Firehouse Lawyer

Volume 5, Number 3 *March 15, 2005*

Joseph F. Quinn, Editor

Joseph F. Quinn is legal counsel to more than 25 fire districts in Pierce, King and other counties throughout the State of Washington.

His office is located at:
5000 Steilacoom Blvd. SW
Lakewood, WA 98499
(in Lakewood's Station 2-1)

Telephone: 253.589.3226

Fax: 253.589.3772

Email Joe at:
quinnjoseph@qwest.net

Access this newsletter at:
www.Firehouselawyer.com

Inside This Issue

LEGISLATIVE SCENE

This month I have decided to do something unusual for the Firehouse Lawyer: discuss proposed legislation. In the past, I have always waited to see what new statutes actually made it through the legislative labyrinth and became law. However, sometimes there are good reasons to write about, and discuss legislation before it becomes law, so that my readers can (1) get involved with legislation they support or oppose and (2) prepare for legislation that will impact them, either fiscally or operationally, or both. So here goes—the following are some bills that you may find interesting.

SHB 1756: This bill has important provisions for fire protection districts, as well as for cities. It applies to "substantially career" fire departments operated by fire protection districts and/or regional fire protection service authorities. There is no definition provided for "substantially career" fire departments, but the legislature is trying to distinguish this entity from a "substantially volunteer" fire department. Since many of my clients are combination departments, with some career and some volunteer responders, it appears we may face a definitional issue here. My belief is that a department with only a paid chief and perhaps one other paid responder, supplemented by a significant number of volunteer firefighters and EMTs, would be a "substantially volunteer" department. On the other hand, a combination department with only a few paid, career firefighters (and probably unionized after hiring two or more firefighters) would probably be a "substantially career" fire department, even if that work force is supplemented by numerous volunteers.

In any event, what is the thrust of this proposed law? The purpose and intent of the law is obviously to establish standards for reporting and accountability for the substantially career departments. It would also establish performance measures applicable to response time objectives for certain major services, such as fire suppression operations, emergency medical operations, and special operations. The statute shows that the legislature recognizes the importance of time in deploying before flashover occurs, and in EMS, the critical importance of early defibrillator capability. The law does not in any way modify or limit the authority of fire districts to set levels of service.

"Response time" in the bill is defined to mean the time that begins when units are en route to the emergency incident and ends when the units

arrive on scene. The remaining statutory definitions are consistent with the common accepted meaning of terms in the fire service, so I will not belabor them here. However, for those who are unfamiliar with the term, "special operations" means those emergency incidents to which a fire department responds that require specific and advanced training and specialized tools and equipment. Examples would be trench rescue, confined space, and high angle rope rescues.

Now for some of the actual requirements: SHB 1756 would require a written statement of policy establishing the existence of a fire department, required department services, the basic organizational structure of the department, the expected number of employees and expected functions employees will perform. This sounds rather straightforward, but the department had better be on sound financial footing before it specifies the number of employees. Every district must also set forth service delivery objectives in the policy, including specific response time objectives for major service components such as fire suppression, EMS, special ops, wildland fire fighting, etc.

Every district must also establish time objectives for turnout time, response time for the first arriving engine at a fire and for deployment of a "full first alarm assignment" at a fire. We assume this is a reference to the WAC 296-305 requirement for "two-in, two-out" at a structure fire. In other words, the first engine may have responders to begin an outside attack on the fire or other work, but until you have the required personnel, you cannot proceed into a burning structure. Also, response time objectives for medic units to EMS incidents must be established, including ALS units if applicable.

But here is the troublesome standard: Every district shall also establish a performance objective of not less than 90 percent for the achievement of each response time established, as referenced in the foregoing paragraph. Thus, a district should be careful in establishing these times, that it can attain such times a very high percentage of the time, if not every time. Many of my clients have established response time objectives already, but if this bill becomes law, a much closer look must be given to meeting the objectives.

Finally, the bill requires annual evaluation of services delivery and attainment of objectives. Beginning in 2007, each district must issue an annual report based on the annual evaluation, defining and discussing any areas or circumstances where the objectives are not being met. The report shall explain the predictable consequences of any deficiencies and address steps necessary to achieve compliance.

My overall reaction to bills like this one is: "Why?" In other words, what does this law really accomplish? While everyone would readily agree that time is of the essence both in fires and in EMS responses, is it really possible to dictate standards legislatively? I suppose one could argue that this bill does not mandate any specific response times, and still allows the standards to be set locally. It does, however, set the 90% frequency standard and this implies some consequences if the standard is not met. My fear is that in those cases where the standard is not met, the fire department may be more likely to be sued successfully, as it will be interpreted to be a negligence standard of care that they themselves established. The bill itself does not have any compliance penalties, so I can only foresee the civil liability implications, and they are not good.

SHB 1694

This bill would amend the Open Public Records Act exemption applicable to residential addresses and telephone numbers of your employees and volunteers. It broadens the exemption, so that it now would also protect their personal wireless telephone numbers, personal e-mail addresses, social security numbers and emergency contact information.

It seems to me that this statutory amendment is consistent with the case law that already exists. The Tacoma Public Library case, a few years ago, essentially stands for the same proposition.

Additionally, as to dependents of employees and volunteers, the Act would exempt their names, dates of birth, residential addresses and phone numbers, as well as that information mentioned in the above paragraph. This provision would seem to provide greater privacy and protection from identity theft for your employees and volunteers. It is certainly worth supporting, as identity theft is an increasing problem.

SHB 1000

This bill would amend the Open Public Meetings Act, by adding fax and e-mail to the methods of providing notice of special meetings. Superficially, it seems good to add modern means of providing such special meeting notices, as this could serve administrative convenience. However, the bill would also allow "the subscriber" to such notifications (for example, a local newspaper) to specify which approved method or methods of communication he/she prefers. Then, the bill states that the sender must use that method. If e-mail is used, a return receipt must be requested by the agency, and if a fax is used, a reply fax must be requested. If reply is not received in a timely manner, the agency shall verify receipt by telephone.

Again, my objection is that the bill makes for a good deal of additional administrative work. Of course, that work is added without providing any money to pay for it, or time in the day to accomplish it. On balance, however, I suppose the bill is a good idea as many of you use such tools extensively already.

ESHB 1401

This bill is an apparent response to that multiple fatality fire in the Rhode Island night club a few years ago. It would add a new section to RCW 19.27 to

provide for rulemaking requiring nightclubs to have automatic sprinkler systems. The law defines nightclubs as establishments, other than theaters with fixed seating, having live entertainment or recorded music, with beverage sales, cover charges, or both, and with an occupant load of 100 or more. (The foregoing is oversimplified a bit.)

The bill would also allow the owner of the nightclub to apply to the county assessor for a special property tax exemption, through which the increase in value attributable to the sprinkler system would be subtracted from the assessed valuation for ten years.

Probably everyone would support this idea (except maybe the county assessor!).

SSB 5422

This bill would facilitate research and services to special purpose districts, such as fire services. Currently, the Municipal Research Services Center provides valuable research services to the cities and counties. However, the fire districts have nothing at all comparable, relying upon the Washington Fire Commissioners Association and the Washington State Association of Fire Chiefs for such services.

The bill would appropriate $200,000 for the fiscal year ending June 30, 2006 from the public works assistance account to a newly-established "special purpose district research services account". Moneys in that account would only be used to finance the costs of special district research and services. I think this bill is long overdue; hopefully, it would give the fire districts long needed enhancements in research and other such services.

SHB 1173

This bill is intended to provide relief to families from the impacts of childbirth, sickness in the family, and related situations. It recognizes that many individuals do not have access to family leave, either because it is not mandated by federal or state law, or the leave that is required is unpaid leave. The law would establish a system of family leave insurance, administered by the department of labor and industries.

SHB 1758

Principally, this bill would overrule last year's Hangartner decision, wherein the Washington State Supreme Court ruled that a records request that is overly broad need not be answered. Under this statute, no denial can be based solely on overbreadth. It also provides for making records available on a partial or installment basis, in the case of a large request.

Also, by next February, the bill would require the attorney general to adopt a model rule for agencies to follow in dealing with records requests. This bill is silent about the attorney-client privilege for government agencies.

SSB 5735

Similar to the foregoing, this bill also addresses Hangartner. However, this one adds a new exemption from public disclosure by codifying the common law attorney-client privilege. The scope of the privilege is not limited to litigation matters, which was the position espoused by the news media. It does state that the privilege does not attach merely because you send a copy of a letter or document to your municipal attorney, or merely because the attorney was present at a meeting. The bill specifically parallels the statutory privilege set forth in RCW 5.60.060(2). To me, it appears that SSB 5735 would be clearly superior to SHB 1758. I have often argued that municipal "persons" should be treated like all other clients for purposes of this privilege.