

*Tracking Legal Developments that Affect Our Clients***REQUIRED NEW POLICIES  
& NOTICES**

- IF UNITS OF LOCAL GOVERNMENT CHOOSE TO ADOPT ENERGY STANDARDS THEY MUST COMPLY WITH THE ENERGY EFFICIENT BUILDING ACT.
- ALL MONEY RECEIVED BY MUNICIPALITIES FOR SECURING OR REMOVAL OF ABANDONED PROPERTIES MUST GO INTO THE ABANDONED RESIDENTIAL PROPERTY MUNICIPALITY RELIEF FUND.
- THERE ARE NEW HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL REGULATIONS.

**ACTION ALERTS**

- THE ILLINOIS DEPARTMENT OF PUBLIC HEALTH HAS AMENDED THE ADMINISTRATIVE CODE TO REFLECT PUBLIC ACT 95-712 AND PUBLIC ACT 95-447 WHICH CHANGE REQUIREMENTS FOR AED'S AND PHYSICAL FITNESS FACILITIES.
- THE CERTIFICATION PROCESS FOR VOLUNTEERS APPLYING PESTICIDE ON PUBLIC LANDS HAS CHANGED.
- MUNICIPALITIES MAY AUDIT PUBLIC UTILITIES THAT IT COLLECTS TAXES OR FEES FROM AND COMMUNITY ANTENNA TELEVISION SYSTEMS.

- SCHOOL DISTRICTS EXPECTED TO FAIL TO FULLY MEET ANY REGULARLY SCHEDULED PAYROLL-PERIOD OBLIGATIONS MAY BE REQUIRED TO DISCLOSE FINANCIAL DATA.

**MUNICIPAL DEVELOPMENTS****Legislation****Flinn Report- August 6, 2010-**

<http://www.ilga.gov/commission/jcar/flinn/reg28.pdf>

**Automatic External Defibrillators (AED)**

The Illinois Department of Public Health has adopted amendments to "Physical Fitness Facility Medical Emergency Preparedness Code" (77 Ill Adm Code 527) which are effective as of July 21, 2010. The amendments update the Code to comply with recent public acts. The Code, in conformance with Public Act 95-712, now includes football stadiums, soccer fields and baseball diamonds as physical fitness facilities required to have at least one (1) automated external defibrillator (AED). However, now only the following facilities are excluded: (1) facilities owned or operated by park districts organized under the Park District Code, the Chicago Park District Act, or the Metro-East Park and Recreation District (East St. Louis); (2) facilities owned or operated by a forest preserve district organized under the Downstate Forest Preserve District Act or the Cook County Forest Preserve District Act; or (3) a conservation district organized

under the Conservations District Act. Anticipated non-employee rescuers are encouraged to be trained as AED users. Provisions of Public Act 95-447 are also implemented. AEDs no longer have to be registered with an Emergency Medical System hospital. Inoperable AEDs must be replaced or repaired within thirty (30) days now, instead of forty-five (45). Additionally, the amendments specify that a "physical fitness facility" does not include any facility during any activity or program organized by a private or nonprofit organization and organized or supervised by persons who are not employees of a local government, school, college or university. Moreover, "staffed business hours" does not include times that only maintenance or security personnel are working at a facility and "individuals" includes only people actively engaged in exercise that substantially increases one's heart rate.

### Energy Efficient Building Standards

The Capital Development Board adopted amendments to the "Illinois Energy Conservation Code" (71 Ill Adm Code 600) which are effective as of July 26, 2010. The amendments implement Public Act 96-778, which applied state energy efficiency guidelines and standards to residential as well as commercial buildings. The Code does state that units of local government that do not regulate energy efficient building standards are not required to adopt, enforce or administer the Illinois Energy Conservation Code. However, if the unit of local government does adopt energy standards, the standards must be in compliance with the Energy Efficient Building Act (Act). If the local government does not have its own code, then all construction, renovation or

additions for buildings or structures must also comply with the Act. The amendments also state that local authorities, including home rule units, that regulate energy efficient building standards may not adopt residential building efficiency standards less than or more stringent than these rules unless a specified exemption applies. The local authority with jurisdiction must submit one (1) of the three (3) compliance documents listed by the CDB to prove code compliance.

### Pesticide Use

The Illinois Department of Agriculture has proposed amendments to the "Illinois Pesticide Act" (8 Ill Adm Code 250). The amendments change the certification process for people who apply pesticides to public land, including parks and forest preserves. The amendments will streamline the process for volunteers over eighteen (18) years of age who conduct limited herbicide applications on public lands for the control of weeds and invasive plants. Volunteers must receive annual training from a licensed, compensated employee of the public institution that addresses the labels, use restrictions, applications rates and methods, potential hazards, and protective equipment associated with the specific products used. Trainers must have a current DOA pesticide applicator license and must provide the DOA with the names and contact information of all people they have trained. Upon receipt of the list, the DOA will issue certificates, but the certificates will be limited to the specific herbicide product that they were trained to use, the public lands identified in the training and the certificates are only good for the calendar year of the training session. Public comment is available for these amendments until September 20, 2010.

### Auditor General FOIA

The Auditor General adopted amendments to the "Freedom of Information" (2 Ill Adm Code 601) which are effective on August 13, 2010. The amendments implement the changes required by Public Act 96-542. The code allows FOIA requests to be made by e-mail or facsimile and parties requesting information are no longer required to submit their full name, address and telephone number, but must still state whether the information is sought for a commercial reason. The response time is shortened from seven (7) to five (5) days and a denial of a request must be in writing with a detailed factual basis for any statutory exemption being claimed. Any denial also must include that the requester may ask for review of the denial by the public access counselor and has the right to judicial review of the denial. It additionally states that the first fifty (50) pages of requested documents are provided free of charge.

### **Illinois General Assembly -**

<http://www.ilga.gov/legislation/default.asp>

### Community Antenna Television System Audits

Senate Bill 2612 was signed by the governor and is now Public Act 96-1422. The Act amends the Electricity Infrastructure Maintenance Fee Law and the Illinois Municipal Code. It authorizes municipalities that impose certain taxes or fees on or collected by public utilities to conduct audits of those utilities to determine the accuracy of the taxes or fees paid to the municipality and sets forth the procedures under which a municipality may collect information from a public utility that is necessary to perform an audit. It additionally sets forth procedures

concerning the audit findings, liability for errors, penalties, confidentiality, and exemptions. A municipality may audit a community antenna television system operator franchised by the municipality to provide video services and under specified circumstances, a county or municipality may conduct an audit of a community antenna television system (CATV) operator's franchise fees (instead of gross revenues) derived from the provision of cable and video services. However, the provisions authorizing a county or municipality to conduct an audit of a CATV operator's franchise fees do not apply to any action that was commenced, to any complaint that was filed, or to any audit that was commenced before the effective date of the amendatory Act nor any franchise agreement that was entered into before the effective date of the amendatory Act unless the franchise agreement contains audit provisions but no specifics regarding audit procedures. The Act also makes changes in provisions requiring a municipality to notify an electricity deliverer of an error by the electricity deliverer in the amount of fees collected or paid by the electricity deliverer and in provisions requiring a municipality to notify a public utility of an error by the public utility in the amount of taxes paid by the public utility. The Act states that municipalities having a population of more than 1,000,000 are exempt from the provisions that are otherwise applicable to municipalities. The Act also amends the Local Government Taxpayers' Bill of Rights Act. It limits the authority of municipalities (including home rule municipalities) to impose penalties with respect to certain taxes imposed under the Illinois Municipal Code. Finally it amends the Counties Code to provide that a county may

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audit a community antenna television system operator franchised by the county to provide video services and sets forth the procedures concerning said audit and the procedures concerning the audit findings, liability for errors, and confidentiality. This Act is effective immediately.

### Foreclosure Prevention Program Fund & Abandoned Residential Property Municipality Relief Program

Senate Bill 3739 was signed by the governor and is now Public Act 96-1419. The Act creates the Save Our Neighborhoods Act of 2010 and amends the Illinois Housing Development Act, the Illinois Municipal Code, the Mortgage Foreclosure Article of the Code of Civil Procedure, and the State Finance Act. It provides that the Illinois Housing Development Authority shall establish and administer a Foreclosure Prevention Program to be funded by grants from the Foreclosure Prevention Program Fund and an Abandoned Residential Property Municipality Relief Program to be funded by grants from the Abandoned Residential Property Municipality Relief Fund. The grants can be issued to approved counseling agencies for approved housing counseling, to approved community-based organizations for approved foreclosure prevention outreach programs, and to municipalities. The Acts set forth provisions regarding the distribution of funds, rules (including emergency rules), definitions, and other matters. All amounts received by a municipality for costs incurred under provisions regarding removal, securing, or enclosing costs with respect to abandoned residential property for which the municipality has been reimbursed under the new provisions shall be remitted to the state

treasurer for deposit into the Abandoned Residential Property Municipality Relief Fund. With respect to residential real estate, the Act provides that a plaintiff filing a foreclosure complaint shall pay the clerk of the court a \$50 fee for deposit into the Foreclosure Prevention Program Fund and disbursement to the clerk of the court. It also provides that upon and at the judicial sale of foreclosed residential real estate, the purchaser (subject to provisions involving mortgagees) shall pay to the person conducting the sale a fee according to a specified formula for deposit into the Abandoned Residential Property Municipality Relief Fund and disbursement to the clerk of the court. Finally it includes the Foreclosure Prevention Program Fund and the Abandoned Residential Property Municipality Relief Fund as special funds in the state treasury. This Act is effective sixty (60) days after becoming law.

## SCHOOL DEVELOPMENTS

### **New Cases**

#### Special Education

*Marshall Joint School Dist. No. 2 v. C.D.*

<http://www.ca7.uscourts.gov/tmp/ZY1FFCRJ.pdf>

(7th Cir. Aug. 2, 2010)

The seventh circuit reversed the district court's affirmation of a decision finding that a student was eligible for special education under the Individuals with Disability Education Act. The circuit court found that the wrong legal standard was applied by the ALJ when it determined whether the student's disability might affect his performance in physical education classes, where it should have evaluated whether his

performance was actually affected. Further, testimony from the student's doctor was insubstantial as the doctor had no special education training and failed to observe the student in an educational setting. Evidence also showed that the student was already participating in physical education classes and performing the activities with modifications.

#### Qualified Immunity

*Purvis v. Oest,*

2010 WL 2991137

(7th Cir. August 2, 2010)

The seventh circuit reversed the district court's decision and found that the defendants-school and police officials were entitled to qualified immunity. The plaintiff-teacher filed a Section 1983 action alleging that defendants denied the plaintiff-teacher due process and subjected her to false arrest by investigating rumors that plaintiff had a sexual affair with a male student. Although one school official had a conflict of interest in investigating plaintiff because the official had earlier been accused of sexually harassing a student, this did not prevent the qualified immunity. The court reasoned that the officials forwarded the allegations of the plaintiff's conduct to another entity that would perform an independent investigation before they took any serious action against the plaintiff; therefore all defendants were entitled to qualified immunity. Moreover, defendant-police official had probable cause to arrest plaintiff because the alleged victim eventually admitted to a sexual affair, and certain elements of the victim's story were corroborated by third-party.

#### **Legislation**

##### **Illinois General Assembly -**

<http://www.ilga.gov/legislation/default.asp>

##### Financial Information Disclosure

Senate Bill 3681 was signed by the governor and is now Public Act 96-1423. The Act amends the School Code with respect to districts in financial difficulty. It provides that the State Superintendent of Education may require a school district to share financial information relevant to a proper investigation of the district's financial condition and the delivery of appropriate state financial, technical, and consulting services to the district if the district is determined to be likely to fail to fully meet any regularly scheduled, payroll-period obligations when due or any debt service payments when due or both. It also provides that the State Board of Education may certify that a district is in financial difficulty when the district is likely to fail to fully meet any regularly scheduled payroll-period obligations when due or any debt service payments when due or both. The School Code is additionally amended to make changes concerning student dropouts, the annual salary and benefits survey, support for transitional bilingual education programs, qualifications for an administrative certificate, and the evaluation of certified employees. The section concerning the State Board of Education's physical education report is repealed and the provision of School Breakfast and Lunch Program Act concerning a school breakfast program report is deleted. Moreover, the School Code is

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amended to provide that on or before October 1, 2012 (instead of August 1, 2009) and every three (3) years thereafter, the State Board of Education shall file with the general assembly and the governor and shall make available to the public a report listing the institutions of higher education engaged in teacher preparation in the state, along with other specified data pertinent to each institution. However, the language that provides that on or before February 1, 1998, and each year thereafter, the State Board of Education shall submit a cumulative report summarizing all types of waivers of mandates and modifications of mandates granted by the State Board or the General Assembly is now deleted. Finally, the Act amends the School Construction Law. It provides that each school year in which school energy efficiency project grants are awarded, 20% of the total amount awarded shall be awarded to a school district in a city with a population of more than 500,000 (currently, specifies only a school district with a population of more than 500,000), provided that the school district complies with the specified rules and requirements. This Act is effective immediately.

### **State Board of Education -**

<http://www.isbe.state.il.us>

#### Update of Teacher Standards

The State Board of Education has adopted the amendments to Part 24 "Standards for All Illinois Teachers" and they are effective as of July 26, 2010. The amendments reflect the new studies, statistics and methods developed since 2002. The amendments also incorporate literacy and technology standards.

#### IHOPE Program

The Illinois State Board of Education has adopted the new rule Part 210 "Illinois Hope and Opportunity Pathways through Education Program" and it is effective as of July 26, 2010. In response to P.A. 96-106, the rule sets forth the requirements for an IHOPE program, including approval by the State Board of Education. Some of the requirements include that the IHOPE program must be in effect for a full year before receiving state aid, each student must have a learning plan, and the teachers and support staff must be properly qualified and certified. Subpart B of the rules sets forth the requirements for applying for a grant.

#### Bilingual Education Requirements

The Illinois State Board of Education has adopted the amendments to "Transitional Bilingual Education" (23 Ill. Adm. Code 228) which are effective as of July 26, 2010. The amendment proposes a new Section 228.27 to help clearly identify school district requirements under both state law and the federal mandate in the Equal Educational Opportunities Act (EEOA). The new section demonstrates that, although state law only requires bilingual education for three (3) years, the school district is required to provide services which will enable limited English proficient (LEP) students to "overcome barriers" to educational achievement. The amendment to 228.25 establishes an exit standard for LEP students with statewide uniformity and districts can only use the state-established cut-score. Other proposed amendments address the Spanish Language Arts Standards and certificate requirements for directors of bilingual programs. Districts will be expected to include in their bilingual education plans

for the 2010-11 school year a discussion of how they plan to align instruction to the standards, which must occur in the 2011-12 school year. Beginning in 2011-12, plans also must discuss how student performance will be measured and curriculum modified, as needed. Finally, the new Section 228.35 addresses requirements for bilingual staff and administrators, as well as for ongoing professional development. This section contains requirements that were previously found in Sections 228.10 and 228.30(c), cross-references the requirements for preschool teachers and non-certificated personnel found in Part 235 (Early Childhood Block Grant) and allows preschool teachers to meet bilingual certification requirements by July 1, 2014.

#### Preschool Grants Meeting Bilingual Requirements

The Illinois Board of Education has adopted the amendments to the "Early Childhood Block Grant" (23 Ill. Adm. Code 235) which are effective as of July 26, 2010. The amendments proposed for Part 235 will require that information about bilingual education services be included in preschool grant applications submitted by school districts to ensure that appropriate services will be provided for any student who may be identified as having limited English proficiency. In response to PA 96-119 requiring agreements with Head Start Programs, Section 235.120(b)(3)(B) is no longer needed since it establishes a funding priority for those applicants who choose to enter into partnership agreements with their Head Start programs.

### PUBLIC SAFETY

#### **New Cases**

##### Search and Seizure

*U.S. v. Jones*

2010 WL 2977311

(7th Cir. July 30, 2010)

After officers arrested defendant and his girlfriend during a controlled drug sale, the girlfriend gave police consent to search their apartment. The lower court denied defendant's motion to suppress drugs found in the apartment, and the seventh circuit affirmed. The court rejected the defendant's allegation that officers did not reasonably believe that they had probable cause, finding that the girlfriend gave consent after her handcuffs were removed. Further, she consented after learning that the officers would be obtaining a search warrant.

##### Statute of Limitations

*Parish v. City of Elkhart*

2010 WL 2977411

(7th Cir. July 30, 2010)

Plaintiff was arrested, prosecuted, and convicted on a murder charge that later was vacated when evidence was presented indicating that police officials coerced witnesses into identifying plaintiff as the perpetrator. Plaintiff then brought an intentional infliction of emotional distress claim against police officials alleging that they engaged in misconduct during his arrest and prosecution. The district court found that the IIED claim accrued at the time of arrest. However, the seventh circuit reversed, finding that the claim actually accrued when the conviction was vacated.

## LABOR AND EMPLOYMENT

### New Cases

#### ERISA

*Walker v. Monsanto Company Pension Plan*

2010 WL 2977304

(7th Cir. July 30, 2010)

Plaintiffs brought an action against a pension plan, alleging that the plan violated ERISA by terminating the inclusion of yearly 8.5% interest credits in the calculation of plaintiffs' pension benefits after the age of fifty-five (55). The seventh circuit affirmed the district court's decision to grant summary judgment to the pension plan, finding that employees receiving interest credits before age fifty-five (55) did not obtain any more benefits than employees retiring at retirement age. Further, the plan satisfied ERISA, in requiring that all employees receive the equivalent of pension benefits even if they choose to take lump-sum payments for early retirement.

#### Fair Labor Standards Act

*Spoerle v. Kraft Foods Global, Inc.*

2010 WL 2990830

(7th Cir. Aug. 2, 2010)

Plaintiffs sought a declaration that a union contract that did not include time spent changing clothes at the beginning and end of shifts in wages was a violation of Wisconsin law. The seventh circuit affirmed the district court's decision to enter judgment in favor of plaintiffs, rejecting the employer's claim that federal law pre-empted Wisconsin law. Further, nothing in the collective bargaining agreement exempted the employer from state law applicability, so the time should be included in plaintiffs' wages.

### News

#### Chicago Police Officer Sues to Reclaim Overtime Hours logged on his Blackberry

A Chicago Police Sergeant has filed suit in federal court to reclaim alleged overtime hours he earned through using his work Blackberry while off-duty. The sergeant was a member of the gang-investigation unit, which issues Blackberrys for officers in that unit, and claims that he and other officers did hours of work off-duty whether it was dealing with search warrants or receiving calls from supervisors on cases. The sergeant is requesting overtime for the past two (2) years. You can find the article [here](#).

## ENVIRONMENTAL LAW

### Legislation

#### **Flinn Report- July 16, 2010-**

<http://www.ilga.gov/commission/jcar/flinn/reg28.pdf>

#### Hazardous and Solid Waste

The Pollution Control Board has proposed amendments to "RCRA Permit Program" (35 Ill. Adm. Code 703), "Hazardous Waste Management System: General" (35 Ill. Adm. Code 720), "Identification and Listing of Hazardous Waste" (35 Ill. Adm. Code 721), "Standards Applicable to Generators of Hazardous Waste" (35 Ill. Adm. Code 722), "Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities" (35 Ill. Adm. Code 724), and "Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities" (35 Ill. Adm. Code 725). The proposed amendments reflect recent changes

by the federal Environmental Protection Agency since July, 2008. Changes to Part 703 require facilities to receive IEPA Class 1 permit modification approval before operating under an exclusion from the definition of solid waste. Parts 720, 721, 722, 724 and 725 reflect name changes in the USEPA's Office. Additionally, the amendments define "hazardous secondary material" (HSM), "hazardous secondary material generated and reclaimed under the control of the generator," and "hazardous secondary material generator." Additionally, the amendments specify how the Board will grant a non-waste determination for HSM that is reclaimed in a continuous industrial process, is not discarded, and is legitimately recycled. The Board can also consider whether an HSM is indistinguishable in all relevant aspects from a comparable product or "intermediate." The amendments also establish an optional alternative test of generator requirements applicable to laboratories owned by eligible academic entities. There are additional amendments to Part 721 that are quite lengthy and should be consulted for more information.