# Firehouse Lawyer

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*Inside This Issue*

1 Legislative Session Ends with a Whimper…and a Groan
1 Update on Some Other Bills of Interest
3 A Few Points about the FMLA
4 Continuation of Government Succession Plans, and Delegation
4 Disclaimer

# Legislative Session Ends With A Whimper…And A Groan

As this issue of the *Firehouse Lawyer* goes to press, it appears that the State Legislature will end the session (again) without a great record of accomplishments. The most important bill to the fire service in the State of Washington—2SSB 5333, on six-year lid lifts—died without getting to the House Floor for a vote. This legislation would have allowed those elections to exceed the 1% limit on annual growth of property tax collections for taxing districts to be voted on less often instead of annually. Letting the voters vote to authorize that "waiver" of the limit (a so-called "lid lift") every six years instead of annually would have saved thousands of dollars in election costs for many municipal governments. Some districts, such as Federal Way, have held such elections every year for the last few years, and earned good voter support each time.

Apparently, House Speaker Frank Chopp and his leadership team had expressed concerns about allowing a tax vote in this election year. I guess they did not realize that this measure could only decrease costs of elections and therefore reduce the need for taxes to defray ever-increasing elections costs. The Washington Fire Commissioners Association expressed its "disappointment and dismay" with Speaker Chopp and his team, who said they wanted to protect "vulnerable Democratic House members" during the upcoming fall elections. (Well, perhaps we need to make them a bit more vulnerable.)

## UPDATE ON SOME OTHER BILLS OF INTEREST

SHB 2345. This bill would clarify the powers and duties of a regional fire protection authority, such as voting requirements, property tax levies, benefit charges, bond issuance and indebtedness. This one has passed the Senate and will be returned to the House for concurrence with Senate amendments. Later this one died in the Senate Rules Committee.

SHB 2713. Last year an Attorney General opinion (which we disagreed with in a prior edition) questioned the legality of special purpose districts (but not cities and counties) expressing support or opposition to a ballot

measure, in their meetings or resolutions. The AG argued that these districts are not municipal corporations for purposes of the Public Disclosure Act provision at RCW 42.17.130. In any event, this bill would clarify that governing bodies of such districts (e.g. Boards of Fire Commissioners) may take such actions without running afoul of the law. This one passed the Senate and is headed for the Governor's desk.

SB 6236. We almost missed this one, but thanks to Chief Andy McAfee, who brought it to our attention at the PC Chiefs meeting. This bill changes several important election rules and deadlines! The primary election is moved to the third Tuesday in August. As to special elections fire districts might request to be called by the county legislative authority, those slated for the February, March, April or May election dates must be presented to the county auditor 52 days prior from now on, and not just 45. As to the primary and the November general elections these special elections must be requested 84 (yes eighty-four) days prior to the election date! Consider the strategic effects of those changes when you think about running (and perhaps re-running in the event of a failure) your lid lift and EMS elections. This law takes effect January 1, 2007; it is on the governor's desk.

SB 6411. Currently, the Public Employees Bargaining Act limits collective bargaining agreements with bargaining units of public employees to three years or less. This bill would extend that to six years. The legislation has passed the House and it too is headed for the Governor's pen.

SSB 6555. This bill would allow special purpose districts to access the municipal research council for research and legal opinions. I have long advocated that fire districts should somehow gain access to the services of the Municipal Research Services Center, funded primarily by the state's cities and counties. See www.mrsc.org. This bill has passed the House and Senate has concurred with House Amendments. This too will be delivered to Governor Gregoire.

HB 2932. The LEOFF 2 Retirement Board requested this law, which would provide that a LEOFF 2 member who is severely injured in the line of duty such that they are incapable of substantial gainful employment would be guaranteed up to 70% of the salary tax-free for life, from LEOFF 2 Plan or up to 100% of salary, when combined with workers' compensation and/or federal social security benefits for the same injury. This has passed the Senate and is headed for the Governor's desk too.

SB 6723. This bill would adjust the LEOFF 2 $150,000 death benefit for

inflation annually and clarify that occupational illness is also included within the meaning of "line of duty". Passed the House and will be delivered to the Governor.

As you can see, there are no earth-shattering examples of major legislation in the foregoing list, as the only really important bill for the fire service died when it was kept from a floor vote by Speaker Frank Chopp. The pity of the matter is that those who did it may not have understood that the measure should not have been seen as a tax increase or a tax issue at all, but rather as a bill intended to allow voters to cut the costs of government processes.



## A FEW POINTS ABOUT THE FMLA

In an effort to include more articles about federal laws, which impact the fire service in the state of Washington almost as much as Washington laws and cases, we include this month a brief discussion of the FMLA—the Family Medical Leave Act.

Under this federal law, public employers and private employers with at least 50 employees are required to allow up to 12 weeks of unpaid leave to eligible employees faced with a "serious health condition". As mentioned in this newsletter in the past, case law leads us to take the word "serious" with a slight grain of salt, as some conditions for which the courts have found eligibility did not seem that serious. Some courts have held that a health care professional must, however, certify the condition as serious for the FMLA to apply.

The importance of notifying the employees of their FMLA rights, at the appropriate time, cannot be overemphasized. Some courts have strictly enforced the notification rules, and even awarded an employee eligibility when he may not otherwise have met the minimum requirements, e.g. one year's employment and at least 1,250 hours worked during the last year.

A frequently recurring question relates to the continuation of benefits during the leave period, assuming that the employee is on unpaid leave, i.e. no longer on the payroll. The health plan benefits of employees on FMLA leave must be maintained just as if they were working. Furthermore, if the employer changes plans during that leave, the absent employee is entitled to the benefit of those changes just like the workers still working. In other words, the level and terms of coverage cannot be changed adversely, and if positive changes are made for the group, the employee on FMLA leave gets those benefits too.

Unlike the foregoing, during FMLA leave the absent employees do not accrue further seniority, but maintain what they already have. There is no "break in service" due to using the leave, but only the loss of what they would have accrued.

If the department has a deferred compensation program, absent something in the collective bargaining agreement to the contrary, I would think that an employee on unpaid FMLA leave who is not making their employee contributions to deferred comp would not be entitled to the benefit of the employer portion either.

Nothing in the FMLA requires employers to allow employees to continue accruing other benefits such

as sick leave and vacation, during the time they are out on unpaid leave. Of course, the FMLA is only intended to "set a floor" for benefits; employers are encouraged to provide greater benefits and often do. It is common for collective bargaining agreements to provide for continued accrual of, for example, sick leave during such an absence.

The foregoing is just a short list of the kinds of practical questions that often arise under FMLA.



## CONTINUATION OF GOVERNMENT, SUCCESSION PLANS, AND DELEGATION

A recent discussion at the King County Fire Chiefs' Association got me thinking about the considerations relevant to fire departments staying effective in the event of a pandemic or a widespread disaster. Consider this: Have you got a plan in place in your department's rules and policies to deal with any or all of the following:

- Suppose three out of five (or at least a quorum) commissioners are down with the avian flu and cannot make it to the meeting? What do you do for payroll and all vouchers?

- Do you have any provisions allowing for participation in meetings by telephone under limited, specified emergency circumstances?

- Suppose your Fire Chief, Assistant Chief, and Operations Chief are all down with the flu, or cut off from communicating with the rest of your responders due to an earthquake or tsunami at the coast? Have you provided a delegation of authority within the chain of command? Who is in charge of the day-to-day decision making under whatever command matrix you have in place?

- What about the administrative division of your department? Is there any succession plan or sub-delegation in place for the District Secretary position or the minutes of Board meetings?

- Have you cross trained admin and clerical staff so that if the Accounts Payable person is too sick with the flu to work another staff member can seamlessly take over that task?

As you can see the questions are endless, but frankly we need to start asking them and doing something about this.

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