector can also provide

Brandsville FPD v. Phillips (SD 31576)

FPDs were affirmed to be able to bill emergency service fees.

Two statutes authorize FPDs to bill for services rendered when mutual aid is not involved. The first law (321.220[12]) allows FPDs to bill for “actual and reasonable” costs of emergency services provided in the FPD, but to residents who live elsewhere. However, the bill cannot exceed \$100 for responding to each fire call or alarm and \$250 for each hour, billed in 15 minute increment.

The second law (321.622) allows FPDs to bill for services rendered beyond their corporate boundaries. However, the bill cannot exceed \$100 per call or alarm and \$500 for each hour, billed in 15 minute increments. These fees are not applicable if there’s a previous written agreement with the property owner, although this fee structure might be a reasonable starting point when negotiating such agreements.

Prior to any billed services provided, FPDs must make sure the fees are properly adopted, that is, through resolutions and ordinances (see *Chapter XIX. Ambulance and Emergency Medical Services* for information regarding rules and regulations if an FPD provides ambulance services).

Reimbursements

The “Spiller Pays” statute (260.546) states that spillers of hazardous substances are liable to FPDs for “reasonable and necessary” costs such as the costs of materials and supplies to secure the emergency and non routine contracted services. However, the FPD must submit an itemized statement of costs within 60 days of completion of the cleanup. If the spiller is unable to pay, then the state is to pay the FPD.

Prior to any spills, FPDs must make sure to adopt resolutions or ordinances requiring spillers to reimburse FPDs when there is a spill.

IX. Meetings, Records and Votes

The Sunshine Law

The state's Sunshine Law, also known as the Open Meetings and Records Law, covers all political subdivisions and quasi governments in Missouri, including FPDs. Its basic intent is clear in the following section: "It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law" (610.011). The section goes on to instruct courts to liberally interpret openness requirements and strictly limit exceptions. With fines for violations ranging as high as \$5,000 per individual plus attorney's fees (see *Challenges and penalties* in this chapter), FPD officials should make sure to conduct business in public. One suit involving three alleged violations by a state prosecutor resulted in fines and penalties of \$39,000 in 2018.

The Missouri Attorney General's Office (AGO) publishes a popular Missouri Sunshine Law booklet containing the law, some sample forms and summaries of court opinions and AG opinions interpreting this law. The AGO may also provide training on the Sunshine Law.

Special FPD rules

Two provisions unique to FPDs modify some requirements of the state's Sunshine Law. One statute (321.200.1) requires that notice of regular public meetings (not an agenda, just a notice) be posted at each fire station, not merely at the FPD headquarters, as the Sunshine Law requires (610.020). It also says that notice of regular meetings must be posted continuously, not merely 24 hours before the meeting. This same law says that minutes of a board meeting must be available within one week after the meeting for any member of the public who requests them. (The Sunshine Law requires that the minutes be provided within 72 hours after they are prepared, but allows unspecified delays before they are prepared.) A prudent FPD will fulfill these additional legal requirements.

Notice of meetings

An FPD board must meet at least monthly at a location within the FPD it designates (321.200.1). Notice of when and where regular meetings are to be held is to be posted continuously at each firehouse. When special meetings are necessary, each board member must be formally notified, preferably by a non board member to avoid accusations of Sunshine Law violations.

Closed meetings

Only two kinds of meetings are possible: open or open with a portion closed. A list of about two dozen authorizations for specific closings

Meetings, Records and Votes

- The Sunshine Law
- Special FPD rules
- Notice of meetings
- Closed meetings
- Open meetings
- Public participation
- Minutes and votes
- Policy regarding release of information
- Records
- Copies
- Challenges and penalties
- Advice

The Missouri Sunshine Law booklet can be downloaded from the AGO website: <https://www.ago.mo.gov/docs/default-source/publications/missourisunshinelaw.pdf?sfvrsn=20> or call 573-751-3321 to request a free printed copy

A sample sunshine law policy resolution can be found at: <https://www.ago.mo.gov/missouri-law/sunshine-law/sample-language-forms>

FYI

For more information on a number of laws that protects confidentiality of patient medical information see State privacy laws under *Chapter XIX. Ambulance and Emergency Medical Services*

contains only a few that might apply to FPDs. In these instances, meetings may be, but do not have to be, closed:

- Legal actions, but only if the FPD is suing or being sued (610.021[1]);
- Real estate transactions where public knowledge could affect the price (610.021[2]);
- Hiring, firing, promoting or disciplining of particular employees where personal information about the employee is either discussed or recorded. Closing the meeting is only allowed when a specific person is being discussed (610.021[3]);
- During a bid call when specifications are being prepared (610.021[11]), and when sealed bids are received until the bid opening. Meetings to open bids may be closed until either a contract is awarded or all bids are rejected (610.021[12]);
- Preparations for contract negotiations may be closed if FPD employees are organized to collectively bargain (610.021[9]); and
- Pre- and post-audit conferences may be closed (610.021[17]).

To hold a closed meeting, the board must vote in an open meeting to close a meeting for one of the specific authorized purposes (610.022.1). Notice must be given, with the specific reason or citation of the specific section authorizing the closing indicated by number (610.022.1), 24 hours before the closed meeting is held (610.020.2).

Given the variety of state and federal protections for government employees, it is generally never advisable to discuss personnel matters in public session. Keep in mind, however, the requirements of Section 610.021 that personnel actions must become subject to open record requests within 72 hours, and the affected employee notified promptly before any public access to the information.

Open meetings

Except in an extreme emergency (such as after a tornado), the board must give the public 24-hours notice (exclusive of weekends and holidays) of all meetings. This notice need not be complicated. A regular, easily accessible location needs to be established to post notices. The law says notice must be given “in a manner reasonably calculated to advise the public.” The notice must contain a tentative agenda for the meeting. In case a challenge is made, the board secretary, or whoever posts the notice, should write the time and date of posting on a corner, such as “Posted 4:00 p.m. 6/7/14.”

Public participation

The public is allowed to attend meetings. They are not allowed to participate unless the board chooses to permit this. Whether to permit public participation should be discussed and agreed upon in form of

A Notice of a Closed Meeting form is provided by the Office of the Attorney General at: <https://www.ago.mo.gov/missouri-law/sunshine-law/sample-language-forms>

A Meeting Notice form is provided by the Office of the Attorney General at: <https://www.ago.mo.gov/missouri-law/sunshine-law/sample-language-forms>

Public Participation Policy

The FPD board might want to review the public participation policy of the local school district (they might be used to dealing with upset patrons). When reading their policy, substitute the appropriate fire district office for “superintendent” or “principal.”

a written policy or standing rule before the board is facing a roomful of angry citizens all wanting to make a complaint. If public attendees are permitted to speak at meetings, it might be a good idea to set time limits on comments in advance. Remember, the public is not restricted to FPD citizens. If reporters from The New York Times want to attend an open FPD board meeting, they may do so.

Minutes and votes

Minutes of open meetings “shall be taken and retained” and must include the date, time, place, members present and a record of votes (610.020[7]). The record of roll call votes should be by member name. When the agenda is prepared, it might be helpful if each item includes board members’ names at the end, such as “Jones _____, Smith _____, Brown _____,” Then either “yea” or “nay” can be jotted in the blank after the vote. The law states: “When a roll call vote is taken, the minutes shall attribute each ‘yea’ and ‘nay’ vote, or abstinence if not voting, to the name of the individual member of the public governmental body.” (610.015). The safest practice is to follow this procedure for every vote.

Also, the minutes are a record of what was decided at the meeting, not a transcript of what was said at the meeting.

Minutes do not become the minutes and assume their essential status as the official record of the board until approved; however, draft or unapproved minutes are considered a public record and are therefore subject to the Missouri Sunshine Law.

Never erase errors! When the board approves corrections to the already approved minutes, the error should be bracketed and the correction written above, on the facing page or in a wide margin, and then dated and initialed by both the secretary and the chair. The correction should also be included in the minutes of the meeting where the correction was made.

Minutes can be corrected any time after the minutes have been approved, if the existence of an error or omission becomes reasonably certain, and a director may propose a correction to the minutes even though not present at the meeting in question.

Special rules apply to votes both in and related to closed sessions. All such votes must be taken by roll call and the individual members’ vote recorded. This applies even to what would normally be routine procedural matters like adjournment.

The law provides that video and audio recording of public sessions must be allowed, so long as the same is not disruptive. Recording of closed sessions, however, is prohibited and is actually a criminal offense.

Records

The same law that requires most records be open to the public (610.022.5) also requires that records of the FPD be open to the public,

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A sunshine law policy resolution can be found at: <https://www.ago.mo.gov/missouri-law/sunshine-law/sample-language-forms>

There is also a form to request records from a government

unless the FPD board has adopted a written policy to keep certain records closed (610.028.1). If an FPD wants to have any closed records, it must have a written policy.

Every public governmental body must formally designate a custodian of records. For FPDs, the custodian of records typically might be the secretary, as stated in *Chapter V*. The custodian of records' name and contact information must be publicly posted (610.023).

Provided the board has voted to approve a written policy to do so, sealed bids may be kept closed until the opening date. Personnel records beyond name, position, salary and length of service may and should be kept closed (including evaluations, reprimands and sick days used). Again, these records can be kept closed only if the FPD board has voted to approve a written policy to close them (610.028.1).

Policy regarding release of information

The statutes say that every governing body "shall provide a reasonable written policy ... regarding the release of information on any meeting, record or vote" (610.028.2). This policy should also provide guidance on procedures for making a sunshine request and how to handle issues that may arise, including the cost of making copies and public videotaping of meetings. Due to the uniqueness of many FPDs, the FPD board may want its attorney to assist in writing such a policy.

Requests for records have deadlines for responding (see discussion under *Special FPD rules* in this chapter).

Copies

The FPD may recover the actual cost of making copies of records and should be prepared to document these charges. Photocopy cost may not exceed 10 cents per page for regular sized copies. The FPD can require payment of costs before it produces the records (610.026) and may charge average staff time for researching and producing records. A reasonable staff rate should be determined in advance if it is to be collected on future record requests.

Challenges and penalties

Any person can challenge a public, governmental body with violating the state's open meetings and records laws. Once the challenger demonstrates to a court that the law applies to the body, the governing body must prove it did not violate the requirements.

If an FPD board is found to have improperly closed a meeting, each member who voted to close and who participated in the meeting is subject to a fine of up to \$1,000 plus attorney fees for the challenger (610.027.3). If the violation is found to have been purposeful, the fine increases up to \$5,000 (610.027.4). In addition, the court may nullify any decisions made at an improperly closed meeting (610.027.5), which leaves the board with

having to conduct the meeting's business again. If a member objects to closing the meeting, that objection needs to be included in the minutes. If that member also votes against closing the meeting, the member has an "absolute defense" against the penalties noted, even if he or she subsequently attends the closed meeting (610.022.6).

Advice

The underlying presumption of the Sunshine Law is that the public has a right to watch public business being transacted. This presumption is hardly revolutionary in the United States. Because board decisions affect the public and influence public expenditures, citizens have a right to be concerned.

Whenever possible, make every effort to stress openness. Skeptical Missourians, when convinced no one is trying to hide anything from them, generally lose interest quickly. Operating in secret makes them think the board is hiding something.

Budgets and the Budget Process

- Rules and enforcement
- Budget officer
- Fiscal year
- Budget contents
- Failure to adopt
- Changes
- Keeping documents
- Long-term purchases

The Office of the State Auditor provides budget forms for county governments: <https://auditor.mo.gov/local/countybudgetforms>

A generic budget template is provided. Clicking on the “Generic Budget” will provide an Excel Worksheet. The website states that this budget is for officials and boards for funds held outside the county budget. The Fire District may modify the form or use it as a template to create a budget form.

X. Budgets and the Budget Process

Rules and enforcement

No expenditure of public moneys shall be made unless it is authorized as provided by law (67.080). Not a single cent of public money can be spent until a budget has been formally adopted following procedures and including the contents set out in the statute (67.010). The statutes are very clear on this point. Unless a formal resolution to adopt a budget has been accepted by a majority board vote before the beginning of the fiscal year, no funds can be spent (67.030; 67.080). There are no budget police going around inspecting, nor squads of inspectors general making sure every one of the state’s political subdivisions complies, but that does not mean this requirement cannot be enforced. FPD funds are public money.

Budget officer

Every political subdivision must designate someone as budget officer (67.020), and that person must prepare a proposed budget for the board. Logically, this should be the secretary or treasurer — maybe the fire chief. Everyone connected with the FPD must furnish to the budget officer any facts or figures requested. The proposed budget is given to the board, which may, as often as necessary, return it for revisions before adopting it (67.030). The budget officer must attest to the fact that preparation and adoption procedures were conducted in the manner prescribed by law (67.060).

Fiscal year

The budget law does not specify the FPD’s fiscal year. The FPD statutes used to mandate that the FPD’s fiscal year be the calendar year, January to December (321.180); however, that law was repealed. Many FPDs use the calendar year as their fiscal year; however, some FPDs follow the July June fiscal year used by other local governments, while some FPDs follow the October September federal fiscal year, and a few FPDs use a November October fiscal year to best match local property tax receipts (property taxes are due November 1st and past due January 1st. A decision to change an FPD’s fiscal year should be in consultation with the FPD’s accountant and/or auditor.

Budget contents

At a minimum, the budget must have these five elements (67.010.1):

1. A budget message pointing out changes from the prior budget;
2. Estimates of revenue for the coming year, the year currently in progress and the previous year;
3. Estimates of spending for the coming year, the year in progress and the previous year;

4. A list of note payments due the coming year and report of balances remaining; and
5. A summary.

The budget may use cash on hand at the beginning of the fiscal year, but the budget must balance (67.010.2; 67.030). It is also acceptable to leave cash on hand at the end of the fiscal year.

Generally, auditors will advise their clients to have cash on hand to pay at least three to six months of operating expenses. Excessive amounts of cash on hand could bring criticism, because it becomes difficult for the board to justify the taxes levied if the FPD is just going to hoard cash. If there is a legitimate reason for additional cash, for instance, for a “rainy day” or to purchase land or replacement vehicles with cash accumulated over several years, the board should work with its attorneys, accountants and/or auditors to establish “funds” to properly set aside monies for these types of purposes.

Much of the budget will be based on previous years’ numbers and the budget officer’s best estimates. How much revenue will come in is uncertain, and the current year’s total spending is incomplete. The last solid figures will be from two years ago. Because of this, budgets are subject to revision as the budget year progresses. Neither the budget officer nor the board can anticipate everything that will happen 13 or 14 months in the future.

Budget forms are available from the Office of the State Auditor. However, these forms may be more complex than FPDs will want because they are designed for counties. Designing your own simple budget form is acceptable.

Failure to adopt

If the board fails to adopt a budget by the start of the FPD’s fiscal year (67.030), the last adopted budget remains in effect until the board approves a new budget (67.070). This means spending for whatever purpose cannot exceed the amount allotted in the last budget, until a new budget is adopted.

As a practical matter, the budget has to be adopted before property tax rates can be set, which is by Sept. 1 or Oct. 1 (67.110; 321.250) — otherwise, how can the board justify the rates?

Changes

Any increase in spending over what has been budgeted during the course of the year must be approved by board resolution (67.040). The resolution must state in written form “the facts and reasons making the increase necessary.” Internal transfers may be made that shift money from one fund to another, as long as they do not put the budget out of balance and money that was collected for one purpose is not used for another. Total

Typical FPD Funds

- Capital Projects Fund (CPF)
- Debt Service Fund (CSF)
- General Fund (GF)
- Pension Fund (PF)

Resolution

A written motion attached to the meeting minutes; signed by the chair; sealed by the secretary

spending can be no more than revenues received plus any balance on hand at the year's beginning.

To benefit from the budget, the board should receive monthly updates as part of the treasurer's report. Regularly monitoring the budget can make it possible to find ways to save money, expand existing programs or add new ones. It is best to amend the budget, if necessary, before the end of the year, so that it balances.

(See Financial statement and penalties section under Chapter VI. Treasurer Powers and Duties for more information about budgets being included on financial statements.)

Keeping documents

While Chapter 67 mandates keeping budgets on file for three years, the local records retention schedule promulgated under Chapter 109 RSMo designates budgets as a permanent record to be archived and kept indefinitely.

Long-term purchases

Any purchase in an amount greater than the year's anticipated revenue plus balances on hand requires voter approval of a bond issue. To pass a bond issue requires an exceptional majority, usually two thirds of the voters. Once a bond passes, it becomes a lien against all taxable property in the FPD.

To budget for bond debt retirement, a separate Debt Service Fund (DSF) budget must include the year's installments and interest payments on the bonds as well as any miscellaneous expenses for maintaining the separate sinking fund as well as bond banker fees for distribution of installments and interest payments to bond holders.

(See Chapter XVII. Bond Issues for more information on bonds.)

(See Lease purchases section under Chapter XI. Purchasing, Bids and the Bidding Process for information regarding lease purchases in lieu of bonds.)

XI. Purchasing, Bids and the Bidding Process

Purchasing

An FPD can purchase what it needs to get the job done (321.220[6]; 321.600 [6]); however, it is prudent for FPD boards to adopt a formal purchasing policy. Examples of topics potentially included in a purchasing policy include:

- Avoiding conflicts of interest (105.454; 105.458.1; and 105.458.2);
- Avoiding double taxation of sales taxes and fuel excise taxes;
- Purchases cannot cause the budget to be exceeded (67.080);
- Standards for personal protective equipment (PPE) (320.088);
- Regulatory reporting for certain purchases, for example, reporting a new ambulance to the Centers for Medicare and Medicaid Services (CMS) within 90 days of acquisition (42 CFR § 424.516[[d]]);
- Commandeering products or services;
- Use of products from prison industries (217.575);
- Interest-bearing bank accounts (321.270; 110.030; 110.130);
- Ensuring payment of materials for construction of public works, and for labor performed for such work, by requiring performance bonds for public works over \$50,000 (107.170);
- Requiring contractors provide 10-hour safety training (292.675);
- Ensuring contractors' employees have the right to work in the United States (285.530);
- Certificates of workers' compensation insurance for contractors (avoids the FPD from potentially paying for such insurance during the annual workers' compensation insurance audit);
- Liability insurance (105.1070-105.1079);
- Health insurance for public employees – competitive bidding required every three years (67.150);
- All other types of insurance – competitive bidding required every six years (376.696)
- Increased preference to service- and disabled-veteran businesses (34.74.3); and products from organizations for the blind (34.165.1);
- “Buy America,” “Buy Missouri,” and use of certain Missouri products (34.350-34.359; 34.073.1, and 8.280, respectively);
- Proof that products were produced in America, or else the payment is illegal (34.355).

Purchasing, Bids and the Bidding Process

- Purchasing
- Legal requirements
- Phone and email bids
- Files
- Rejecting bids
- Specifications
- Sole-source suppliers
- Contracts must be in writing
- Prevailing wage
- Lease purchases

An FPD may want to contact other FPDs for examples of purchasing policies and also speak with the FPD lawyer.

Bid Form

The Office of Administration provides an example of a bid form: <https://oa.mo.gov/sites/default/files/300-0162s%20%288-01%29.pdf>

While it contains multiple bids, a separate sheet can be used for each telephone bid and place each bid in a separate sealed envelope.

Purchasing Resource

The Office of Administration, Cooperative Procurement Program:
<https://oa.mo.gov/purchasing/cooperative-procurement-program>

Legal requirements

For purchases of \$10,000 or more of goods or construction work, an FPD is required to “publish” its specifications before making the purchase. No one knows exactly what this requirement means because it has not been litigated, but most FPD attorneys assume it means that you must: (1) advertise for bids; and (2) take the “lowest and best” bid if the price is \$10,000 or more (321.220[4]; 321.600[4]).

Phone and email bids

Seeking bids by telephone or email is acceptable and is often necessary. However, phone and email bids need to be treated exactly like written bids. Design a simple form for soliciting phone bids that lists the same information that would be provided in written bids, including the person calling for the FPD, the firm called, the date, the person speaking for the vendor, what was offered and for what price.

Files

Make a file folder for every item the FPD bids. The folder should contain a copy of the announcement, the specifications, written bids received and telephone bids solicited, the affidavit of publication of the notice and, eventually, the contract. Specifications can be kept closed until public announcement of bid letting is made (610.021[11]). Sealed bids can be kept closed until bid opening (610.021[12]). It is advisable to seal phone bids (in an envelope or other manner) after the paperwork has been completed until the opening of all bids.

Rejecting bids

Every bid call should include the statement, “The FPD reserves the right to reject any and all bids.” This is necessary because often bidders will offer to provide goods or services different from those the FPD is seeking. If the bids received do not meet the specifications announced, the bids should be rejected, even though this slows down the process. Appellate court decisions have now given unsuccessful bidders standing to challenge a bid process for irregularity in some situations, so formality and strict adherence to the FPD’s own internal policies is critical.

Specifications

Drawing specifications is not easy or simple. Suppliers will be glad to offer help, but be cautious about accepting it. Suppliers might write specifications so that only their product will qualify, nullifying the statutory “due opportunity for competition” mandate. The law forbids state purchasing from using brand names in bid specifications (34.060). This law might apply to FPDs too, especially in certain grant-funded purchases. As a part of state government, FPDs can use state purchasing programs such as fleet fueling, specifications and bids. Smaller FPDs might also consult larger FPDs within the state for specifications of similar products.

Sole-source suppliers

Do not assume only one supplier can furnish what the FPD wants.

Remember some years ago when it was exposed that military purchasers were buying exorbitantly priced toilets and tools through sole source suppliers. Usually, more than one supplier can furnish an acceptable product. Search the internet for possible suppliers. It can be surprising how many vendors are out there.

Contracts must be in writing

All contracts to which an FPD is a party must be in writing and must be signed by authorized representatives of the parties involved. FPDs are not required to pay for any product, good or service unless there is first a written contract. Missouri has a special rule on contracts that protects all local governments (432.070). Although private individuals and businesses can be held liable for oral agreements — such as a telephone order or a quasi-contract, where goods are delivered, unpacked and displayed for sale — Missouri governmental entities cannot be held liable for such agreements.

Thus, if an FPD receives a bill for goods or services for which it does not have a written contract, it can refuse to pay the bill. The vendor must be able to produce a properly signed contract to collect on the bill.

Prevailing wage

Prevailing wage must be paid on construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair of public works (290.210-340). Prevailing wage is defined as the “hourly rate of wages for work of a similar character in the locality in which the work is performed” (290.220). Missouri’s Prevailing Wage Law also applies to all public works projects on behalf of FPDs, so having a company or organization construct the public works may not get an FPD out of paying prevailing wages.

FPDs thinking about a public works project should be familiar with a slew of other laws that may be applicable:

- Construction or renovation practices (8.677; 8.675-8.681; 34.057; 34.059.1; 34.076; 34.209; 290.550-290.550; 290.210-290.340; 292.675.2; 292.675.4);
- Engineering, surveying and architectural services — interview and negotiate, not bid (8.285-8.291); and
- Ensuring payment of materials for construction of public works, and for labor performed for such work, by requiring performance bonds for public works over \$25,000 (107.170).
- Revisions to the prevailing wage law in 2018 exempt projects with engineering cost estimates or actual contract amounts under \$75,000 from prevailing wage requirements. Complicated rules and

Download the Public Works Guidebook from the Missouri Department of Labor and Industrial Relations (DOLIR)
<https://labor.mo.gov/publicworks>

Information on prevailing wage:
<https://labor.mo.gov/prevailing-wage>

exceptions apply, so when work exceeds \$75,000, even only after a change order, the FPD's legal counsel should be consulted about compliance.

Lease purchases

Many public entities dodge bond issue requirements with lease purchase arrangements. Such an agreement must be cancelable by a new board when elected, even if the members do not change. This puts the vendor at additional risk, which usually is factored into the price quoted. A board should enter into such agreements with caution (see *Chapter XVII. Bond Issues* for more information about bond issue requirements).

XII. Personnel

Coverage

FPDs might not think of themselves as employers needing detailed personnel policies. An FPD might have but one employee, and work arrangements may be informal. However, even with a single employee, an FPD is an employer. An FPD must have federal and state employer identification numbers (EINs), withhold income and Social Security and Medicare taxes from wages, and pay state unemployment insurance. Moreover, an FPD is considered a public employer. As such, an FPD must keep certain records under the federal Fair Labor Standards Act, known as FLSA, and compensate employees in accordance with FLSA rules (see *Chapter XIII. Federal Fair Labor Standards Act*).

Today, most public employees are covered by Social Security, but this was not always the case. Some long term public employees who were not covered by Social Security may have been “grandfathered” when laws changed. An FPD could have employees who are covered by Social Security and others who are not.

Risks

In recent years, there have been many changes in laws that relate to employees. Most of the changes are the result of federal laws designed to eliminate discrimination. Only gradually have similar laws been adopted at the state level. These overlapping laws can be confusing. In some cases, they apply broadly to all workers, including volunteers; in other cases, they apply only to employees, or they may apply only to workplaces with a minimum number of employees, which might be four, 15, 25 or 75, depending on the section of the law. Many federal laws always apply to a political subdivision, such as an FPD, regardless of the number of employees or even if the FPD has no employees.

An FPD is not exempt from labor laws simply because it performs a public service. Rather, it should assume that all discrimination and employment laws apply, even if it has fewer than the “minimum number” of employees. Under modern civil rights legislation, including statutes sometimes referred to as “Civil Rights” or “1983,” (called this because of the legal citation, Title 42 of the United States Code, section 1983), an FPD might be sued over FPD conduct that is not otherwise covered by the specific statute. Damage claims can include attorney fees, which can be even more substantial than the underlying claim.

FPD board members protect themselves by staying well informed and scrupulously following employment laws. A board may also want to consider insurance that covers its decisions as an employer. Most insurance products, including workers’ compensation, general liability and even board errors and omissions coverage, do not cover personnel

Personnel

- Coverage
- Risks
- Special Rule
- Employees and volunteers
- FPDs have special circumstances
- Special firefighter benefits
- Hiring and firing the fire chief
- Expectations and evaluation of fire chief
- Workers’ compensation insurance
- Personnel policies
- Alcohol use
- Minimum wage
- Child labor laws
- Licenses and certificates

or wage disputes. Insurance protection in this area requires separate employment liability coverage, which may be expensive.

Special rule

The statutes include a restriction that only applies to FPDs: “The board, acting as a board, shall exercise all powers of the board, without delegation thereof to any other body or entity or association, and without delegation thereof to less than a quorum of the board” (321.200). This means that FPD board members act as a group, not as individuals. Authorizing a member, including the chief or the office manager, to act for the board is strictly prohibited. The board is the decision making body. However, the board can assign duties to the fire chief, other officials and employees that may involve what lawyers call “ministerial duties” to carry out the board’s policies.

The origins of statute 321.200 are uncertain. However, the statute emphasizes the board’s authority to make decisions by stating that the FPD board is in charge of the equipment, the personnel and the procedures for the FPD. While at times there may be decisions of a technical nature that require knowledge of firefighting that elected board members may not have, the statute is clear that all authority rests with the elected board.

Employees and volunteers

Lawyers, legislators and courts use the terms “employee” and “volunteer” in different ways, and telling them apart for legal purposes can be difficult. Volunteers, called unpaid employees by some, might receive a payment, such as a small honorarium called “show up pay” when they attend a training session, or they might receive mileage or tuition reimbursement, especially when taking training far from home. Sometimes employees want to volunteer to fight fires — which, by the way, they cannot do unless paid at their regular rate of pay or at time and a half, depending on the situation (FSLA §3[e][4][A]). Both employees and volunteers can be fired. Both employees and volunteers can be required to follow FPD policies, and both can be required to wear a prescribed uniform. Also, an FPD can be sued for the conduct of either type of worker.

When distinguishing between an employee and a volunteer, most will say that an employee is paid a “regular wage,” while a volunteer receives only “nominal compensation.” In 2007, the International Association of Fire Chiefs (IAFC) asked the U.S. Department of Labor for more explicit guidelines clarifying who is an employee and who is a volunteer. In response, the Labor Department’s Wage and Hour Division provided a letter stating that a person would be considered a volunteer if he or she is paid less than 20 percent of what a full time firefighter receives in the same locality. This 20 percent guidance might also be useful to FPDs in contexts beyond the authority of the Wage and Hour Division, such as minimum wage, overtime and compensatory time.

For more information on volunteer compensation, see the IAFC publication *Managing Volunteer Firefighters for FLSA Compliance*:
<https://www.iafc.org/topics-and-tools/resources/resource/flsa-manual-managing-volunteer-firefighters-for-flsa-compliance>

FPDs have special circumstances

Firefighters, whether they are employees or volunteers, are given certain legal dispensation when responding to a call (300.100). This includes allowance to drive as fast as they think prudent, provided both lights and siren are working. However, firefighters are not allowed to disobey stop signs or lights until after slowing down. Every year, firefighters and other emergency personnel suffer serious injuries or line of duty deaths (LODDs) at stop signs or traffic lights. Also, an FPD can be sued if one of its firefighters causes a traffic injury or death by inattention to stop signs. Occasionally, a firefighter (or police officer or ambulance driver) is charged with manslaughter when a death results from running a stop sign.

As a result of speed, and because a fire tanker truck carrying thousands of gallons of water does not steer like a sports car, failure of firefighters to wear a seat belt and shoulder harness is particularly dangerous. Rollovers of top heavy fire apparatus cause an appalling number of firefighter deaths and injuries.

Thus, it is important that FPDs have rules requiring firefighters to slow down or stop at every stop sign or red traffic signal and to wear seat belts and shoulder harnesses. The FPD should discipline any firefighter, whether an employee or a volunteer, who fails to obey these rules, even when driving a private vehicle to the fire station or a fire scene.

(See FPDs have special circumstances under Chapter XIV. Training, Physical Fitness and Equipment for more information about preventing LODDs.)

Special firefighter benefits

It is hoped that you will never need this information in your tenure as an FPD director, but you should be aware of special benefits that may be available to the families of firefighters who suffer a line of duty death (LODD). The Missouri Fire Service Funeral Assistance Team helps fire service organizations when a firefighter dies, even if the death did not occur during duty. If a firefighter dies, the employing FPD should immediately contact this organization for guidance and assistance, including funeral protocols, a firefighter flag for the family, badge shrouds, station and vehicle bunting, honor guard uniforms, etc. — there are even funeral protocols for the death of an FPD director.

The federal government provides a death benefit (just under \$360,000 in fiscal year 2018) to the family of a firefighter who dies in the line of duty or from a heart attack within 24 hours of a non-routine stressful situation. The application for the benefit can require extensive medical records and is difficult to complete. The Missouri Fire Service Funeral Assistance Team can provide guidance to families in this situation. This application requires certain autopsy results to show the death was not caused by alcohol or drug abuse; for this reason, the family should not release the body to a funeral home until after an autopsy.

For more LODD information, see the Missouri Fire Service Funeral Assistance Team's website:

<http://www.mofirefuneral.org>

For more information on the Public Safety Officers' Benefits Programs see the Department of Justice:

<https://psob.bja.ojp.gov>

For more information on Missouri's Line of Duty Compensation Act, see the Missouri Department of Labor and Industrial Relations website:

https://labor.mo.gov/DWC/Injured_Workers/benefits_available

Missouri provides two death benefits to the surviving spouse of a firefighter killed in the line of duty. (These benefits are also available to surviving spouses of EMT, paramedic, first responder or law enforcement personnel). The first benefit is property tax relief on the family home as long as the surviving spouse does not remarry. The relief is provided through a special income tax credit that must be claimed annually on the state income tax return (135.090) The second benefit is a \$25,000 death benefit from the Line of Duty Compensation Act (287.243, as currently written, will expire in 2025).

Other benefits may also be available. One of the nation's large funeral home chains has been providing a free funeral service when an LODD occurs. Upon request, a uniform manufacturing company has been providing a free dress firefighter uniform for the body of a firefighter. More information about these benefits is available from the Missouri Fire Service Funeral Assistance Team.

Hiring and firing the fire chief

In addition to the powers listed in *Chapter II. FPD Powers and Duties* (321.220; 321.600), the board of an FPD is authorized to carry out the work of the FPD, including employing such help and contracting for such work as is necessary to provide service to the FPD, and may pay reasonable compensation (321.200). Hiring and firing the FPD's fire chief is one of the most important duties of an FPD board.

All persons employed by the board on behalf of the FPD are, by law, at will employees. This means they are employed for an indefinite term, which either employer or employee may terminate at any time, for or without cause.

Expectations and evaluation of fire chief

One of the most important duties of the FPD is to appoint a fire chief. The fire service tends to be organized with a military type command structure, and is strongly influenced by the personality and level of competence of the fire chief. The board should take seriously its role in selecting and working with the fire chief, who will lead the FPD's day to day operations. When appointing a chief, the FPD board needs to communicate clearly and honestly with the candidates about its expectations. Once a chief is appointed, the board should evaluate the chief's performance at least annually.

Generally, the fire chief is expected to be prepared for and informed on all aspects of the job. During interactions with the FPD board, the fire chief should provide multiple options for the board to consider along with proposing recommendations to the board for the best options. One of the strengths a chief should have is the ability to communicate with all levels of the organization and also with the community, either in person or through

the public media. And, finally, the chief needs to understand and embrace the basic roles and responsibilities of the job, which can include;

- Providing organizational leadership;
- Overseeing daily management of the operations;
- Overseeing the staff, although only the FPD board may hire, fire, and discipline;
- Developing and recommending policies and standards to the FPD board;
- Implementing standard operating procedures or guidelines;
- Overseeing implementation of strategic plan decisions;
- Educating, informing, and communicating important information to the FPD board — both positive and negative;
- Keeping abreast of political, legal, financial and technological changes to emergency services;
- Ensuring compliance with FPD, Missouri and federal laws, rules and regulations;
- Analyzing FPD needs and helping develop the FPD budget;
- Serving as an official FPD ambassador of sorts and liaison to the public and media;
- Cultivating relationships with other agencies, governments and organizations, for example, hospitals, cities, counties, ambulance providers, etc.; and
- Overseeing, controlling and preserving FPD resources and assets.

Workers' compensation insurance

Laws require any organization with five or more employees to have workers' compensation insurance to cover its employees (287.030). Volunteers have sometimes been construed as employees by the courts, so consult with legal counsel before assuming they are not. (*Orphant v. St. Louis State Hosp.* 441 S.W.2d 355 (Mo. 1969)). This insurance provides medical insurance coverage for a firefighter injured on the job, disability insurance coverage for a firefighter injured on the job, and a modest death benefit for the family of a firefighter killed on the job.

The workers' compensation benefits that volunteer firefighters might have at their regular jobs will not cover injuries from volunteering, so a separate policy by the FPD is needed. Also, because private health insurance often excludes injuries that could be protected by workers' compensation, many times the volunteer's private health insurance also will not pay. In addition, the disability and death benefits listed above for volunteer firefighters are particularly modest because they are based upon a benefit of \$40 per week. If a volunteer firefighter is injured in a flashover, for example, an FPD workers' compensation insurance policy would pay all medical bills but would provide only \$40 per week disability pay for the time the firefighter

AD&D Insurance

For accidental death and dismemberment

A&S Insurance

For accidents and sickness

was unable to work during recovery. If the firefighter supports a family, they may have difficulty getting through the recovery period on so little money. (Many generous employers will permit a firefighter who suffers an injury to draw vacation and/or sick leave pay, but employers are not required to do this.) For these reasons, many FPDs provide additional disability and death benefit protection for their fire fighters (321.220[17]; 321.600[16]).

Currently, several insurance companies that operate in Missouri provide specialized insurance coverage for fire service organizations. These companies are familiar with the workers' compensation problems, and other insurance companies can be educated about the problems and urged to provide reasonable assistance.

Personnel policies

Workplace related lawsuits do not happen often, but when they arise, they are unpleasant and can be extremely expensive, even for the winners. That is why employment liability insurance coverage is sold separately and why it is expensive. Employers have found that one of the best defenses available is to have a published handbook of employment policies that is followed scrupulously in all situations.

With this in mind, FPD boards are encouraged with advice and counsel from their attorneys to examine their existing written policies, compare them with policies being used in neighboring FPDs and review sample policies available from insurance companies or from reliable sources on the internet. Then, the board members should put together a set of policies the FPD can live with and can realistically follow. Keep in mind, because a policy that is ignored is evidence that can be used against an employer, the board must follow the policies it adopts.

(See *License and certifications* under *Chapter XIX. Ambulance and EMS* for more information regarding the impact of medical licensing and certifications on personnel policies.)

Alcohol use

Historically, firefighting was conducted by voluntary social groups. Firefighting not only provided community benefit, but also was a form of group camaraderie. Like many social activities, it was frequently accompanied by the use of alcoholic beverages. As firefighting has become more complex, it has become more a professional and less a social activity. The risks of combining alcohol and firefighting are obvious. FPD board members and officers should be aware of the risks and ensure that alcohol is removed from the firehouse, if its use there is still allowed or condoned in the FPD.

Minimum wage

Both Missouri and the federal government have enacted rules that govern minimum wages paid to non volunteer workers. Laws also regulate the

maximum number of hours a paid worker can work before the employer must pay an overtime premium (time and a half).

Exemptions available under state law for public employers such as FPDs should be carefully considered before being used. Positions with lower pay, while lawful, may be challenging to fill, or may attract unsuitable candidates. (290.502).

Child labor laws

Many FPDs have “junior firefighting” or Explorer scouting programs for younger members of the community. FPD boards should be aware that laws enacted both by Missouri (294.005 150) and the federal government (Fair Labor Standards Act of 1938) regulate employment of children. Children may not work in hazardous conditions such as using power driven machinery, maintenance or cleaning/washing of machinery, operation of any motor vehicle, and anything dangerous to life, limb or health — that is, most firefighting activities.

Additionally, work certificates from the school district superintendent are required for children working during the school year and there are limitations during the school year on how many hours children can work in a day and in a week.

Federal Fair Labor Standards Act

- Rules
- Hourly equivalent wage
- Overtime and compensatory time
- On-call time
- Career firefighter rules
- Penalties
- Other common benefits
- Volunteer work
- Exemptions

Information on the federal laws that govern wages is available on the Fair Labor Standards Act website:
<https://www.dol.gov/agencies/whd/flsa>

XIII. Federal Fair Labor Standards Act

Rules

The federal Fair Labor Standards Act (FLSA) was enacted in 1934, during the Great Depression. Its original purpose was to spread available work among more workers. In 1978, the law was applied to local governments because of a U.S. Supreme Court decision. Congress then modified the law to accommodate some different employment practices in the public sector. As the law now reads (29 USC §213[b]20), it applies to organizations that have four or more employees who work either full or part time. (For example, if an FPD employs a halftime paid fire chief, a halftime paid secretary, a quarter-time paid bookkeeper and a quarter time paid janitor, it is considered to have four employees. In other words, each person counts as an employee, regardless of the number of hours he or she works.)

FPD boards with paid firefighters should retain a competent attorney who has a thorough understanding of employment law. Doing so might prevent a lot of troubles, penalties and/or back wages.

The law has three sets of rules that can apply to public entities, including FPDs:

Volunteers. Volunteers are not directly covered by the FLSA. Thus, an FPD's rules covering these workers can generally be anything that is reasonable. As discussed in *Chapter XII. Personnel*, volunteers can receive some compensation for their labors, provided it doesn't exceed 20 percent of the rate for paid firefighters in the locality.

Generally, an employee cannot volunteer for the same work for which he or she is paid. An FPD employee could volunteer to do work for a city or a county, but time spent volunteering for the FPD would be hours worked and would have to be paid. This would probably hold true even in a case such as an FPD office secretary who volunteers to go on a fire call.

Normal employees. A secretary, bookkeeper, mechanic or other worker — even if cross trained as a firefighter. EMTs and paramedics who do not meet the four part test described in the *Career firefighter rules* section of this chapter are considered normal employees for purposes of overtime and compensatory time.

Career firefighters. Those who meet the four part test described in the section *Career firefighter rules*. A firefighter who is engaged in fire prevention and mitigation activities, such as building inspection, safety talks and handing out free smoke alarms, is considered to be working in firefighting and would be classified as a "career firefighter." Similarly, a

firefighter safety officer or a firefighter public information officer is a career firefighter.

Arson investigators. If arson investigators do not have the authority to make arrests, they are considered normal employees for purposes of overtime and compensatory time. Arson investigators who meet the four-part test described in the *Career firefighter rules* section of this chapter, or have the authority to make arrests, are considered career firefighters for purposes of overtime and compensatory time.

Hourly equivalent wage

Regardless of how they are paid, every employee must have, on record, an hourly equivalent wage, which is the figure used for calculating overtime rates. If an employee is paid on an other than hourly basis, the equivalent figure is calculated by dividing hours worked per year into annual earnings.

Overtime and compensatory time

Government workers, including FPD employees, are not treated the same as private sector workers because the government does not always have to pay employees one-and-a-half times their normal pay (time and a half) for overtime hours. In this way, Congress recognizes that government agencies are required to live within a legislative budget and may not be able to pay for overtime. A public entity, including an FPD, is allowed to give employees extra time off in the future instead of paying overtime, provided that workers receive one and a half hours of future time off for each hour of overtime worked. However, the amount of compensatory time off is limited. Regular employees, such as non firefighters, must be paid time and a half after they accumulate 240 hours of compensatory time (or 160 hours of overtime work). It is illegal to allow the employee to accumulate compensatory time beyond the maximum rather than paying overtime. (See the *Career firefighter rules* section of this chapter for firefighter overtime and compensatory time.)

Once compensatory time is earned, it is the property of the employee. Within the bounds of reasonableness, it may be taken when the employee desires. Under a May 2000 ruling by the U.S. Supreme Court, however, public employers may require that employees take compensatory time they have accrued.

An employee does not have the right to decline to be paid overtime. Remember, the original passage of FLSA in 1937 was not intended to benefit workers but to employ more workers when over a fourth of the workforce was unemployed. The purpose of replacing the 60 hour week with the 40 hour week was to provide more jobs.

When an employee dies, quits, retires, is fired or is laid off, all the employee's unused compensatory time must be paid at either the employee's final rate of pay or the employee's highest rate of pay in the final three years, whichever is higher. Thus, accrued compensatory time is not

only limited but is also an FPD liability on the FPD's financial reports, so the FPD needs to track it and not just rely on employees to track it. Timesheets need to report compensatory time earned in each period.

On-call time

FPD personnel are often on call. Generally, rulings under FLSA on whether on call time must be paid have hinged on the required show up time. If an on call worker is required to arrive at work in 10 minutes or less, on call time counts as hours worked. However, most rulings suggest that if a called in worker has more than 10 minutes to arrive, on call time does not count as hours worked.

Career firefighter rules

The Fair Labor Standards Act contains a specific exemption (29 USC §207[k]) that establishes special rules for career firefighters. Like most federal statutes, it begins with a definition. For FLSA purposes, a firefighter is someone who:

- (1) Is trained in fire suppression;
- (2) Has the legal authority and responsibility to engage in it;
- (3) Is employed by a city, county, fire district or state; and
- (4) Is engaged in the prevention, control or extinguishment of fires or responds to emergency situations where life, property or the environment is at risk.

Employees who meet all four standards may work on a 28 day schedule, with overtime pay accruing when they exceed 212 hours of work or 53 hours in a seven day work period. These employees may accumulate up to 480 hours of compensatory time (equal to 320 hours of overtime work).

Another special firefighter rule allows career firefighters to arrange among themselves to trade time. Here is an example: Firefighter Adams is scheduled to work for 48 hours this Friday and Saturday. But her wedding anniversary is this weekend, and she would like to spend the weekend with her family. She arranges with a coworker, Firefighter Baker, to work Friday and Saturday. This exchange of work does not require the advance permission of the employer. Baker works as promised, but the FPD pays Adams because she was the one scheduled to work. Adams makes her own arrangement to compensate Baker, which usually takes the form of Adams working for Baker later when requested. In any industry other than firefighting, this practice of trading time is illegal. It is legal for firefighters, however, provided the employer does not forbid the practice.

Penalties

If an employee files a complaint about labor practices, the U.S. Department of Labor (DOL) investigates. The DOL investigators do not look solely at the hourly records of the employee or former employee who

complained, but they review all work records of all employees — even those the FPD counts as exempt from coverage. And they usually find violations of some sort, nearly always in record keeping. The DOL can assess penalties that go back two years from the date the complaint was filed, or three years if the employer was purposely trying to dodge the law. Penalties can be doubled, or even tripled, for certain violations.

Don't risk an investigation. Keep careful overtime records and compensate overtime.

Other common benefits

The FLSA concerns only three sets of numbers: 40 hours in seven days or for “207(k) employees,” 212 hours in 28 days, or 53 hours in seven days. The FLSA does not concern holidays, vacations, Sundays, sick leave or other common employee benefits. Nor does it concern special pay rates, such as night differential and holiday pay. Whether to offer any of these benefits is an FPD board decision.

Exemptions

Several groups of employees, including executive, administrative and professional workers who are paid a salary, are exempt from certain overtime and minimum wage coverage rules. Each class is tightly defined. Executives must have hire and fire authority, make management decisions, supervise at least two workers (not counting themselves) and make at least \$455 per week. Administrative workers must spend at least 80% of their work time deskbound and doing administrative tasks, be able to exercise independent judgment and make at least \$455 per week. Professionals must have completed a recognized training program, usually at the master's degree level, meet the pay criteria and be able to exercise independent judgment. Those who provide training and instruction may also be exempt.

Exempt employees must be paid on a salary basis, which means they are not subject to having their pay docked for any reason other than dangerous safety violations, regardless of hours worked. An FPD puts itself at risk if it pays overtime to an exempt employee, because that makes it seem as if the employee is an hourly, rather than salaried, worker.

In most FPDs, only the fire chief is likely to be classified as exempt, and then only if the chief supervises at least two employees. An FPD should be cautious about classifying workers as exempt. Boards are encouraged to become well informed about the implications of such decisions.

Training, Physical Fitness and Equipment

- Fire and deaths rare
- No minimum training in Missouri
- Physical fitness
- Equipment and grants

National Fire Department

Calls: 2016

- Fires: 4%
- Medical aid: 64%
- False alarms: 7%
- Mutual aid: 4%
- Hazardous materials: 1%
- Hazardous conditions and others: 19%

Source: <https://www.nfpa.org/News-and-Research/Data-research-and-tools/Emergency-Responders/Fire-department-calls>

For information on the 2016 training needs assessment on the National Fire Protection Association website: <https://www.nfpa.org/News-and-Research/Data-research-and-tools/Emergency-Responders/Needs-assessment>

See *License and certifications under Chapter XIX. Ambulance EMS* for information regarding training for medical licenses and certifications

XIV. Training, Physical Fitness and Equipment

Fire and deaths rare

Many people are unaware of how remarkably the risk of fire has been reduced. In the 1920s, it was not unusual for any family to have had someone die in a fire. Now, fire fatalities are rare. This change is due partly to safer living conditions, with fewer kerosene lamps and open fires for heat, partly due to building codes and partly to improved training of firefighters. Today, most fire service organizations respond to medical emergencies and to automobile accidents to help remove people from vehicles more frequently than they fight fires.

No minimum training in Missouri

Nationally, recommended minimum levels of training for firefighters have been set. Missouri, however, does not require a minimum level of training. It is up to the FPD board to insist on a minimum level of competence. (See *Licenses and certifications in Chapter XII. Personnel* for information on required training for emergency medical services personnel.)

The first two levels of training are known by their titles, Firefighter I and Firefighter II. Ideally, all firefighters should be trained at the Firefighter I level before starting to fight fires, and they should complete Firefighter II training within a year after that. Achieving this training with volunteers can be difficult, however. Requiring a minimum level of competence with paid firefighters can be easier.

A 2016 nationwide study showed that, of the departments with structural firefighting capability, nearly 50% do not formally train all personnel for fighting structural fires. Of departments that provide EMS, 34% have not formally trained all personnel involved in EMS. Of the departments providing wildland firefighting, 63% have not formally trained all personnel involved. And, 40% of departments providing technical rescue have not formally trained all personnel involved.

An FPD should encourage or require its firefighters to receive training and provide an adequate budget to allow this. Many free and low cost resources are available to help FPDs provide training.

Firefighter I and Firefighter II training is available free from the State Fire Marshal's Office in the Missouri Division of Fire Safety. These classes and many others are available from the University of Missouri Fire and Rescue Training Institute sometimes for a fee, though grants may be available to cover the costs.

Advanced training also is available from the U.S. Fire Administration National Fire Academy (NFA), which is part of the Department of Homeland

Security. Firefighters who attend the fire academy receive reimbursement of travel expenses, meals and dormitory space during training.

Physical fitness

Physical fitness may be nearly as important as fire related training. Firefighters need to eat right, exercise and get regular medical checkups. Everyone in an FPD benefits when an FPD board encourages physical fitness for its firefighters.

The leading cause of death among firefighters is sudden cardiac arrest. This is true for both career and volunteer firefighters. Firefighting involves long periods of intense boredom, waiting for a fire, followed by short periods of extreme stress, physical activity and danger. Nationally, about 100 firefighters die each year; sudden cardiac arrest causes about half of these deaths. No statistics are published about nonfatal firefighter injuries; however, FPDs could learn from reviewing online summaries of near misses.

FPD boards should create a safe and healthy culture and work environment for the FPD by adopting health and safety policies for all aspects of the FPD. The board should also consider appointment of a certified safety officer with adequate budget and with real authority to keep everyone safe. And when creating a safe and healthy culture and work environment at the FPD, members of the FPD board should also lead by example in their personal lives.

Physical fitness also includes being protected against infectious diseases and bioterrorism. Employers that have employees who may be exposed to infectious materials must provide vaccination programs for all employees and volunteers who may be exposed to infectious diseases; however, participation in such vaccination programs should be voluntary. See 19 C.S.R. 20-20.091 for more detailed information.

Every national fire service organization supports the Everyone Goes Home® program to prevent line of duty deaths (LODD) and injuries — and FPD boards should consider also supporting the campaign, especially because the second of 16 firefighter life safety initiatives is aimed at elected fire officials: Enhance ... organization accountability for health and safety throughout the fire service.

Equipment and grants

To properly equip firefighters to fight fires costs about \$5,500 per person. This provides four main elements:

- (1) Personal protective clothing, that is, fire resistant clothing (including boots, gloves, hood and helmet) to help protect firefighters from the heat;
- (2) A self contained breathing apparatus, known as SCBA, that allows firefighters to enter areas with smoke;

Training sources:

- Missouri Division of Fire Safety:
<https://dfs.dps.mo.gov/programs/training>
- Missouri Fire and Rescue Training Institute:
<https://extension2.missouri.edu/programs/mu-fire-and-rescue-training-institute>
- National Fire Academy, see the Department of Homeland Security website:
<https://www.usfa.fema.gov/training/nfa/index.html>

For more information on firefighter health and safety, including firefighter fatalities, injuries, close calls, fitness, and wellness, see the U.S. Fire Administration website: <https://www.usfa.fema.gov>

For more information on the Everyone Goes Home® Firefighter Life Safety Initiatives see the website: <https://www.everyonegoeshome.com>

See *Chapter XIX. Ambulance EMS* for information about equipping medical licensing of ambulances

(3) A “personal alert safety system,” or PASS device, that allows firefighters to be located if they become disoriented, trapped or injured when inside a building; and

(4) A portable radio for communication within the incident management system.

A 2010 nationwide survey found that 9% of fire service organizations could not provide all responders with their own personal protective clothing, 51% could not equip all firefighters on a shift with an SCBA, 39% did not have enough PASS devices to equip all responders on a shift, and 51% did not have enough portable radios to equip all responders on shift.

Firefighting equipment, and its regular use, is critical for effective firefighting and safety. For example, a few years ago, a firefighter death in Missouri occurred when a volunteer in a small community was fighting a brush fire without protective clothing. The wind shifted, and he was trapped. Proper protection is important even when fighting a brush fire.

Many FPDs use automated external defibrillators (AEDs); however, the law (190.092) and FDA regulations for a class II medical device require an FPD to make sure that expected AED users receive nationally recognized training in cardiopulmonary resuscitation (CPR) and AEDs, that the AED is maintained and tested according to the AED manufacturer’s operational guidelines, and that clinical protocols, or “doctor’s orders,” are approved by the FPD’s medical director (See *Medical Direction* in *Chapter XIX*). The medical director must also review all situations when the AED was used (190.092.2[4]). If FPDs have basic life support (BLIS) ambulances or stretcher vans, FPDs are required to equip each with an AED and staff each with at least one individual trained in the use of an AED (190.060.7; 190.092.5).

Many FPDs also use epinephrine auto injectors, commonly known by their trade name EpiPen®; however, similar to AEDs, without completing a state approved epinephrine auto injector training course, no one without a medical license or certificate can use one (190.246.2[1]). FPDs with epinephrine auto injectors must use, maintain, and dispose of the devices in accordance with the Missouri Department of Health and Senior Services (DHSS) rules (190.246.2[2]).

To help FPDs obtain equipment, Missouri has a statute (320.091) that allows larger fire service organizations to give out of date or obsolete equipment to other departments without fear of liability for providing substandard equipment, on the theory that something is better than nothing. (Note: Chapter 320 deals generally with fire protection, whereas Chapter 321 deals with FPDs.)

The federal government has several grant programs administered by the U.S. Fire Administration to help communities pay for fire equipment and facilities. These include Assistance to Firefighter grants and the Staffing for Adequate Fire and Emergency Response, or SAFER, grant

For more information about federal firefighting grants and funding alternatives see: <https://www.usfa.fema.gov/grants/index.html>

For more information about federal and state surplus property programs, see the Office of Administration’s website: <https://oa.mo.gov/general-services/surplus-property>

For more information about all assistance programs to FPDs, see MDC’s website: <https://mdc.mo.gov/property/fire-management/fire-department-assistance-programs>

program. Applications for both programs must be submitted electronically. The programs are highly competitive, but helping to provide protective equipment is currently a high priority for the government.

In Missouri, the Department of Conservation (MDC) has a smaller grant program to help with what are now called “wildland fires” (namely, brush fires and forest fires).

The MDC also has a matching grant program that helps rural and volunteer fire departments obtain equipment. In addition, the MDC participates in the federal Excess Property Program through an agreement with the U.S. Forest Service (USFS), to secure excess federal equipment to redistribute to rural fire departments. To be eligible, FPDs have to sign a mutual aid agreement with MDC. The Missouri State Office of Administration in Jefferson City also administers federal and state surplus property programs.

For more information **Nepotism:
Do Not Appoint Relatives**

- The constitution
- Degrees of relationship
- Consanguinity and affinity

XV. Nepotism: Do Not Appoint Relatives

The constitution

The Missouri Constitution, in Article VII, Section 6, is direct and to the point on the matter of nepotism: “Any public officer or employee in this state who by virtue of his office or employment names or appoints to public office or employment any relative within the fourth degree, by consanguinity or affinity, shall thereby forfeit his office or employment.” In other words, an official or public employee who appoints a relative loses his or her own office or job. This happens at the time the appointment is made, even if the appointment is to an unpaid position.

The section forbids appointment of close relatives. An official who recuses from voting when a relative is under consideration violates nothing. A person would not be in violation if elected to a position that a relative held previously by election or appointment. Siblings can be on the board, as long as the voters do the appointing. However, if a director votes to hire his or her child, or any relative within the fourth degree, to work in the office, the director’s job is forfeited, though the improperly appointed relative would keep the position. If the rest of the board were to hire the director’s relative for the same job, there would be no violation. It is the use of an official position to appoint a relative that is prohibited.

Degrees of relationship

All relatives have a common ancestor. Degrees of relationship are calculated by counting from one relative back to the common ancestor, then forward to the other relative. First cousins, for example, the children of siblings, would be related in the fourth degree: from A to parent (1) to grandparent (2) to B’s parent (3) to B (4). Sisters would be related in the second degree: from one sister to the parent (1) to the other sister (2).

Consanguinity and affinity

Consanguinity and affinity are fancy ways of saying, “by blood or by marriage.” A daughter and daughter in law count exactly the same. Spouses count as a unit, so that relatives of either are equivalent relatives of both. Whether ex relatives are considered still related is unclear. The following figure shows three degrees of consanguinity and affinity from a director.

For more information on consanguinity, see the relationships chart on the website of the Missouri Ethics Commission: <https://www.mec.mo.gov/WebDocs/PDF/Misc/RelationshipChart.pdf>

XVI. Conflict of Interest and Other Offenses

The law

In ordinary language, the conflict of interest (COI) law prohibits officials from doing business with themselves (105.450–466). It says officials may not be paid or receive anything of value for official actions, beyond the statutory salary. Nor may they use information gained in an official capacity to benefit them or another, or official acts to benefit spouse or children (105.452; 576.050). These rules cover elected officials and all public employees.

The prohibitions in the conflict of interest law not only cover the time a person serves in office or works for a public entity, but also extend for a year afterward. This “follow on ban” covers actions that could influence decisions of the FPD, or dealing in a business with any matter that came before the FPD while the person was in office or working there.

Working for or renting to the FPD

The law limits any paid work for the FPD by an appointed official to \$500 per transaction and \$5,000 per year beyond the official's regular salary. Rent, sale or lease of property is limited to the same amounts (105.454).

An exception is provided when a competitive bid is taken and the official's bid is lowest (105.454[2]). Board members are prohibited from working for the FPD for pay, but may sell, rent or lease within dollar limits upon lowest bid. However, note that in this exception, the language is not the “lowest and best” but the absolute low dollar bid (lowest bid means that there were at least three bids, because if only two bids were required, the word lower would have been used in the statute instead of lowest). Keep in mind that the dollar limit is firm, regardless of circumstances. Above \$5,000, any official's work is unpaid, period. Also keep in mind that if a bid is considered, the official submitting the bid must not vote. Because members have a duty to vote, abstention should be authorized by motion of the remainder of the board.

Officials' business interest

The law likewise limits businesses with which an official or an official's family members are affiliated to the \$500 per transaction and \$5,000 per year maximum. Having substantial interest in a business is defined as the official or family member owning 10% or more, having an interest worth \$10,000 or more, or drawing \$5,000 or more annual salary (105.450[10]). For example, if the board president's spouse works at a local restaurant and is paid over \$5,000 per year, the president has a substantial interest in that restaurant, and the FPD annual training dinner should be held somewhere else.

Conflict of Interest and Other Offenses

- The law
- Working for or renting to the FPD
- Officials' business interests
- Penalties
- Bribery, etc.
- Disclosure

RSMo 105.450(10)

“Substantial interest,” ownership by the individual, the individual's spouse, or the individual's dependent children, whether singularly or collectively, directly or indirectly, of ten percent or more of any business entity, or of an interest having a value of \$10,000 or more, or the receipt by an individual, the individual's spouse or the individual's dependent children, whether singularly or collectively, of a salary, gratuity, or other compensation or remuneration of \$5,000, or more, per year from any individual, partnership, organization, or association within any calendar year

Information on Missouri Ethics, including the Financial Disclosure Statement form, is available on the Missouri Ethics Commission website:
<https://mec.mo.gov>

Financial Disclosure Statement for Political Subdivisions form can be found at:
https://www.mec.mo.gov/WebDocs/PDF/Fillable/PFD/PFD_Short.PDF

Penalties

The first conviction for violating the conflict of interest law is a Class B misdemeanor, with a maximum punishment of six months in jail and/or a \$1,000 fine (105.478[1]). Every additional offense is a Class D felony, with a maximum punishment of seven years in prison and/or a \$10,000 fine (105.478[2]).

Other Offenses

There are other offenses that can get FPD officials in trouble, including bribery (576.010); acceding to corruption (576.020); obstructing government operations (576.030); and official misconduct (576.040).

There are also other offenses that, although not illegal, may get you convicted in the court of public opinion. Flying in fresh lobster and caviar for that annual training dinner might get you in the same hot water as the lobster! And don't forget the unwritten law of being frugal with public money — how much chrome is needed on that new fire truck?

Disclosure

Officials and director candidates of an FPD that has a budget of \$1 million or more are required to fill out the Financial Disclosure Statement for Political Subdivisions form and file it with the Missouri Ethics Commission, unless the FPD biennially adopts an ordinance, order or resolution by Sept. 15 of the preceding year to establish its own public method of disclosure that fulfills the law (105.483[11]). A certified copy of the ordinance, order or resolution must be sent to the Missouri Ethics Commission within ten days of its adoption.

For FPDs that have a budget of \$1 million or more and do not have their own public method of disclosure, the law prescribes filing deadlines (105.487):

- **Candidates:** no later than 14 days of filing for election;
- **Officials:** within 30 days of initial election, appointment, or employment; and
- **Officials:** annually by 5 p.m. on May 1; however, only one statement per year.

The penalties for failing to disclose, or untimely disclosure, can be expensive and can lead to removal from the ballot or removal or suspension from office (105.492; 105.963.3).

XVII. Bond Issues

Explanation

When an FPD needs long term financing for capital expenditures, the method of raising funds that the Missouri Constitution and statutes provide is to issue bonds (321.220[5]; 321.240; 321.260; 321.290; 321.340 380; 321.600 [5]). Examples of capital expenditures include building an additional firehouse, purchasing new equipment that will last multiple years, and making other purchases or improvements of long term usability rather than normal annual operating expenses.

These bonds come in two types: general obligation and revenue. General obligation bonds use all taxable real estate and personal property in the FPD as security to borrow against. Revenue bonds use as security only the revenue to be produced from the project or activity that the borrowing is for. FPDs nearly always use general obligation bonds because almost all their revenue comes from taxation. There are few situations for which revenue bonds could be used.

Also see *Long-term debt and lease purchases* section in *Chapter X. Budgets and the Budget Process*.

General obligation bonds

General obligation bonds represent a lien against every taxable property in the FPD — even after annexation into a city with its own fire department; thus, they are more tightly controlled than revenue bonds. Commonly called GO bonds, they can be issued only after voters approve a bond issue by an “exceptional” majority. At high turnout elections (April, August or November), this means four sevenths or 57.1% approval. At low turnout elections (February), it means two thirds or 66.7% approval.

After passage of a GO bond issue, an annual property tax levy raises the revenues needed to redeem these bonds. Should an FPD default on GO bonds, every taxable property in the FPD would have a proportional lien for its share placed against it. Property could be sold at auction for nonpayment (321.280).

Revenue bonds

As previously stated, revenue bonds do not obligate taxable property in the FPD, but only the revenue that is expected to be received from the purpose for which the funds were borrowed. An example of when a revenue bond might be used is if an FPD contracted with a city adjoining the FPD boundaries to provide service for an annual contract fee (321.221). Revenue bonds could be used to finance construction of a firehouse inside that city, payable from the contract payments.

Law firms that specialize in bond issues generally assess whether the proposed projects will produce necessary revenues to retire revenue

Bond Issues

- Explanation
- General obligation bonds
- Revenue bonds
- Interest
- Loan term
- Maximum borrowing
- Debt retirement fund

Long-Term Debt

Voter-approved Bond

Short-Term Debt

Board-approved Notes Payable

bonds. If a law firm considered the bond issue unlikely to cover its obligations, it would not draw up the bond issue.

Interest

As political subdivisions, FPDs can issue bonds that are exempt from both state and federal income taxes. This tax exemption makes GO and revenue bonds attractive to investors, which allows borrowing at lower interest rates.

General obligation bonds usually have a slightly lower interest rate than revenue bonds.

The interest rate of FPD bonds is capped at 6% (321.340).

Loan term

FPD laws permit borrowing for any term up to 20 years (321.340). Whatever the term, the reserves set aside to repay bonds can be no more than amounts necessary to make the current year's and the coming year's payments. With GO bonds, each year's assessed property valuation is calculated against payment amounts needed, the dollar value of bonds maturing, to establish the needed levy amount.

Maximum borrowing

According to Article VI, Section 26b, bonded indebtedness cannot exceed 5% of the value of taxable tangible property in the FPD as shown by the last state or county assessment. For example, an FPD with a \$20 million assessed valuation, could only have \$1 million in bonded indebtedness.

Debt retirement fund

When certifying annual levies the FPD board needs to take into account a separate levy for the next year's installments and interest payments on bonds. (321.260). The tax revenues from this separate levy must be deposited into a separate reserve fund for debt retirement (321.290), that may have enough tax revenue for up to two years' of installments and interest payments. (Also see the Long term debt and bond issues section in *Chapter VIII. Property and Sales Taxes and Fees.*)

XVIII. Elections

Timing

FPD elections for directors are held on municipal-election day, which is the first Tuesday after the first Monday in April (115.121.3; 321.210). This minimizes costs because election costs are divided proportionally among all entities holding elections on a particular day (115.063; 115.065; 115.077; 321.220 [13]; 321.600[13]). The April election has the greatest number of potential ballot issues, with the schools, cities and all districts participating.

Besides April, other available election days for FPDs are in the following months:

- February (only for bond issues and limited other purposes);
- August; and
- November.

With two exceptions, FPD boards are responsible to call for all elections. If the county clerk or board of election commissioners reminds an FPD board of its responsibility for a director election, it is only as a courtesy. If an FPD board forgets to call for a director election, the FPD's attorney will have to petition the court for a resolution, which could include reprinting ballots if the court allows for a special, abbreviated filing period or more likely, holding an August or special election (which could be more expensive if there is no other local government to share the election costs). Either way, the resolution will usually come with a court admonishment for the FPD board to never forget to call for a director election again.

A recall election, along with the election of a replacement director if the recall is successful, is the responsibility of the county clerk or board of election commissioners, not the FPD (see *Chapter IV. Initiative, Referendum and Recall*).

Elections are conducted by the county clerk or the board of election commissioners. In fact, the law says that county clerks and boards of election commissioners are the election authority (115.015), which gives them broad jurisdiction over FPD elections.

Other FPD elections include:

Election	Authorization
Bond issue	321.340-380
Property and sales taxes, including pensions	321.225, 321.240-244, 321.246-247, and 321.620
Increase of directors	321.120.5
Consolidation	321.460, 321.687 and 321.688
Dissolution	321.390
Citizen initiative	321.490

Elections

- Timing
- Mail-in elections
- Posts to be filled
- Non-elections
- Order of events

RSMo 115.646

No contribution or expenditure of public funds shall be made directly by any officer, employee or agent of any political subdivision to advocate, support, or oppose any ballot measure or candidate for public office.

Payments for estimated election costs are due to the county clerk or board of election commissioners the third Tuesday before the election. After the election, overpayments are to be promptly refunded or any remainder due must be paid by the fifth Tuesday after the election (115.077.2).

Mail-in elections

FPDs are eligible to have mail-in elections. This provision allows the county clerk or board of election commissioners to conduct an election by mail if requested in writing by the FPD; however, mail-in elections are only allowed when the election doesn't involve an elected official being recalled or a candidate, and when only the FPD voters are voting. That is, there are no other jurisdiction's questions on the ballot.

Posts to be filed

The only elected officials of an FPD are the board members. Everyone else is elected, appointed, designated or hired by the board, including the office staff, fire chief, volunteers, and the secretary and the treasurer. After the original board completes staggered terms, so that all members will not come up for election at the same time, terms are for six years; however, board members in St. Charles County FPDs serve four-year terms (321.120.4).

Non-elections

FPDs are eligible to have a non-election. This provision allows local governments with nonpartisan elections to skip holding an election if the number of candidates who file is no greater than the number of open seats (115.124). When these conditions are met, no election is needed, and the candidate is declared elected without ever appearing on a ballot or any votes being cast. The candidate assumes the responsibilities of office at the same time and in the same manner as if he or she had been elected.

This provision can cause problems. In one FPD, a woman thought no one was filing for a board seat that was coming open. Rather than see it blank on the ballot, she filed. Later, when someone who was more serious about the position filed, she offered to drop out. The board, eager to save the costs of an election, offered to reimburse her costs for getting a court order to remove her name. She became suspicious of the board's motives and changed her mind about withdrawing.

Order of events

The sequence in which a new director is elected (or an incumbent director re-elected) is laid out by law.

1. The current FPD board calls for the director election and the candidate filing period, which works out to be mid-December to mid-January, because the law says the filing period opens the 16th Tuesday before the election and closes the 11th Tuesday before the election (115.127.5);

2. The FPD publishes a newspaper notice of the director election, candidate filing period, and the proper place for filing, which is the headquarters for the FPD (115.127.5; 321.130.1; 321.210);
3. During mid-December to mid-January, candidates file declarations of their candidacy with the FPD secretary, which is an oath that they possess all the qualifications for office (321.130.1; 321.130.4) and pay the FPD a \$50 filing fee (321.130.1; 115.357.1(2); 321.210);
4. In late January, no later than 5 p.m. on the 10th Tuesday before the election (a week after the candidate filing period ends), the FPD must notify the county clerk or board of election commissioners of the election and candidates, which is in the form of a certified copy of the legal notice to be published by the county clerk or board of election commissioners (115.125; 321.130.4; 321.210);
Note: Unless the motion or resolution calling for the director election and candidate filing also authorizes the FPD board secretary to notify the county clerk or board of election commissioners, in order to meet the deadline, the FPD board will have to meet for such authorization within a week after candidate filing ends.
5. The county clerk or the board of election commissioners conducts the election;
6. The verification board or the board of election commissioners certifies the election results to the FPD within 14 days of the election (115.507);
7. The current, now outgoing FPD board declares election results, typically based on the certified election results; however, sometimes circumstances may dictate that the candidate with the most number of votes might not be declared the winner (due to death of the candidate, withdrawal by the candidate, refusal to serve by the candidate, the candidate no longer being qualified, etc.);
8. The outgoing FPD board, having no further orders of the day (new business would be out of order for an outgoing board), adjourn sine die — which, in Latin, means to never meet again (board members not re-turning to the board may want to say a few departing remarks before adjournment);
Note: Before adjourning sine die, because the outgoing board is not going to meet again to approve the minutes of its last meeting, the out-going board should appoint a committee to approve the minutes of its last meeting — typically the committee is the new, incoming board or at least the incumbents of the new, incoming board.
9. The director-elect takes the oath or affirmation (see *Oath of office* under *Chapter III. Officials and Board Operations*, especially for information on timely filing of oaths with the circuit clerk);

For a calendar with the various election-related dates already figured out, see the Missouri Secretary of State's website: <https://www.sos.mo.gov/elections/calendar/2020cal>

An example of the agenda for the outgoing and incoming boards is provided in the Sample Forms section of this manual.

10. The secretary, as the highest ranking officer of the FPD (the chair and vice chair no longer exist because the outgoing board no longer exists), calls to order the incoming FPD board;
11. The secretary's power is short-lived however, as the first order of business is the election of the board chair and FPD president to a new two-year term — even if it's the same chair/president as the outgoing board (321.170);
12. The oath of office is administered to the new chair/president — even if it is the same person that was chair/president of the outgoing board;
13. The chair's first order of business is the election, appointment and delegation of other officers to their new two-year terms of office (see the *Officers* section of *Chapter III. Officials and Board Operations*), for example, vice president/vice chair if the FPD has such a role; the secretary; the custodian of records; the treasurer; and the budget officer (321.170; 321.210; 610.023.1; 67.020);
14. Oaths of office are administered to the new officers — even if the same individuals are the same officers as before;
15. The first meeting of the new, incoming FPD board continues to adjournment; however, unfinished business would be out of order because all unfinished business “died” with the outgoing board.

XIX. Ambulance and Emergency Medical Services

FPD rules and regulations for ambulance and emergency medical services

Unlike ambulance districts, there are few laws (321.225; 321.622) regarding FPD based ambulance and emergency medical services. However, if an FPD is going to fix, charge and collect reasonable fees and compensation for operation, management or the use of ambulance services, this all has to be done according to FPD rules and regulations properly adopted by the FPD board through resolutions and ordinances prior to any billed services provided. What the FPD board adopts must be in conjunction with federal and state laws, rules and regulations. An FPD also needs to ensure its rules and regulations for ambulance services render the highest quality of emergency medical care and without discrimination (190.105.12; 191.665; Chapter 213), although those who willfully disregard any established rules and regulations for ambulance services should be excluded by the FPD.

Many of the FPD rules and regulations regarding ambulance services may involve medical direction (see *Medical direction* under this chapter for more information about medical direction).

Health insurance carriers and managed care plans must pay benefits directly to ambulance services and emergency medical response agencies (190.205.1) and cannot prohibit or discourage the use of the 9 1 1 emergency telephone system to avoid using ambulance services when there is an emergency (190.205.2).

When collecting for claims, by law (190.250), ambulance services also have the same rights granted to hospitals regarding liens for the cost of services upon any and all claims, counterclaims, demands, suits or rights of action of anyone receiving treatment, excluding workers' compensation claims, but "including any personal injury as the result of the negligence or wrongful act of another, which such injured person may have, assert or maintain against the person or persons causing such injury for damages on account of such injury."

Public ambulance services, by law (190.827), may also receive additional revenue in the form of reimbursement payments from the Missouri Department of Health and Senior Services (DHSS) if the ambulance service has a Missouri HealthNet participation agreement. This "MO HealthNet" revenue is the result of a special tax private ambulance organizations pay for the privilege of being able to provide ambulance services in Missouri. Public ambulance services, such as an FPD, are required to keep certain records to determine the amount of its reimbursement payment and report such information to the DHSS (190.806).

Ambulance and Emergency Medical Services

- FPD rules and regulations for ambulance and emergency medical services
- Federal and state rules and regulations for ambulance and emergency medical services
- Licensing ambulance and emergency medical services
- Licenses and certifications for EMS personnel
- Record keeping for ambulance and emergency medical services
- Medical direction
- Medicare participation
- Federal privacy laws
- State privacy laws
- Patient safety organizations
- Management contracts

**Emergency Medical
Response Agency (EMRA)**

Utilizes paramedics or EMTs
but does not transport patients

For more information on
the Clinical Laboratory
Improvement Amendments of
1988 (CLIA) regulations, which
cover federal clinical laboratory
standards applicable to all
U.S. facilities or sites that test
human specimens for health
assessment or to diagnose,
prevent, or treat disease, see
the CDC website:
<https://www.cdc.gov/clia>

**Federal and state rules and regulations for ambulance and
emergency medical services**

FPDs must follow all the state laws, rules, and regulations regarding medical licensing of ambulances (19 CSR 30 40.309) or emergency medical response agencies (190.133), which includes the vehicle (190.105), insurance (190.120), equipment and staffing. For instance, ambulances staffed with volunteer staff must also have an emergency medical technician (EMT) and at least one other crew member who has first responder certification, at the minimum (190.094).

Information on EMT and paramedic training, physical fitness, providing staff uniforms and equipping ambulances, including automated external defibrillators and epinephrine auto injectors, can be found in *Chapter XIV. Training, Physical Fitness and Equipment*.

Information on medical licenses and certifications that could be important to rules and regulations for ambulance services can be found in *Licenses and certifications* later in this chapter.

FPDs must also follow all federal and state healthcare laws, rules and regulations regarding such areas as operating emergency vehicles, ambulance licensing, licenses and certifications for emergency medical service (EMS) personnel, Medicare participation, privacy laws, joint public safety organizations and management contracts.

(See *FPDs have special circumstances* under *Chapter XII. Personnel* for more information on authorized emergency vehicle drivers and operations.)

Licensing ambulance and emergency medical services

For an FPD just starting ambulance or emergency medical services, the task of establishing these services can be daunting even if the services are being transitioned from an existing organization.

Ground ambulances and emergency medical response agencies (EMRAs) are licensed by the Missouri Bureau of EMS in the DHSS. The Bureau of EMS will require the FPD to submit an application for an ambulance service or an EMRA and will use the Ground Ambulance Service License Inspection Form during a site visit. During the site visit, all required documentation and records must be available, including records required by other regulatory agencies.

During the site visit by the Bureau of EMS, whether for a new or renewing ambulance service, the applicable documentation will be reviewed:

- Safety program, including infection control program, including a comprehensive safety component;
- Vehicle operations and driving procedures;
- Communications procedures;

- Standards for clinical care (medical protocols and standing order authorizations from medical director);
- Vehicle and equipment maintenance procedures;
- Disaster/multiple casualty protocols; and
- Quality improvement program (including problem identification and resolution).

Licenses and certifications for EMS personnel

Employees and volunteers providing EMS are required to have certifications or licenses. In fact, no FPD is allowed to employ or permit any employee to perform any services for which a medical license or certificate is required unless and until the person possesses all required licenses and certificates (190.196.1). Therefore, FPDs absolutely must ensure licensed medical staff actually have their medical license and that medical licenses are not lapsed, suspended or revoked.

An FPD is required to report to the DHSS within 72 hours of having knowledge of one of their medical licensees being charged with child abuse, sexual abuse of a child, crimes of violence, or rape or sexual abuse (190.196.3). Medical licensees are also required to report to DHSS within 72 hours of being charged with the same offenses (190.196.4).

After first responder certification, the law (190.142) provides for the next levels of EMS licensure, which are known by their titles: EMT, EMT Intermediate (EMT I), and EMT paramedic (EMT P or, generally, just paramedic or medic). Achieving this licensure with volunteers can be difficult. Requiring licensure with paid EMTs and paramedics can be easier. Temporary medical licenses may be issued by DHSS to certain qualified health care professionals in good standing in another state, for example, military personnel, including the National Guard, in a hospital training program, or during a governor's declaration of an emergency (190.500).

FPDs should ensure their EMTs and paramedics receive continuing education to maintain their medical licenses and FPDs should provide an adequate budget to allow this.

Record keeping for ambulance services

According to law (190.133.2[3]; 190.175.1; 190.175.2) and the code of state regulations (19 CSR 30 40.375), every ambulance service and EMRA must maintain accurate patient care records, including, if applicable, the transportation of each patient. Patient care records must be retained for five years and must be readily available at any reasonable time during business hours for inspection by the Bureau of EMS of the DHSS (190.175.2; 190.175.5). Specific ambulance service records that must be kept and will be reviewed during site inspections by the Bureau of EMS for new or renewing ambulance services, include the following:

- Run report (ambulance run reports must meet required EMS data elements in 190.175.3);
- Medical direction agreement (190.103.4) and the code of state regulations (19 CSR 30-40.303[3][A], and [B]);
- Medical Director protocol and policy authorization;
- Vehicle maintenance records;
- Records of driver competency in emergency vehicle operations;
- Equipment maintenance records;
- Controlled substance security and record keeping;
- Documentation of ambulance response times;
- Licenses and certifications for EMS personnel;
- Memorandum of understanding (MOU) between an ambulance service and any emergency medical response agency (190.133.1[4]); and
- MOU with the FPD's dispatch agency (190.134).

(See *Record keeping* under *Chapter V. Secretary Powers and Duties* for additional information on FPD record keeping.)

Medical direction

As required by law (190.103) and the code of state regulations (19 CSR 30-40.303[2] and [3]), a qualified medical director is required for all ambulance services and emergency medical response agencies that provide:

- Advanced life support services;
- Basic life support services using medications or providing assistance with patients' medications; or
- Basic life support services performing invasive procedures including invasive airway procedures.

A medical director, in cooperation with FPD staff, has the responsibility and the authority (19 CSR 30-40.303[3][C], [D], and [E]) to ensure that personnel working under his or her supervision are able to provide care meeting established standards of care with consideration for state and national standards as well as local area needs and resources. A medical director, in cooperation with FPD staff, establishes and develops triage, treatment and transport protocols, which may include authorization for standing doctor's orders.

There are many things to be considered when a FPD appoints a medical director. Finding a medical director can be problematic for an FPD — consider a doctor at your local hospital or the (a) medical director of the ambulance service provider(s) serving your FPD.

By law (190.103.4), there must be an agreement between the FPD and its medical director that describes the medical director roles, responsibilities and authority. By law the agreement must include grievance procedures.

Advanced Life Support

Uses paramedics and EMTs

Basic Life Support

Uses only EMTs

Pediatric Life Support (PALS)

Care focused on infants and children

Other things in the agreement to consider include whether the medical director will be paid and whether medical malpractice insurance will be provided.

Medicare participation

Almost every FPD will want to bill patients who are beneficiaries of the Centers for Medicare & Medicaid Services (CMS), which is the federal agency responsible for administering the Medicare, Medicaid, State Children’s Health Insurance Program (SCHIP), Health Insurance Portability and Accountability Act of 1996 (HIPAA), Clinical Laboratory Improvement Amendments (CLIA), and several other health related programs. Therefore, a new FPD will need to submit a Medicare Enrollment Application to the fee for service contractor for the area served by the FPD.

The Medicare Enrollment Application must also include an Electronic Funds Transfer (EFT) Authorization Agreement, a Medicare Participating Physician or Supplier Agreement, and, on FPD letterhead, a signed attestation that the FPD will be legally and financially responsible in the event there is any outstanding debt owed to CMS. The FPD board must authorize in writing the “Authorized Official” of the FPD who will have the authority to legally and financially bind the FPD to the laws, regulations and program instructions of the Medicare program). (See *Contracts must be in writing* under *Chapter XI. Purchasing, Bids and the Bidding Process* for information on proper procedures.) The Medicare Enrollment Application may also specify optional “Delegated Officials” who should also be authorized in writing by the FPD board, so that the Delegated Official(s) can sign the Medicare Enrollment Application.

Before completion of the Medicare Enrollment Application and Medicare Participating Physician or Supplier Agreement, the FPD will need to complete a National Provider Identifier (NPI) Application Update Form to be assigned a unique NPI to the FPD. The FPD’s ambulance service will also need to be licensed by Missouri.

Deliberately falsifying information in the Medicare Enrollment Application to gain or maintain enrollment in the Medicare program will bring severe penalties, and any changes to the Medicare Enrollment Application must be reported in accordance with established timeframes in the code of federal regulations (42 CFR § 424.516[d]).

CMS may require you to submit or update your enrollment information. The fee for service contractor will notify you when it is time for the FPD to revalidate its Medicare Enrollment Application information.

Following insurance laws, rules and regulations is especially critical when charging patients who are Medicare beneficiaries. Medicare fraud and abuse costs taxpayers billions of dollars, so the federal government aggressively goes after providers, including FPDs, for errors (incorrect billing), waste (medically unnecessary services), abuse (improper billing)

For more information about CMS and its programs, visit <https://www.cms.gov>

FYI

Putting a new ambulance into service must be reported to CMS within 90 days of the ambulance being placed into service — the same for retired ambulances or ambulances that change their level of service, for example, basic life support to advanced life support

Medicare Abuse

Knowingly billing for services not furnished, supplies not provided, or both, including falsifying records to show delivery of such items; knowingly billing for services at a level of complexity higher than the service actually provided or documented in the file

practices such as up-charging), fraud (billing for services or supplies that were not provided). In fact, the CMS Office of Inspector General (IOG) has joined up with a Department of Justice (read FBI) Medicare Fraud Strike Force to fight Medicare fraud and abuse. Violations can and have resulted in nonpayment of claims, criminal and civil liability (fines and/or jail), exclusion (meaning the FPD can no longer receive payment from Medicare and state healthcare programs), and individuals can be disbarred from ever again being involved with Medicare — effectively ending anyone's career as a healthcare provider or administrator.

There are a number of federal laws governing Medicare fraud and abuse, including the False Claims Act (FCA), Anti Kickback Statute (AKS), the Physician Self Referral Law (Stark Law), the Social Security Act, and other parts of the United States Criminal Code. These laws specify the criminal and/or civil remedies that can be imposed upon individuals, or entities such as FPDs, that commit fraud and abuse in the Medicare Program. It is important to note that liability can exist without proof of actual knowledge or a specific intent to violate the law (meaning that ignorance of the law is not an excuse).

For example, an FPD submits a claim to Medicare for paramedic services provided, even though the patient care record indicates that the emergency medical services provided were for a lower, EMT level of medical services. If this claim is found to be false and a violation of the FAC, then the fine for this single false claim could be \$5,500–\$11,000 plus up to three times the amount of damages to Medicare as a result of the false claim. Individuals or entities, such as an FPD, involved with a false claim can also face criminal prosecution.

In the example above, falsifying the patient care record so that it looks like the patient required the higher paramedic care, is a violation in and of itself under the Civil Monetary Penalties Law (CMPL), which allows fines up to \$50,000 per violation plus assessments of up to triple the claim amount for each item or service, or up to triple the amount of money offered, paid, solicited or received.

Federal privacy laws

Many people may recognize one of the primary federal laws regarding privacy of health information: Health Insurance Portability and Accountability Act (HIPAA) of 1996. The second part of HIPAA, called Title II, created several programs to control fraud and abuse, but it also defined policies, procedures and guidelines for maintaining the privacy and security of personal health information (PHI), as well as outlining numerous offenses relating to health care, and setting civil and criminal penalties for violations. PHI is any information held by a covered entity that concerns health status, provision of health care, or payment for health care that can be linked to an individual. PHI is interpreted rather broadly and includes any part of an individual's medical record or payment history.

For more information on HIPAA, see the CMS website, <https://www.cms.gov/Regulations-and-Guidance/Administrative-Simplification/HIPAA-ACA/index>

In January 2013, updates were made to HIPAA as well as to the Security Rule Economic and Clinical Health (HITECH) Act. By regulation, the U.S. Department of Health and Human Services (HSS) extended the HIPAA privacy rule regarding PHI to covered entities and business associates such as FPDs. The HIPAA and HITECH laws and associated HSS and Federal Trade Commission (FTC) regulations include requirements about releasing PHI, to whom PHI must be released and how quickly, correcting PHI inaccuracies, ensuring protection and confidentiality of PHI for 50 years after death, communications containing PHI, notifications when PHI is used, tracking disclosures of PHI, reporting breaches of PHI (including proof that harm has not occurred due to a breach), written privacy policies and procedures, appointment of a privacy official, appointing a contact person for receiving privacy complaints, and training everyone in the workforce on procedures regarding PHI.

State privacy laws

Although the Missouri Sunshine Law does not specifically restrict disclosure of patient medical information, the catch-all phrase in the law (610.021), "except to the extent disclosure is otherwise required by law," does protect confidentiality of patient medical information found in other parts of the Missouri statutes (see *Chapter IX. Meetings, Records and Votes* for more information about Missouri's Sunshine Law).

Specifically, the law protects medical test results from disclosure without the patient's consent (191.317). Also prohibited is disclosure of Medicaid beneficiary information (208.120; 208.155), except the state code of regulations allows release of such information for treatment, payment or health care purposes (13 CSR 70-1.020). There also are laws regarding confidentiality of mental health records (630.140), nursing home residents' medical, personal, or financial records (198.032); information pertaining to enrollees or applicants of health maintenance organizations (354.515); and certain information disclosed to medical peer review committees (537.035).

There are also Missouri laws regarding confidentiality of specific types of information, such as genetic information (375.1309), newborn hearing screening results (191.928), certain abortion reports (188.055) and an individual's human immunodeficiency virus (HIV) status (191.656). Disease-specific registry medical reports and records are also subject to confidentiality requirements (192.739). Certain cancer reports from administrators or designated representatives of certain organizations must be kept confidential (192.655). Disclosure or misuse of a criminal background investigation (BGI) is prohibited (43.540). And finally, patient brain injury information and records maintained by rehabilitation or treatment facilities must be kept confidential (199.033).

Patient safety organizations

In an effort to work collaboratively to reduce the frequency of serious EMS events and to improve the quality of EMS patient care, the Center

FYI

Civil and criminal penalties for violations of PHI privacy can be severe--anywhere from minimums of \$100 to \$250,000 per violation, up to \$1.5 million annually and/or imprisonment for up to 10 years

For more information on Missouri's PSO, see the CPS website:
<https://www.centerforpatientsafety.org/psol>

for Patient Safety (CPS) is partnering with Missouri's emergency medical service community, which includes ambulance districts, fire-based EMS, hospitals and first-response providers.

The purpose of CPS is to strive to learn what adverse EMS events occur, why they occur and how to prevent them, and by this sharing, participants promote safety improvement across the industry.

CPS provides the EMS community with a safe haven of federal confidentiality and privilege protection for the data sent by the FPD to the Patient Safety Organization (PSO) through an internet-based Patient Safety Evaluation System (PSES) to collect and develop patient safety work products such as individual FPD performance benchmarking against state comparatives, and collaboration and knowledge sharing opportunities among EMS agencies within Missouri and across the nation — where discussions take place under the legally protected, patient safety review program of the PSO.

Working with the CPS makes it possible for an EMS agency such as an FPD to collect data on adverse events without fear of discovery or subpoena, perform analyses of those events (looking for patterns, similarities, etc.), comparing de-identified data from one EMS agency to others across the state, and collecting data on EMS quality indicators in a central repository leading to improvements in response times, greater efficiency and improvements in patient outcomes.

Management contracts

A FPD board of directors may want to contract for the total management and operation of its ambulance services and/or fire protection services. However, the law (321.506) allows an FPD to contract to a private company to provide "fire service" only if a majority of voters of the FPD authorize such a proposal. While the law clearly is limited to "fire service," the term "fire service" does not appear to be defined, thus allowing some to interpret the term in conjunction with an FPD's broad purpose as defined by RSMo 321.010.

(See *Consolidation and shared services* under *Chapter VII. Changing FPD Boundaries* for more information regarding a potential type of management contract called shared services).

XX. Additional Resources

There are many possible sources of information; however, it is always important to decide on the value and usability of information from each source. Of course, one of the most important sources of information should be an FPD's attorney because an attorney, competent in FPD law, has understanding of the law through years of practices and is able to balance different sections of law, sometimes conflicting law, and case law to give learned opinions.

FPD attorneys will give clients answers that sometimes are frustrating. Answers to, "Is it legal?" truly may be unknown because there has been no judicial interpretation — often the safest answer might be, "you probably shouldn't do that." Answers to "Can we do it?" may be more of a political situation than a legal question — the FPD board may need to use its collective wisdom to decide between "we can do it" versus "we should do it."

In some cases the Missouri attorney general may have already offered an opinion on a particular matter. State elected officials are allowed to request opinions from the attorney general. However, until there is a judge's ruling on the matter, an attorney general opinion is the opinion of another attorney, albeit the state's attorney.

There is also the ice skating analogy. Yes, a person can skate on thin ice, but why chance it? FPD boards should always try to "skate on the thickest ice possible" when considering a particular course of action.

If an FPD board and its attorneys absolutely cannot determine a course of action, then the law (321.080; 321.450) says the courts have exclusive jurisdiction over all matters of the FPD and are open at all times and should be a priority as a matter of public interest and concern.

FPDs should also make sure they build relationships with county officials such as the county clerk (handles elections in most counties and handles tax levy forms), the collector (forwards property tax revenue), etc.

A list of additional resources follows, including influential organizations that may be worthy of membership and contributions of time and talent.

Federal Emergency Management Agency (FEMA)

Phone: 866 274 0960
Email: firegrants@dhs.gov
<https://www.fema.gov/welcome-assistance-firefighters-grant-program>

Grant information and tutorial
NIMS Training

Fire and Rescue Training Institute

University of Missouri Extension
1110 S. College Ave., Rm. 232
Columbia, MO 65211 3410
Phone: 800 869 3476 or
573 882 4735 Fax: 573 882 0678
<https://extension2.missouri.edu/programs/mu-fire-and-rescue-training-institute>

Offers a wide range of emergency and leadership training including NIMS training

Firefighters Association of Missouri

P.O. Box 1153
Warrensburg, MO 64093
Phone: 660 429 1327
<https://ffam.org>

International Association of Fire Chiefs

4025 Fair Ridge Dr.
Fairfax, VA 22033 2868
Phone: 703 273 0911 Fax:
703 273 9363
<https://www.iafc.org>

Local Records Preservation Program

P.O. Box 1747
Jefferson City, MO 65101 1747
Phone: 573 751 9047
Fax: 573 526 3867
<https://www.sos.mo.gov/archives/localrecs>

Mid-America Regional Council

600 Broadway Ste. 200
Kansas City, MO 64105
Phone: 816 474 4240
<https://www.marc.org/Training-Events>

Missouri Ambulance Association

P.O. Box 522
Jefferson City, MO 65012
Fax: 660 783 2804
<https://moambulance.org>

Missouri Association of Counties

516 E Capitol Ave,
Jefferson City, MO 65101
Phone: (573) 634-2120
<https://www.mocounties.com>

Missouri Association of Fire Chiefs

P.O. Box 589
Oak Grove, MO 64075
Phone: 816 690 6990
Fax: 816 690 6191
<http://www.mochiefs.org>

Missouri Association of Fire Protection Districts

P.O. Box 97
Eureka, MO 63025
Phone: 636 549 0528
Email: info@mafpd.org
<https://www.mafpd.org>
For members is source of information.

Missouri Association of Public Purchasing

<https://www.mappi.org/index.cfm>

Missouri Attorney General

207 W. High St.
Jefferson City, MO 65102
Phone: 573 751 3321
Fax: 573 751 0774
<https://www.ago.mo.gov>

Sunshine Law information and Attorney General Opinions

Missouri Bureau of Emergency Medical Services

Missouri Department of Health and Senior Services
P.O. Box 570
Jefferson City, MO 65102 0570
Phone: 573 751 6356
Fax: 573 751 6348
<https://health.mo.gov/safety/ems>

Missouri Department of Conservation Forestry Division

Phone: 573 751 4115
<https://mdc.mo.gov/property/fire-management/fire-department-assistance-programs>

Assistance to rural and volunteer departments

Missouri Division of Fire Safety

Office of the State Fire Marshal
P.O. Box 844
Jefferson City, MO 65102
Phone: 573 751 2930
Fax: 573 751 1744
<https://dfs.dps.mo.gov>

Missouri Emergency Medical Services Association

425 E. High St.
Jefferson City, MO 65101
Phone: 573 761 9911
<https://memsa.org>

Missouri EMS Funeral Response Team

425 E. High St.
Jefferson City, MO 65101
Phone: 660 415 7990 or
800 274 6914
<http://www.moemsfuneralteam.org>

Missouri Fire Service Funeral Assistance Team

716 N. Elm Ave.
St. Louis, MO 63119
Phone: 314 973 0685 or
888 4911HELP
<http://www.mofirefuneral.org>

Missouri Municipal League

1727 Southridge Dr.
Jefferson City, MO 65109
Phone: 573 635 9134
Fax: 573 635 9009
<https://mocities.site-ym.com/default.aspx>

**Missouri Office of Administration
Division of Purchasing**

301 W. High St., Rm. 630
Jefferson City, MO 65101
Phone: 573 751 2387
Fax: 573 526 9815
<https://oa.mo.gov/purchasing>

**Missouri School Board
Association**

2100 I 70 Dr. S.W.
Columbia, MO 65203
Phone: 573 445 9920
<https://www.mosba.org>
A resource for policies, such as
public comment policies

**Missouri Secretary of State
James C. Kirkpatrick State
Information Center**

P.O. Box 1767
Jefferson City, MO 65102 1767
Phone: 573 751 2301 or
800 669 8683 (NOW VOTE)
Fax: 573 526 3242
<https://www.sos.mo.gov>
Information on elections, records
retention, etc.

Missouri State Auditor

301 W. High St., Office 880
P.O. Box 869
Jefferson City, MO 65102
Phone: 573 751 4213
Fax: 573 751 7984
<https://auditor.mo.gov>
Taxation and finance information

**National Association of
Emergency and Fire Officials**

P.O. Box 4284
Everett, WA 98204
Phone: 503 607 0914 or
877 479 6629
<https://naefo.org>

**National Association of
Parliamentarians**

213 S. Main St.
Independence, MO 64050
Phone: 816 833 3892
<https://www.parliamentarians.org>

**National Association of
Resource Conservation and
Development Councils**

444 N Capitol St NW, Ste. 618
Washington, DC 20001
Phone: 202 434 4780
Fax: 202 434 4783
<http://narcdc.org/index.html>
Community development training,
coordination and communication,
including dry hydrant campaigns
and county fire plans

**National Fire Protection
Association**

1 Batterymarch Park
Quincy, MA 02169 7471
Phone: 617 770 3000
Fax: 617 770 0700
<https://www.nfpa.org>

**National Highway Traffic Safety
Administration**

Office of Emergency Medical
Services (NTI 140)
1200 New Jersey Ave. S.E.
Washington, DC 20590
Phone: 202 366 5440
Fax: 202 366 7149
<https://www.ems.gov>

**National Institute of
Governmental Purchasing**

151 Spring St.
Herndon, VA 20170 5223
Phone: 703 736 8900 or
800 367 6447
Fax: 703 635 2326
<https://www.nigp.org>

**State Emergency Management
Agency**

Missouri Department of Public
Safety
<https://sema.dps.mo.gov>
Offers a range of emergency
training

United States Fire Administration

For most information:
<https://www.usfa.fema.gov>

For grant information and tutorial:
<https://www.usfa.fema.gov/grants>
Grants and training publications
and information; NIMS training
information

XXI. Glossary, Abbreviations and Acronyms

AD: Ambulance District	CMS: Centers for Medicare and Medicaid Services	ERMA: Emergency Medical Response Agency
ADA: Americans with Disability Act	COI: Conflict of Interest	EEZ: Economic Enhancement Zones (see TIF)
AD&D: Accidental Death and Dismemberment (see A&S)	CPA: Certified Public Accountant	FASB: Financial Accounting Standards Board (see GASB)
AED: Automated External Defibrillator a/k/a Automatic External Defibrillator	CPI: Consumer Price Index	FBI: Federal Bureau of Investigation
AGO: Attorney General's Office	CSR: Code of State Regulation	FC: Fire Chief or Fire Captain
AIDS: Acquired Immune Deficiency Syndrome (see HIV)	DEA: Drug Enforcement Agency (federal; see BNDD)	FCA: False Claims Act
aka: also known as; aka "a/k/a"	DHSS: Department of Health and Senior Services (Missouri)	FDIC: Federal Deposit Insurance Corporation (see NCUSIF)
AKS: Anti Kickback Statute	DOJ: Department of Justice (federal)	FEIN: Federal Employer Identification Number (see EIN)
ALS: Advanced Life Support	DOLIR: Department of Labor and Industrial Relations (Missouri)	FEMA: Federal Emergency Management Association
A&S: Accident and Sickness (see AD&D)	DOT: Department of Transportation (federal)	FD: Fire Department or Fire District (see FPA and FPA)
ASAP: As Soon As Possible	EC: EMS Chief	FFAM: Fire Fighters of Missouri
AV: Assessed Valuation (see FMV and MV)	ED: Emergency Director, Emergency Department or Eastern District (of Appeals)	FLSA: Fair Labor Standards Act
BEMS: Bureau of EMS (Missouri)	EEO: Equal Employment Opportunity	FMLA: Family Medical Leave Act
BGI: Background Investigation	EEOC: Equal Employment Opportunity Commission	FMV: Fair Market Value a/k/a MV (see AV)
BLS: Basic Life Support	EFT: Electronics Fund Transfer	FPA: Fire Protection Association (see FD and FPD)
BNDD: Bureau of Narcotics and Dangerous Drugs (DEA predecessor)	EIN: Employer Identification Number (see FEIN)	FPD: Fire Protection District (see FD and FPA)
BOD: Board of Directors	EMS: Emergency Medical Services	FRTI or MoFRTI: Fire and Rescue Training Institute (University of Missouri)
BOEC: Board of Election Commissioners	EMT: Emergency Medical Technician	GAAP: Generally accepted accounting principles
CDC: Centers for Disease Control and Prevention	EMT B: EMT Basic	GASB: Government Accounting Standards Board (see FASB)
CADBT: Certified Ambulance District Board Training	EMT I: EMT Intermediate	GF: General Fund
CFDBT: Certified Fire District Board Training	EMT P: Paramedic	GINA: Genetic Information Nondiscrimination Act
CFR: Code of Federal Regulations	E&O: Errors and Omissions insurance (see GL)	GIS: Geographic Information Services
CLIA: Clinical Laboratory Improvement Amendments	EpiPen®: Epinephrine auto injector brand name	GL: General Liability insurance (see E&O)
CMPL: Civil Monetary Penalties Law	EPA: Environmental Protection Agency (federal)	

GTI: Government Training Institute (of MARC)	MARC: Mid America Regional Council	PD: Police Department (see SD and SO)
HAZMAT or HM: Hazardous Materials	MEC: Missouri Ethics Commission	PF: Pension Fund
HIPAA: Health Insurance Portability and Accountability Act	MDC: Missouri Department of Conservation	PL: Public Law
HITECH: Health Information Technology for Economic and Clinical Health	MEMSA: Missouri EMS Association	PP: Personal Property a/k/a IP (see RE and RP)
HIV: Human Immunodeficiency Virus (see AIDS)	MML: Missouri Municipal League	PPE: Personal Protective Equipment
HM: Hazardous Materials a/k/a HAZMAT	MOCPS: Missouri Center for Patient Safety	PSES: Patient Safety Evaluation System
HSD: Health and Safety Officer a/k/a SO or ISO	MoDOT: Missouri Department of Transportation	PSO: Patient Safety Organization
HSS: Health and Human Services (federal)	MoFRTI: Missouri Fire and Rescue Training Institute (University of a/k/a FRTI)	PSOB: Public Safety Officer Benefits
IOG: Office of Inspector General (of CMS)	MOU: Memorandum of Understanding	RE: Real Estate property (see IP and PP); a/k/a RP
IP: Individual personal Property a/k/a PP (see RE and RP)	MSBA: Missouri School Board Association	RP: Real property (see IP and PP); a/k/a RE
IRC: Internal Revenue Code	MV: Market Value a/k/a FMV (see AV)	RSMo: Revised Statutes of Missouri §: section §§: sections
IRS: Internal Revenue Service	NAEFO: National Association of Elected Fire Officials	SCHIP: State Children's Health Insurance Program
ISO: Incident Safety Officer a/k/a HSO or SO; Insurance Services Office	NAP: National Association of Parliamentarians	SD: Sheriff's Department (see PD and SO) or Southern District (of Appeals)
LAGERS: Local Government Employees Retirement System (Missouri)	NFA: National Fire Academy a/k/a USFA	SFMO: State Fire Marshal Office
LODD: Line Of Duty Death	NFPA: National Fire Protection Association	SO: Sheriff's Office (see PD and SD) or Safety Officer a/k/a HSO or ISO
MA: Mutual Aid (see AA)	NHTSA: National Highway Traffic Safety Administration	SOG: Standard Operating Guideline (see SOP)
MAA: Missouri Ambulance Association	NIGP: National Institute of Governmental Purchasing (see MAPPI)	SOP: Standard Operating Procedure (see SOG)
MAC: Missouri Association of Counties	NIMS: National Incident Management System	SoS: Secretary of State
MAFC: Missouri Association of Fire Chiefs	NPI: National Provider Identifier	TIF: Tax Increment Financing (see EEZ)
MAFPD: Missouri Association of Fire Protection Districts	OSHA: Occupational Safety and Health Administration	USC: United States Code
MAPPI: Missouri Association for Public Purchasing (see NIGP)	PALS: Pediatric Advanced Life Support	USFA: United States Fire Academy a/k/a NFA
	PCR: Patient Care Report	USFS: United States Forest Service
		WD: Western District (of Appeals)

Sources of Example Forms for Fire Protection Districts

Custodian of Records (page 21 in text)

A resolution for designating the custodian of records is provided by the Office of the Attorney General:

<https://www.ago.mo.gov/missouri-law/sunshine-law/sample-language-forms/resolution-sample>

Financial Statement (page 23 in text)

The state auditor provides an electronic spreadsheet and printer-friendly format (PDF) financial form in the Local Government Forms and Reports section of its website:

<https://auditor.mo.gov/local/politicalsubfinrcpt>

Sunshine Law Policy Resolution (page 39 in text)

A sample sunshine law policy resolution is provided by the Office of the Attorney General:

<https://www.ago.mo.gov/missouri-law/sunshine-law/sample-language-forms>

Meeting notice (page 39 in text)

A Meeting Notice form is provided by the Office of the Attorney General at:

<https://www.ago.mo.gov/missouri-law/sunshine-law/sample-language-forms/open-meeting-sample>

Closed meeting notice (page 40 in text)

A Notice of a Closed Meeting form is provided by the Office of the Attorney General at:

<https://www.ago.mo.gov/missouri-law/sunshine-law/sample-language-forms/closed-meeting-sample>

Budget (page 44 in text)

The Office of the State Auditor provides budget forms for county governments:

<https://auditor.mo.gov/local/countybudgetforms>

A generic budget template is provided. Clicking on the “Generic Budget” will provide an Excel Worksheet. The website states that this budget is for officials and boards for funds held outside the county budget. The Fire District can modify the form or use it as a template to create a budget form.

Bid Form (page 48 in text)

The Office of Administration provides an example of a bid form. While it contains multiple bids, a separate sheet can be used for each telephone bid and placed in a sealed envelope.

<https://oa.mo.gov/sites/default/files/300-0162s%20%288-01%29.pdf>

Financial disclosure form (page 69 in text)

Officials and director candidates for some FPDs may be required to file a Financial Disclosure Statement for Political Subdivisions. The form is available on the Missouri Ethics Commission website:

https://www.mec.mo.gov/WebDocs/PDF/Fillable/PFD/PFD_Short.PDF

Example Forms for Fire Protection Districts

The following forms are in approximate order as they are referenced in the text

Example of Accounts Payable and Payroll Check Register (1 page; see page 23 of manual) Greatly simplifies creation of the financial statement

Example of Real Estate and Equipment Inventory Record (1 page; see page 26 of manual) Required as part of the financial statement

Example of Land and Building Inventory Record (1 page; see page 26 of manual)

Example of Meeting Agendas for Outgoing and Incoming Boards (1 page; see page 74 of manual)

Example of Land and Building Inventory

(An electronic document or spreadsheet is acceptable)

Tract # _____ **Location** _____

Legal description, Including: _____ Section _____ Township _____ Range

Land value \$ _____

Structure value \$ _____

Total value - Tract # _____ \$ _____

Tract # _____ **Location** _____

Legal description, Including: _____ Section _____ Township _____ Range

Land value \$ _____

Structure value \$ _____

Total value - Tract # _____ \$ _____

Page total real estate and building value : \$ _____

Page # _____ **of** _____ **pages**

On the final page: Grand total of equipment (of all _____ pages) \$ _____

Signature of District Official _____ **Date** _____

Meeting Agendas for Outgoing and Incoming Boards of Directors

_____ **Fire Protection District**

Last Regular Meeting of the Outgoing Board of Directors

_____, **20**_____

1. Call to order of the outgoing board
2. Approval of the minutes:
 - a. From the last meeting
 - b. Committee appointment to approve this meeting's minutes
 - c. Treasurer's report
3. Unfinished business
4. Special orders of the day:
 - a. Declaration of election results
 - b. Any departing remarks
5. Adjournment of the outgoing board

Oath of office for directors-elect

_____ **Fire Protection District**

First Regular Meeting of the Incoming Board of Directors

_____, **20**_____

1. Call to order of the incoming board
2. Special orders of the day:
 - a. Election of chair; election of secretary
 - b. Appointment of custodian of records
 - c. Election of treasurer; designation of budget officer
3. New business
 - a. Depository and withdrawal authorizations
4. Closed session (if posted pursuant to RSMo 610)
5. Personal appearances
6. Announcements and adjournment of the incoming board

