

The Firehouse Lawyer

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PROPOSED LEGISLATION

Over the years the *Firehouse Lawyer* has been published, we have often refrained from discussing proposed legislation that is pending before the State Legislature. My reasoning has always been that the proposed bills may never be adopted into law, so it is better to wait until they are signed into law by the Governor. At that point,, if they are significant statutes at all, we will write about them to educate members of the fire service in Washington.

However, more and more often my clients ask about proposed statutes and what our opinion might be about them. Therefore, we are re-examining that practice so that once a year we may include an article such as you are about to read.

2020 Proposed Laws:

SB 6582: This one-section bill simply makes it clear that a board of fire commissioners may call for an election to increase to a five-member or a seven-member board, thus making it easier for a district to enlarge its board. The additional members, assuming voter approval, are added to the board using the existing process for filling vacancies. See RCW 52.14.020 and RCW 42.12.070.

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Second Substitute House Bill 1888 (SSHB 1888), would insert into the Public Records Act, at RCW 42.56.230 (3)(b) some added language to provide for notice to the public employee whenever personal information about such an employee is requested, to the extent that disclosure would violate their right to privacy. Under this new law, the employer would include in the notice to the employee the date of the request, the nature of the record(s) requested, the date of intended release, and that the record will be released unless a court order is obtained, enjoining release.

As many readers are undoubtedly aware, the U.S. Supreme Court in a recent term ruled in the *Janus* case that public employees have a First Amendment right not to join a union or pay union dues. Apparently, as many of our clients are aware, the Freedom Foundation has commenced an effort to obtain information about public employees of state and local agencies in Washington State, using the Public Records Act (PRA). Heretofore, there has been no PRA exemption that clearly prohibits disclosure of the requested information. The evident goal of the Freedom Foundation is to obtain the information so that it may “inform” the public employees of the rights afforded to them under the *Janus* decision.

Many of you are probably also aware that a coalition of unions, who represent state and local employees (including the State Labor Council for firefighters) has joined together to try to obtain an injunction against such a release of information.

It appears to us that this proposed legislation may also be a reaction to the *Janus* decision.

In Section 2 of SSHB 1888, some language would be added to the exemption that currently exists in the PRA applicable to certain types of personal information of employees, that is already deemed exempt (such as residential addresses, personal phone numbers, social security numbers, etc.). By this addition, any “payroll deductions including the amount and identification of the deduction” would be made exempt too. Since union dues are commonly paid by payroll deduction, we have brilliantly deduced that this language may also have been prompted by the Freedom Foundation effort.

Later in that section, language would be added to make it clear that photographs and the month and year of birth (in personnel files) of all employees of a public agencies would be made exempt. Currently that exemption only applies to a narrow band of employees of criminal justice agencies.

Finally, in a new subsection of that law, (codified at RCW 42.56.250 by the way) personal demographic details are made exempt from disclosure. If “deidentified” such details may be released, as to state employees. By personal demographic details, the Legislature means race, ethnicity, sexual orientation, immigration status, national origin or disability status.

If enacted into law, we believe that SSHB 1888 will have a major impact in the *Freedom Foundation* lawsuit.

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SSB6058: Unlike the foregoing bill, the next one would seem to be what we call “special legislation”. When I first read the summary, I thought perhaps this might be an important breakthrough in the delivery of health care, as it mentioned “the provision of health clinic services” by fire districts. This bill would add a new service to the short list of services allowed to be provided by fire districts, in addition to the customary fire prevention services, fire suppression services, emergency medical services, and services for the protection of life and property. That new service would be “health clinics.” I had visions of fire districts competing with major private health care organizations that operate drop-in medical facilities for urgent care.

Clinics have been allowed like this for fire districts that “share a common border with Canada and are surrounded on three sides by water” (such as Whatcom County FPD No. 5?) or “are bounded on the north by Bremerton, on the west by Mason County, on the south by Pierce County, and on the east by the Puget Sound” (such as South Kitsap Fire & Rescue?). Now the added language would allow a clinic in a district “in Pierce County and surrounded by Case Inlet, Drayton Passage, Pitt Passage, and Carr Inlet” (such as Key Peninsula Fire?). As one can see, the idea of health care clinics operated by fire districts has, thus far, been allowed only in rather rural or even remote areas. Maybe it is the idea of the future...or maybe not. We shall see.

ESSB 5829: This bill relating to volunteer firefighter pensions is high on the WFC

priority list and appears headed to passage by the Legislature.

Basically, this law provides for an increase in the monthly volunteer firefighter pension from the current \$300 to \$350, with the potential for increase thereafter. Pending a determination from the IRS that the amounts do not exceed what is allowed for deferred compensation from volunteer pension plans like this, but no sooner than July 1, 2022, this law would allow the monthly pension to increase by \$10 per month for each year (that the retirement fee is paid) beyond 25 years.

The bill would also increase certain fees paid into the system. Beginning next January 1st, the annual disability relief fee for each member would increase from \$30 to \$50. The fee for emergency workers and reserve officers would increase from \$30 to \$45, and the annual fee paid by the fire district would increase from \$60 to \$90. The similar fee paid by EMS districts and other municipal corporations would increase from \$30 to \$45.

SSB 6216

The bill, which is intended to make it clear that elected officials such as fire district commissioners are not to be considered employees under the new Paid Family and Medical Leave Act seems to be dead, or on life support at this time. SSB 6216 would have amended the definitions in that section of the RCW that defines what it means to be “in employment.” The bill included a long list of elected officials in special purpose districts that

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would no longer be considered employees and therefore no premiums would be due for such elected officials. That bill appears to be dead but we had heard that attempts were being made to add that new language of exclusion to HB 2614, which is a more wide-ranging bill that would amend the PFMLA law in several other respects. Unfortunately, when we looked at that bill as currently proposed on the legislative web site we did not see that language added in yet. But the WFCA Legislative Report has indicated that this bill is moving forward, although we do not have a certain answer yet.

Meanwhile, we will continue to hold to our strongly considered opinion that neither elected officials nor volunteer firefighters should be considered employees of their public agencies. The strongest supportive argument of that position is that the original FMLA defined the term “employee” by reference to the definitions contained in the Fair Labor Standards Act—the other key federal employment law that deals primarily with the minimum wage and overtime laws. In the FLSA Congress made it absolutely clear that elected officials and volunteers are not considered employees, so therefore the federal FMLA held to that definition. It would be anomalous indeed if the new PFMLA, which deals with the same general subject matter as the FMLA (family and medical leave!) did not follow federal law, but instead differed by 180 degrees. We think not. If not legislation, then this calls for litigation.

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