Firehouse Lawyer

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Inside This Issue

2009 Legislative Developments

This month I decided to follow what seems like an annual rite of spring — analyzing any bills of interest to the fire service in the State of Washington that have been signed into law. Our first statute worthy of discussion relates to city annexations and how they impact fire districts and fire district employees. In the legislative process, the bill was denominated as Substitute House Bill 5808, but of course when codified the legislation will be referenced by various RCW citations. In general, this bill amends various existing statutes and adds a few new sections to existing chapters in the Revised Code of Washington. The apparent purpose of these changes is to smooth out a few wrinkles or difficulties that arise currently when cities propose to annex significant portions of existing fire districts.

Section 1 of the bill amends RCW 35.10.360 by requiring the city and the fire district to "jointly inform" the affected employees of the fire district about any effects upon their employment. That section, as amended, sets forth the conditions under which laid off employees will be employed by the city or town. In essence, qualified employees who are separated due to the annexation have rights to be hired if needed by the city and if qualified.

Section 2 of the bill amends RCW 35.10.365 and clarifies that a request for transfer of employment must be made, but if there is no current opening the statute provides for placing the person's name on an employment list. Needed employees are taken "in order of seniority". The rest of that section deals with preserving the rights of the transferred employees so that they lose no employment rights, or at least to minimize any adverse effects. If the employee has already completed probation, no new probationary period may be imposed. Collective bargaining rights are preserved as well.

Section 3 of the bill amends RCW 35.13.130 to lower the percentage of value of the annexation area required for a valid petition, from 75% to only 60%, of the assessed value of territory within the annexation area.

Section 4 amends RCW 35.13.215 to add a subsection requiring the same thing as section 1 above about "jointly informing" the affected employees.

Section 5 amends RCW 35.13.225 to make it just like section 2's amendments to RCW 35.10.365 discussed above. (There is a lot of overlapping statutory language in this bill as you shall see below for code cities.)

Section 6 is a new section to be added to RCW 35.13. This statute requires a city, upon request by the affected fire district, to issue a report prior to the annexation, regarding the likely effects of the annexation and asset transfers "upon the safety of residents within **and outside** the proposed annexation area". That report must discuss the effects on fire protection and EMS. This section only applies when territory representing at least 5% of the fire district's AV is proposed to be annexed into the city.

Section 7 is a new section to be added to that same chapter of the RCW. It adds an interlocal agreement requirement. The ILA is to be signed by the city, the county and any fire district. The process starts with a notice from the city to the district and the county. Those parties have 45 days in which to respond, but a failure to so respond is deemed to be an affirmative response so negotiations may proceed. A negative response or refusal to negotiate means the ILA process may not proceed.

The rest of section 7 lists the needed contents of such an ILA, which must include (1) boundaries, (2) a statement of the goals of the ILA, (3) subject areas and policies and procedures and (4) a term of at least five years. If the parties can all agree, the annexation is not subject to referendum, but if the fire district does not agree to the ILA, then the city's annexation ordinance for 45 days is subject to a referendum vote of the people. Ten percent of the electors resident in the annexation area can force an election if they sign a referendum petition. If there is an election date within 90 days, that date is used, but otherwise a special election is scheduled by the county auditor, should an election be required.

Subsection (2)(a) lists the "goals" that must be included in such an ILA as follows:

- Transfer of revenues and assets from district to city;
- Consideration of impact to level of service, and agreement that LOS shall not be negatively impacted at least "through the budget cycle" in which the annexation occurs;
- Discussion with the district as to "division of assets" and the impact on citizens inside and outside of the annexation area;
- Community involvement;
- Revenue sharing, if any;
- Debt distribution;
- Capital facilities obligations of all three agencies;
- A schedule or plan on the timing of annexation
- A description of applicable development regulations.

Subsection (2)(b) is a similar list of "subject areas" for the ILA, but these seem mostly to be of interest to the county and not the fire district.

Subsection (5) of section 7 provides that employees not immediately hired by the city after annexation are to be placed on a reemployment list with a 36-month duration. The rest of section 7 is similar to what I have already mentioned in sections 2 and 5, discussed above.

As you can see, Section 7 is a critical part of the bill. The section also states that the Boundary Review Board jurisdiction may not be invoked if an ILA is signed by all parties.

Section 8 requires the annexing city to maintain existing response times (as shown by the most recent annual report by the district done pursuant to RCW 52.33.040) at least through the budget cycle or the following budget cycle too if the annexation occurs in the second half of the year. If the city cannot maintain those response times, it must transfer the needed firefighters to do so.

Section 9 just adds a new section to RCW 35A.14--for optional municipal code cities—identical to what section 7 does for non-code cities and towns.

Section 10 is also just a "parallel provision" for code cities. Section 11 is also; it matches up exactly with section 6 for the other municipalities. Section 12 amends RCW 35A.92 for code cities, to match the similar language in section 8 for the other municipalities.

That concludes my review of the new and amended annexation statutes. As you can see, the intent of the legislation is to introduce a new era of consultation, notice and negotiations, which is probably being done informally by many cities and fire districts now anyway, when faced with these complex annexation scenarios. In my view, it is key to understand section 7, if you wish to truly understand these new statutory provisions.

MORE SIGNIFICANT LEGISLATION

Substitute House Bill 1847 appears to be headed to the Governor's desk too. That would simply raise the bid law limit for fire district public works projects, relating to stations and other land, from the outdated $2,500.00 threshold to a new $20,000 threshold. Not a huge jump, to be sure, but perhaps some small remodeling projects can now be accomplished without competitive bidding under RCW 52.14.110.

Of course, there is always the small works roster exception for those fire districts and municipalities that have adopted the roster by resolution, or use another agency's roster pursuant to an interlocal agreement. There is a bill this year (HB 1196) to increase that limit by the way, from $200,000 to $300,000, which also has been enacted and signed into law by the Governor.

All of these laws take effect July 26, 2009, the date 90 days post adjournment of the legislature.

AND SPEAKING OF NEW LAWS… DO NOT FORGET THE RED FLAG RULES

Since the FTC's regulations known as the Red Flag Rules for preventing identity theft are now in effect, and since all creditors such as fire districts charging for ambulance transports or emergency medical services are subject to these new rules, I have developed a model policy for compliance. Feel free to contact me at 253 858-3226 to obtain a copy of the model Policy and Procedure for a modest price.

LOCAL GOVERNMENT RETENTION RULES AMENDED

For those who did not notice yet, there is a new "manual" updated in December 2008 for the guidelines pertaining to retention and disposal of local government records. You can download the 190-page document from www.secstate.wa.gov. You may be surprised by some of the current retention deadlines for various types of records. For instance did you know that the following retention schedules are applicable to the following types of local government records for Washington municipal governments:

- Correspondence of elected officials, executives, and department heads: 2 years;
- Minutes of staff meetings and internal communications: 2 years;
- Preliminary drafts: until obsolete or superseded;
- Audio/Video of meetings: 6 years, but only 1 year if verbatim transcript made and approved;
- Minutes and Indexes of minutes of legislative body meetings: Permanent.
- Oath of office: 6 years after end of official's term of office;
- Ordinances and resolutions: Permanent;
- Bid Files (public works): 6 years after project is done;

- Contracts: 6 years;
- Legal opinions: Permanent (shows how important lawyer's opinions are!);
- Litigation case files: Closing of file plus 10 years;
- Hazardous Materials Abatement File: 50 years (!);
- Accident/Collision reports: 6 years;
- Appraisals: Disposal of land plus 10 years;
- Accounts Payable and Receivable Records: 3 years;
- Individual Employee's Payment History: 60 years IF used for retirement eligibility verification;
- IRS forms such as 1099's and W-2's: 4 years;
- Most payroll forms: 3 years;
- Disability and Discrimination case/claim files: Closure plus 6 years;
- Misconduct investigation files if held "unfounded" or not sustained: When case closed (but maybe you might want to retain longer);
- Employee medical exposure (e.g. to hazard): End of employment plus 30 years;
- Fire and Drill Reports: 3 years;
- Safety Committee Minutes: 1 year;
- Performance Evaluations: 3 years;
- Personnel Files: Termination plus 6 years;
- Volunteer Files: Same as above;
- Job announcements and other recruitment files: 3 years.

Interesting, is it not? Remember that you **may** keep records longer if you have a good reason; there is no penalty for doing that. Part of the purpose, however, of these guidelines is to reduce unneeded paperwork, clutter and expense of record maintenance. The foregoing is not an exhaustive list of relevant public records; it is only meant to include the highlights or some examples I felt readers might find interesting. Each fire department should download the rules and train your records managers on retention. WFCA and the State Fire Chiefs have some seminars coming up on this subject, I believe.

WILL DEFLATION AFFECT YOUR PROPERTY TAX COLLECTIONS IN 2010?

Given the current recession, here is a timely topic. The economy is so negative, especially in the real estate arena, that there is a very real prospect that declining property values will cause the total assessed valuation in some taxing districts to decline between 2008 and 2009. This phenomenon could particularly impact those districts with a high concentration of residential and commercial properties.

Most of my Washington State readers are familiar with the concept of the 1% annual limitation in the amount property tax revenues can increase from year to year. In an era of appreciating real estate values, most of us may have assumed that the "limit factor" would always be at least 101%, right? Well, maybe that is not so when values diminish and the total AV actually drops, year to year. With values diminishing, maybe your tax revenue itself may actually have to drop from one year to the next!

Let us analyze the statutory language in RCW 84.55. Under RCW 84.55.005, the limit factor for taxing districts having a population of less than ten thousand is simply 101%. But for taxing districts for which a limit factor is authorized under RCW 84.55.0101, the limit factor means the lesser of what is authorized under that section or 101%. So what does RCW 84.55.0101 authorize? Well, that authorizes the governing board ("legislative authority") to make a finding of "substantial need" and then use a limit factor of up to 101% **irrespective of inflation or deflation.** The statute then goes on to provide that, for boards of four or fewer a two-thirds majority is needed for that finding, made by ordinance or resolution. If the board has more than four members, a majority plus one will suffice on such an ordinance or resolution. And a limit factor is for one year only.

Absent a small population (under 10,000) or a finding of substantial need, all other districts are limited to the lesser of 101% or 100% plus **inflation,** under RCW 84.55.005(2)(c), so this is where the problem arises.

Suppose yours is a larger population district, but your board makes no finding of substantial need or adopts no such resolution. Suppose inflation is minus 1%. The **lesser** limit factor therefore is 99% and that will limit your tax levy to 99% of your highest levy of the three most recent years (or as we say, usually that is last year's levy).

The lesson to be learned for the bigger districts is that if deflation occurs, a resolution declaring substantial need takes on an added air of importance, just to get the 1% increase!! It seems to me there is a trap lurking there for the unwary.

Just in case you were wondering… "inflation" means the "percentage change in the **implicit price deflator** for personal consumption expenditures for the United States as published for the most recent twelve-month period by the bureau of economic analysis of the federal department of commerce in September of the year before the taxes are payable" (emphasis added). So September of 2009 for the 2009 levy, collectible and payable in 2010. Don't forget—it is not the consumer price index (CPI), for those familiar with that index often used for comparables in firefighters' union contracts.

The foregoing article was "sparked" by a memo that I saw, written by Diann Locke of the Department of Revenue.

NEW COLUMNIST INTRODUCED TO READERS

How to Do It - Mastering Soft Skills
by Sue Mackey

Sue Mackey and The Mackey Group LLC (TMG) are internationally recognized for the work they do in skill standards development (hard & soft skills) for professional and non-professional occupations, from CEO's to entry level blue collar positions. In addition, she has authored numerous books, including *Living Well, Working Smart: Soft Skills for Success*, which is used extensively in MBA programs and also doctorate programs to teach students mastery of soft skills. She's a columnist, national speaker and business consultant on **how** to do what we do and do it successfully. Mackey's clients span diverse industries and professions, including the fire service. The evidence is glaring, **people learn and know what to do but fail to master HOW to do it and do it well.**

In this newsletter, Joe focuses on what to do and what you need to know. I will focus on and provide you with how to do it -- how to skillfully implement and execute your plans. Good, effective leadership is the result of soft skill mastery.

What are soft skills? They are the underpinning to effective and productive governing and managing. In general terms, soft skills include critical thinking, emotion management and character development skills. Every function and task requires use of these skills. Poor use, poor outcomes. Good use, good outcomes. All successes and failures can be traced to either mastery or deficiency in these skill sets.

Joe has just brought you up to speed on more new laws and regulations – more compliance and even more change. The Fire Chiefs and board members I've spoken with recently are struggling to manage their rising stress levels, with few coping mechanisms kicking in. **How** do you minimize your stress level in order to cope effectively and skillfully with the onslaught of more change?

Most stress is a direct result of malfunctioning relationships. We'll focus on just two skills required to jump start functioning relationships: trust and decision making. If there's a real or perceived breach of trust between board members and/or the executive team, two things happen. Heightened emotions and poor decisions or good decisions and poor execution follow. Heightened emotions cloud logic and decisions are fraught with mingled motives and undermined to prove or disprove trust.

If trust is an issue, real or perceived, you must prove or disprove it. How? There should be nothing more

pressing on your agenda. Lack of trust will ultimately implode an organization from defensive posturing. The elements of mastering trust are: (1) It's a gut feel-- search for validating, reliable evidence; (2) prove or disprove rumors or innuendos with factual evidence; (3) events, a one time error in judgment is just that. A pattern of behavior confirms or denies trustworthy or not; (4) disagreements are not trust issues. They are process issues; (5) there are three, not two, positions on trust: trust, neutral (until pattern evolves) and no trust.

Decision making is a process. Failure to have a sustainable process in place leads to high stress, personal attacks, emotional versus logical conclusions, confusion and resentment. The elements of a good process include: (1) validation of good, reliable data; (2) desired outcomes articulated; (3) known impact on all stakeholders; (4) all known risks and consequences; (5) course correction and exit strategies, if any part or all is flawed; (6) trust in each team member to have the skill sets required to execute successfully; and (7) tracking system to learn from and to improve process and skill sets.

It's not what we do but **how** we do it that makes the difference in our stress level and ability to effectively cope with change.

Email your questions, comments or concerns to:
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