



Notice to Local Officials: Applicability of the Life Safety Code

Office of the Illinois State Fire Marshal

Pat Quinn, Governor • Larry Matkaitis, State Fire Marshal

To: All Local Municipal and Governmental Authorities
From: Office of the State Fire Marshal, State of Illinois
Date: May 1, 2013
Topic: Applicability of the State-Adopted Life Safety Code

This notice is intended to serve as a reminder of the following facts concerning the application of the State-adopted life safety code.

Background

After the Cook County Administration Building Fire in October 2003, the State of Illinois commissioned James Lee Witt and Associates to provide an independent evaluation of the fire and the State's code authority. That investigation led to a final report entitled "*Cook County Administration Building Fire Final Report*", commonly known as the "Witt Report". One of the findings of both the Witt Report and the Illinois Code Task Force formed to follow through on the Report's findings was that modifications were necessary in the methods used by the Office of the State Fire Marshal ("OSFM") to issue notifications to municipalities relative to State fire codes.

As a result, the OSFM has conducted past mailings to all fire chiefs, city managers, mayors and county officials to make them aware of the requirements imposed by State law. However, with the inevitable turnover municipality and fire district personnel, the OSFM believes it is time to once again make municipal authorities aware of these issues and their obligations.

The Witt Report identified a general confusion as to applicable State laws and fire codes by municipalities across the State. One of the most notable findings was a misunderstanding, or complete lack of knowledge, by municipalities that the Fire Investigation Act requires local authorities to enforce either the State-adopted life safety code or a code that is equal to, or more stringent than the State-adopted code.

Applicability

Local municipal and governmental authorities are reminded of the following facts concerning the application of the State-adopted life safety code:

- Pursuant to the Fire Investigation Act (425 ILCS 25), the OSFM has adopted the National Fire Protection Association's ("NFPA's") Life Safety Code ("LSC" or "State Code") 2000 edition as the State's minimum fire prevention and safety code. This adoption is made at 41 Ill. Adm. Code 100. In conjunction with the authority granted by the Fire Investigation Act, the 2000 edition of the Life Safety Code is the minimum requirement *that must be met statewide in Illinois*.
- Specifically, the Act provides that all local officers charged with the duty of investigating fires *shall enforce* [the OSFM rules], under the direction of the State Fire Marshal, except in those localities which have adopted fire prevention and safety standards equal to or higher than such rules adopted by the Office of the State Fire Marshal." (425 ILCS 25/9)
- The LSC applies statewide, even in home rule units of government. While the Fire Investigation Act provides that it "is not a limit on any home rule unit," such units may not disregard the

OSFM-adopted Life Safety Code and enforce only locally-adopted codes. Rather, the OSFM has concurrent jurisdiction with local municipalities on the issue of fire and safety codes. Accordingly, local authorities shall adopt and enforce either the LSC or requirements that are equivalent to, or more stringent than, those imposed by OSFM-adopted rules. (425 ILCS 25/9, 9(e)). This decision has been supported by case law.

- Because a municipality or fire protection district may not have adopted the Life Safety Code does not excuse occupancies within that jurisdiction from the need to comply with the LSC. The LSC serves as the minimum statewide standard as provided by the authority of the Fire Investigation Act and the rule adoption of the LSC by the OSFM. (425 ILCS 25/9)
- Many municipalities and fire protection districts believe that the State Code applies only in areas where local jurisdictions have neither adopted nor enforced a code of their own. Others believe that the OSFM simply enforces the State Code in State-licensed occupancies within their municipality but that the local fire department or code enforcement agency is free to adopt and enforce whatever code they desire in all other buildings. Both of these assumptions are incorrect. The OSFM-adopted LSC is applicable statewide in all occupancy classifications with the exception of public elementary and secondary schools under the jurisdiction of the Illinois State Board of Education and single/two family dwellings, where the code is adopted as recommendation only.
- There are multiple issues and requirements to be examined when comparing locally adopted codes to the OSFM-adopted LSC. However, one major issue causes many locally adopted codes to be less stringent than the LSC: The LSC requires compliance in both new and existing occupancies. While certain LSC requirements pertaining to existing occupancies are less stringent than those applicable to new occupancies, the State Code **does not exempt or “grandfather” any existing occupancies from code compliance.** This is not usually true with locally-adopted building codes and some fire prevention code requirements, as they are forward-looking and apply only to new construction after the date of adoption. Even when other nationally-recognized codes have some requirements applicable to existing structures, they often do not impose the same degree of stringency as the LSC.
- It is a commonly held belief that the International Code Council’s (ICC) International Building Code (IBC) and/or International Fire Code (IFC) are equivalent to the NFPA LSC. However, comparisons of the specific requirements of the ICC codes to the LSC indicate that this is not accurate, especially regarding existing occupancies.
- Local amendments that allow less stringent conditions than are prescribed by nationally recognized codes are another common reason that a community’s adopted fire code may not be considered “equal to or higher” than the OSFM’s adopted rules.
- The entire content of the Fire Investigation Act as well as the OSFM’s “Part 100” administrative rules which adopt the NFPA Life Safety Code can be accessed at the OSFM’s website: <http://www.sfm.illinois.gov/commercial/buildings/rules.aspx>.
- Questions or requests for additional information may be directed to sfm.info@illinois.gov.

425 ILCS 25

Fire Investigation Act

(425 ILCS 25/0.01) Short Title

Sec. 0.01. Short title. This Act may be cited as the Fire Investigation Act.
(Source: P.A. 86-1324.)

(425 ILCS 25/6) Investigation of Fires; Records

(a) The chief of the fire department of every municipality in which a fire department is established and the fire chief of every legally organized fire protection district shall investigate the cause, origin and circumstances of every fire occurring in such municipality or fire protection district, or in any area or on any property which is furnished fire protection by the fire department of such municipality or fire protection district, by which property has been destroyed or damaged, and shall especially make investigation as to whether such fire was the result of carelessness or design. Such investigation shall be begun within two days, not including Sunday, of the occurrence of such fire, and the Office of the State Fire Marshal shall have the right to supervise and direct such investigation whenever it deems it expedient or necessary. The officer making investigation of fires occurring in cities, villages, towns, fire protection districts or townships shall forthwith notify the Office of the State Fire Marshal and shall by the 15th of the month following the occurrence of the fire, furnish to the Office a statement of all facts relating to the cause and origin of the fire, and such other information as may be called for in a format approved or on forms provided by the Office.

(b) In every case in which a fire is determined to be a contributing factor in a death, the coroner of the county where the death occurred shall report the death to the Office of the State Fire Marshal as provided in Section 3-3013 of the Counties Code.

(c) The Office of the State Fire Marshal shall keep a record of all fires occurring in the State, together with all facts, statistics and circumstances, including the origin of the fires, which may be determined by the investigations provided by this act; such record shall at all times be open to the public inspection, and such portions of it as the State Director of Insurance may deem necessary shall be transcribed and forwarded to him within fifteen days from the first of January of each year.

(d) In addition to the reporting of fires, the chief of the fire department shall furnish to the Office such other information as the State Fire Marshal deems of importance to the fire services.
(Source: P.A. 95-224, eff. 1-1-08; 96-1059, eff. 7-14-10.)

(425 ILCS 25/6.1) Rules

The State Fire Marshal may adopt necessary rules for the administration of the reporting of fires, hazardous material incidents, and other incidents or events that the State Fire Marshal deems of importance to the fire services. The reporting of such information shall be based upon the nationally recognized standards of the United States Fire Administration's National fire Incident Reporting System (NIFRS).
(Source: P.A. 95-224, eff. 1-1-08.)

(425 ILCS 25/7) Testimony; Arrest and Charge; Evidence

Sec. 7. The Office of the State Fire Marshal shall, when in its opinion further investigation is necessary, take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts or to have means of knowledge in relation to the matter as to which an examination is herein required to be made, and shall cause the same to be reduced to writing; and if it shall be of the opinion that there is evidence sufficient to charge any person with the crime of arson, or with the attempt to commit the crime of arson, or of conspiracy to defraud, or criminal conduct in connection with such fire, it shall cause such person to be arrested and charged with such offense or either of them, and shall furnish to the proper prosecuting attorney all such evidence, together with the names of witnesses and all of the information obtained by it, including a copy of all pertinent and material testimony taken in the case.
(Source: P.A. 80-147.)

(425 ILCS 25/8) Power to Compel Testimony; Required Disclosures; Oaths; Violations; Penalty; Complaint; Right of Entry

Sec. 8. The Office of the State Fire Marshal shall have power in any county in the State of Illinois to summon and compel the attendance of witnesses before it to testify in relation to any matter which is by the provision of this Act a subject of inquiry and investigation, and may require the production of any book, paper or other document it deems pertinent thereto, and it may require the prompt disclosure of the beneficiaries of any trust by the trustee, the disclosure by any named beneficiary of a trust of all persons who have any direct or indirect interest in the trust or who derive any direct or indirect benefit therefrom, the disclosure of a principal by his nominee, and the disclosure by a corporation of each person who holds 5% or more of the shares of stock of the corporation. The Office is hereby authorized and empowered to administer oaths and affirmations to any persons appearing as witnesses before it, and false swearing in any manner or proceeding aforesaid is perjury and shall be punished as such. Any witness who refuses to be sworn, or who refuses to testify, or disclose any information sought by the Office to which it is entitled, or who disobeys any lawful order of the Office, or who fails or refuses to produce any book, paper or other document touching any matter under examination, or who is guilty of any contemptuous conduct after being summoned to appear before the Office to give testimony in relation to any matter or subject under investigation as aforesaid, is guilty of a Class A misdemeanor and it shall be the duty of the State Fire Marshal to make complaint against the person or persons so refusing to comply with the summons or order of the State Fire Marshal, before the circuit court in the county in which the investigation is being had, and upon the filing of such complaint, such cause shall proceed in the same manner as other criminal cases. The Office of the State Fire Marshal shall have the authority at all times of day or night in the performance of the duties imposed by the provisions of this Act, to enter upon and examine any building or premises where any fire has occurred and other buildings and premises adjoining or near the same. All investigations held by or under the direction of the Office of the State Fire Marshal may, in its discretion, be private, and persons other than those required to be present by the provisions of this Act, may be excluded from the place where such investigation is held, and witnesses may be kept separate and apart from each other and not allowed to communicate with each other until they have been examined.

(Source: P.A. 80-147.)

(425 ILCS 25/9) Duties of Owner or Occupant; Rules; Inspection; Notice

Sec. 9. No person, being the owner, occupant or lessee of any building or other structure which is so occupied or so situated as to endanger persons or property, shall permit such building or structure by reason of faulty construction, age, lack of proper repair, or any other cause to become especially liable to fire, or to become liable to cause injury or damage by collapsing or otherwise. No person, being the owner, occupant or lessee of any building, or structure, shall keep or maintain or allow to be kept or maintained on such premises, combustible or explosive material or inflammable conditions, which endanger the safety of said buildings or premises.

The Office of the State Fire Marshal shall adopt and promulgate such reasonable rules as may be necessary to protect the public from the dangers specified in the preceding paragraph. Such rules shall require the installation, inspection or maintenance of necessary fire extinguishers, fire suppression systems, chemical fire suppression systems and fire alarm and protection devices. A copy of any rule, certified by the State Fire Marshal shall be received in evidence in all courts of this State with the same effect as the original.

All local officers charged with the duty of investigating fires shall enforce such rules, under the direction of the Office of the State Fire Marshal, except in those localities which have adopted fire prevention and safety standards equal to or higher than such rules adopted by the Office of the State Fire Marshal.

The Office of the State Fire Marshal, and the officers of cities, villages, towns and fire protection districts by this Act, charged with the duty of investigating fire, shall, under the direction of the Office of the State Fire Marshal, inspect and examine at reasonable hours, any premises, and the buildings and other structures thereon, and if, such dangerous condition or fire hazard is found to exist contrary to the rules herein referred to, or if a dangerous condition or fire hazard is found to exist as specified in the first paragraph of this Section, and the rules herein referred to are not applicable to such dangerous condition or fire hazard, shall order the dangerous condition removed or remedied, and shall so notify the owner, occupant or other person interested in the premises. Service of the notice upon the owner, occupant or other interested person shall be in person or by registered or certified mail.

The amendatory Act of 1975 is not a limit on any home rule unit.
(Source: P.A. 85-1434.)

(425 ILCS 25/9a) Appeal and Hearing

Sec. 9a. The owner or other person interested in such building or premises, within 10 days after receiving such notice, may appeal from orders of deputies of the Office of the State Fire Marshal, to the Office of the State Fire Marshal. The Office shall thereupon conduct a hearing pursuant to the Illinois Administrative Procedure Act, as amended, and either sustain, modify or revoke the order. If the order is sustained or modified, or if no appeal is made to the Office, it shall be the duty of the owner or occupant to comply with such order.

(Source: P.A. 84-954.)

(425 ILCS 25/9b) Judicial Review

Sec. 9b. When an order to remove or remedy a dangerous condition or fire hazard has been modified or sustained by the Office of the State Fire Marshal, the person against whom the order has been entered may seek review in the circuit court of the county in which the property affected by the order is located, pursuant to the Administrative Review Law, as amended.

(Source: P.A. 84-1308.)

(425 ILCS 25/9e) Violations; Ordinances

Sec. 9e. Willful failure, neglect or refusal to comply (1) with the order of the Office of the State Fire Marshal or other officers after it has become final by reason of failure to prosecute an appeal as provided by this Act, or (2) with the judgment of the circuit court sustaining or modifying the order of the Office is a petty offense, and in the event of a continuance of such willful failure, neglect or refusal to comply with such order, each day's continuance is a separate offense.

The provisions of Sections 9, 9a, 9b, 9c, 9d and 9e shall not be construed to affect or repeal any ordinances of any municipality relating to building inspection, fire limits, fire prevention, or safety standards, but the jurisdiction of the Office of the State Fire Marshal shall, in such municipalities, be concurrent with that of the municipal authorities.

(Source: P.A. 80-147.)

425 ILCS 25/9f Premises Owners Duty of Care

Sec. 9f. The owner or occupier of the premises and his or her agents owe fire fighters who are on the premises in the performance of their official duties conducting fire investigations or inspections or responding to fire alarms or actual fires on the premises a duty of reasonable care in the maintenance of the premises according to applicable fire safety codes, regulations, ordinances, and generally applicable safety standards, including any decisions by the Illinois courts. The owner or occupier of the premises and his or her agents are not relieved of the duty of reasonable care if the fire fighter is injured due to the lack of maintenance of the premises in the course of responding to a fire, false alarm, or his or her inspection or investigation of the premises.

For purposes of this Section, the term "premises" means any building or structure or the real property upon which the building or structure is situated.

This Section applies to all causes of action that have accrued, will accrue, or are currently pending before a court of competent jurisdiction, including courts of review.

(Source: P.A. 93-233, eff. 7-22-03.)

(425 ILCS 25/10) Violation by Officer; Penalty

Sec. 10. Any officer referred to in Section 6 herein who neglects to comply with any of the requirements of this act, shall be guilty of a petty offense. The fine shall be recovered as provided in Section 9 of this act.

(Source: P. A. 77-2603.)

(425 ILCS 25/12) Payment of assessment; Amount; Annual Report

Sec. 12. Every fire insurance company, whether upon the stock or mutual plan, and every other personal or business entity doing any form of fire insurance business in the State of Illinois, shall pay to the Department of Insurance in the month of March, such amount as may be assessed by the Department of Insurance, which may not exceed 1% of the gross fire, sprinkler leakage, riot, civil commotion, explosion and motor vehicle fire risk premium receipts of such company or other entity from such business done in the State of Illinois during the preceding year, and shall make an annual report or statement under oath to the Department specifying the amount of such premiums received during the preceding year. The Department of Insurance shall pay the money so received into the Fire Prevention Fund, to be used as specified in Section 13.1 of this Act.

(Source: P.A. 85-718.)

(425 ILCS 25/13) Penalty and Interest; Court Action; License Revocation

Sec. 13. Every company, firm, co-partnership, association or aggregation of individuals, or body of persons insuring each other, or their agents, representatives, or attorneys in fact, who shall refuse or neglect to comply with the requirements of Section 12 of this Act, is liable, in addition to the amount due, for such penalty and interest charges as are provided for under Section 412 of the "Illinois Insurance Code". The Director through the Attorney General, may institute an action in the name of the People of the State of Illinois, in any court of competent jurisdiction for the recovery of the amount of such taxes and penalties due, and prosecute the same to final judgment, and take such steps as are necessary to collect the same. If such violation is by a company, association, co-partnership or aggregation of individuals licensed to do business in the State of Illinois, such license may be revoked by the Department of Insurance.

(Source: P.A. 83-43.)

(425 ILCS 25/13.1) Fire Prevention Fund

Sec. 13.1.

(a) There shall be a special fund in the State Treasury known as the Fire Prevention Fund.

(b) The following moneys shall be deposited into the Fund:

(1) Moneys received by the Department of Insurance under Section 12 of this Act.

(2) All fees and reimbursements received by the Office of the State Fire Marshal.

(3) All receipts from boiler and pressure vessel certification, as provided in Section 13 of the Boiler and Pressure Vessel Safety Act.

(4) Such other moneys as may be provided by law.

(c) The moneys in the Fire Prevention Fund shall be used, subject to appropriation, for the following purposes:

(1) Of the moneys deposited into the fund under Section 12 of this Act, 12.5% shall be available for the maintenance of the Illinois Fire Service Institute and the expenses, facilities, and structures incident thereto, and for making transfers into the General Obligation Bond Retirement and Interest Fund for debt service requirements on bonds issued by the State of Illinois after January 1, 1986 for the purpose of constructing a training facility for use by the Institute.

(2) Of the moneys deposited into the Fund under Section 12 of this Act, 10% shall be available for the maintenance of the Chicago Fire Department Training Program and the expenses, facilities and structures incident thereto, in addition to any moneys payable from the Fund to the City of Chicago pursuant to the Illinois Fire Protection Training Act. (3) For making payments to local governmental agencies and individuals pursuant to Section 10 of the Illinois Fire Protection Training Act.

(4) For the maintenance and operation of the Office of the State Fire Marshal, and the expenses incident thereto.

(5) For any other purpose authorized by law.

(c-5) As soon as possible after the effective date of this amendatory Act of the 95th General Assembly, the Comptroller shall order the transfer and the Treasurer shall transfer \$2,000,000 from the Fire Prevention Fund to the Fire Service and Small Equipment Fund, \$9,000,000 from the Fire Prevention Fund to the Fire Truck Revolving Loan Fund, and \$4,000,000 from the Fire Prevention Fund to the Ambulance Revolving Loan Fund. Beginning on July 1, 2008, each month, or as soon as practical thereafter, an amount equal to \$2 from each fine received shall be transferred from the Fire Prevention Fund to the Fire Service and Small Equipment Fund, an amount equal to \$1.50 from each fine received shall be transferred from the Fire Prevention Fund to the Fire Truck Revolving Loan Fund, and an amount equal to \$4 from each fine received shall be transferred from the Fire Prevention Fund to the Ambulance Revolving Loan Fund. These moneys shall be transferred from the moneys deposited into the Fire Prevention Fund pursuant to Public Act 95-154, together with not more than 25% of any unspent appropriations from the prior fiscal year. These moneys may be allocated to the Fire Truck Revolving Loan Fund, Ambulance Revolving Loan Fund, and Fire Service and Small Equipment Fund at the discretion of the Office of the State Fire Marshal for the purpose of implementation of this Act.

(d) Any portion of the Fire Prevention Fund remaining unexpended at the end of any fiscal year which is not needed for the maintenance and expenses of the Office of the State Fire Marshal or the maintenance and expenses of the Illinois Fire Service Institute, shall be paid into the General Revenue Fund in the State Treasury.

(e) The Office of the State Fire Marshal shall keep on file an itemized statement of all expenses incurred which are payable from the Fund, other than expenses incurred by the Illinois Fire Service Institute, and shall approve all vouchers issued therefore before they are submitted to the State Comptroller for payment. Such vouchers shall be allowed and paid in the same manner as other claims against the State.

(Source: P.A. 85-718.)