



# **COMMISSIONER'S HANDBOOK**

**Washington Fire Commissioners Association**

**JANUARY 2019**

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## Washington Fire Commissioners Association

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## **INTRODUCTION**

Whether you are a commissioner of a fire protection district or a member of the governing board of a Regional Fire Protection Service Authority “RFA”, whether you have just begun to serve in this role or whether you have years of experience this handbook is designed to provide you with a basic guide to understanding the various roles, duties and responsibilities that you will have as a member of a governing body. (Although the governing member of an RFA may not be called a commissioner, for ease of reference this handbook uses the term commissioner to apply to both RFA and fire protection district elected officials).

## **UNDERSTANDING YOUR ROLE – THE BIG PICTURE**

### **TWELVE SIMPLE RULES OF COMMISSIONER EFFECTIVENESS.**

1. Respect and comply with the law.
2. Work cooperatively with other board members to govern your District.
3. Act in a manner that promotes public confidence in the office of fire commissioner.
4. Participate in establishing, maintaining, and enforcing high standards of conduct and personally observe those standards.
5. Manage and direct personnel only through the board, do not attempt to unilaterally direct or manage personnel. You were not elected to run the District by yourself.
6. Understand, respect and uphold the District’s adopted chain of command.
7. Lead by example.
8. Keep an open mind and don’t be afraid to say, “I don’t know.”
9. Get proper advice when appropriate.
10. Recognize and understand that your actions and most of your work will be in the public eye and will be scrutinized by the public.
11. Recognize that fire protection districts are municipal corporations and often cannot be managed the same way that you manage your personal business.
12. Take advantage of the resources and experience of the Washington Fire Commissioners Association as well as your local and regional commissioner associations. Chances are the question or challenge facing you has been addressed or experienced by other commissioners.

# **WHAT IS A FIRE PROTECTION DISTRICT/REGIONAL FIRE PROTECTION SERVICE AUTHORITY?**

## **MUNICIPAL CORPORATION.**

Fire protection districts are municipal corporations authorized by Title 52 RCW as separate legal entities that have perpetual existence, specific powers, obligations and responsibilities. Fire protection districts are not subdivisions of a county and the county in which a fire protection district is located does not have general control over the fire protection district. A fire protection district may be a member of a Regional Fire Protection Service Authority.

Regional Fire Protection Service Authorities “RFA” are municipal corporations authorized by Chapter 52.26 RCW as separate legal entities that have perpetual existence, specific powers, obligations and responsibilities. When an RFA is formed, the voters approve an RFA Plan, the Plan defines the governance, funding and other operational elements of the RFA. RFAs are not subdivisions of a county and the county in which a RFA is located does not have general control over the RFA. RFAs may include fire protection districts, cities and towns as members but remain independent municipal corporations with independent taxing authority.

## **PURPOSE AND FUNCTION.**

The purposes and functions of a fire protection district are primarily set forth in RCW 52.02.020, which establishes that a district is authorized to provide:

1. Fire Prevention Services,
2. Fire Suppression Services,
3. Emergency Medical Services, and
4. The Protection of Life and Property.

In addition, fire protection districts and RFAs are authorized to provide non-emergent medical care through a community assistance referral and education services program under RCW 35.21.930.

As a commissioner you are required to focus your efforts and services on actions that will further the above purposes. You do not have the legal authority to undertake or direct actions outside of the scope of the above authorities.

Although not specifically identified by a separate statute, RFAs have a similar purpose and function. Because of this similarity, this handbook will generally refer to the term District or Fire District rather than RFA. The general duties and obligations of a member



of a governing board of an RFA are virtually identical to that of a fire protection district commissioner.

## **WHO ARE THE PEOPLE RESPONSIBLE FOR OPERATING YOUR DISTRICT?**

### **THE VOTERS/CITIZENS.**

The voters/citizens should be the focus of the District. The purpose of the District is to protect the citizens by providing the services identified above. The citizens pay the taxes that provide the majority of District funding. The voters are responsible for selecting the Commissioners and for determining the amount of tax levies they will support.

### **THE BOARD OF COMMISSIONERS/GOVERNING BOARD.**

The board of commissioners of a fire protection district, generally consisting of three, five or seven elected individuals, is responsible for governing the operations of the District. The composition of RFA Governing Boards is established by the RFA Plan. Regardless, the board will generally be responsible for the following areas:

1. Determining levels of service and establishing goals.
2. Determining type and level of funding, approve budgets, tax levies.
3. Establishing policies and approve operational procedures.
4. Employing key personnel, supervising chief.
5. Guiding strategic planning.
6. Representing District to public.

### **THE COMMISSIONER/GOVERNING BOARD MEMBER.**

As an individual commissioner/governing board member you have no individual authority to operate a fire protection district or regional fire authority. Instead, individual commissioners and governing board members have the following responsibilities:

1. Attend meetings of the board.
2. Educate yourself to understand the history of your District, the laws governing the operation of the District and your role in governing the District.
3. Actively participate in the governance of the District by working with the board in open public meetings.

4. Understand and comply with all ethics laws.
5. Act as a representative of your District with a professional demeanor.
6. Avoid any attempts to unilaterally direct staff members or micromanage the staff. The board runs the District through the Chief, individual commissioners do not, and should not, attempt to run the District.
7. Represent all constituents and avoid special interests.
8. Maintain confidentiality of privileged or private District records and information.

### **THE SECRETARY.**

RCW 52.14.080 provides that the board of commissioners of a fire protection district shall appoint a District Secretary. There is no similar requirement for regional fire authorities. The District Secretary is an appointed public official and is required to take an Oath of Office upon appointment. The District Secretary is responsible for the performance of certain specific statutory duties including the following:

1. Responsible for preparing and maintaining minutes of board meetings, RCW 52.14.080.
2. Assist in preparation, certification and filing of budget, RCW 52.16.030.
3. Prepare, approve and sign vouchers, RCW 52.16.050.
4. Serve as Auditing Officer for payments of claims, RCW 42.24.080.
5. Receive special meeting notice waivers, RCW 42.30.080.
6. Continue board meetings in commissioners' absence, RCW 42.30.090.
7. Manage annual financial reports, assist in compliance with state Auditor requirements, RCW 43.09.200 – 43.09.2855.
8. Serve as confidential secretary to the board of commissioners.
9. Understand and comply with all ethics laws and rules.
10. Perform other duties as assigned by board of commissioners

### **THE CHIEF.**

The Chief is the CEO of the District and should be responsible for the day-to-day operations of the District. The specific duties of the Chief will vary depending on the size and

organizational structure of a specific District and the duties should be specified in a job description.

### **FIREFIGHTERS/EMS PERSONNEL.**

Paid or volunteer firefighters are responsible for directly providing the services to the citizens of the District. The board of commissioners is responsible for establishing the number and rank of firefighter positions, qualifications for the position of firefighter, and the terms and conditions of employment. The determination of whether the district will use all volunteers, all paid or a combination is a responsibility of the board that will be guided by budgetary limits and the historical practices of your district.

### **OTHER PERSONNEL.**

Depending on the size and budget of your District, the board may create additional paid or volunteer positions including additional administrative support positions, mechanics, public education officers, fire marshals, etc.

### **CONSULTANTS.**

Your District will likely use consultants including, attorneys, architects, engineers, strategic planning consultants, accountants, etc. Prior to hiring architects and engineers the District must go through a statutory request for qualification process. Other consultants may be directly hired. A written contract should generally be executed with any consultants hired. You may also want to have policies in place governing who has authority to contact and communicate with consultants.

### **TITLE 52 RCW.**

To perform your role as a commissioner, you must be aware of the basic structure of Title 52 RCW and must know where to look to understand your roles, responsibilities and duties. Title 52 RCW is organized into the following 14 chapters:

#### **52.02 – FORMATION.**

If you have already been elected, this chapter will rarely be consulted. The Chapter includes the rules for forming fire protection districts in unincorporated areas and, effective in 2017 contains the rules for forming a fire protection district concurrent with the existing boundaries of a city or town,

#### **52.04 – ANNEXATION.**

Allows a fire protection district to expand its boundaries to cover areas currently outside of any city, town or other fire protection district.

#### **52.06 – MERGER.**

Allows two fire districts located within a reasonable proximity to each other to combine into one district or transfer a portion of one district into an another district (partial merger). Reasonable proximity is defined as “geographical areas near enough to each other so that governance, management, and services can be delivered effectively.”

#### **52.08 – WITHDRAWAL.**

Establishes the procedure that allows a portion of a district to be withdrawn from the boundaries of the existing district.

#### **52.10 – DISSOLUTION.**

Establishes the procedures for dissolving a fire protection district.

#### **52.12 – POWERS.**

Establishes the basic powers of a fire protection district including but not limited to:

1. Acquire, purchase, hold, lease, manage, occupy, and sell real and personal property.
2. Enter and perform necessary contracts.
3. Appoint and employ the necessary officers, agents, and employees.
4. Levy and enforce the collection of taxes.
5. Do any and all lawful acts required to carry out the purpose of Title 52 RCW.

#### **52.14 – COMMISSIONERS.**

Establishes number of commissioners, lengths of terms, District Secretary position, commissioner compensation, purchasing and public works requirements. Also includes the rules for establishing city and town legislators as an ex-officio board of commissioners in a fire district formed within the boundaries of a city or town.

#### **52.16 – FINANCES.**

Establishes District tax levy authority, bonding authority, fund disbursement authority.

#### **52.18 - BENEFIT CHARGES.**

Authorizes and establishes procedures to implement a benefit charge.

**52.20 – LIDS.**

Authorizes and establishes a rarely used procedure to raise revenues through a local improvement district process.

**52.22 - SPECIAL PROCEEDINGS.**

Establishes special court proceeding for confirming, contracts, bonds and other matters.

**52.26 – RFPSA.**

Authorizes the creation of a Regional Fire Protection Service Authority. As discussed elsewhere in this handbook, the creation of an RFA results in a separate municipal corporation and taxing district that will assume responsibility for fire protection, suppression and EMS within the boundaries of a participating fire protection district. This chapter also includes provisions governing the taxing authority, benefit charge authority, annexation authority and other provisions specific to RFAs.

**52.30 – MISCELLANEOUS.**

Authorization to contract with other municipal corporations, including state agencies, cities, towns and other institutions for services, authorizes civil service for employees, authorizes District name change procedures.

**52.33 - PERFORMANCE MEASURES.**

Establishes requirements for formally adopting response time based performance measures.

**OTHER COMMONLY ENCOUNTERED STATUTES**

**8.20 Eminent Domain Procedures.**

**18.73 Emergency Medical Care And Transportation.**

**Title 39 Public Works And Purchasing Requirements.**

**35.21.930 Authorizes provision of non-emergent care services.**

**41.24 Volunteer Firefighters And Reserve Officers Relief And Pension Act.**

**41.26 Law Enforcement Officers And Firefighters Retirement. “LEOFF.”**

**41.40 Washington State Public Employees Retirement System, “PERS.”**

- 41.56 Public Employees’ Collective Bargaining, “PERC.”
- 42.23 Code Of Ethics For Municipal Officers.
- 42.30 Open Public Meetings Act.
- 42.41 Local Government Whistleblower Protection.
- 42.56 Public Records Act.
- 49.60 Washington Law Against Discrimination.
- 70.02 Medical Records.
- 84.52 Property Tax Levies, EMS Levy.
- 84.55 Property Tax Limits, Lid Lifts.

**BOARD OF COMMISSIONERS/GOVERNING BOARD STRUCTURE**

**REQUIREMENTS FOR OFFICE.**

To serve as a commissioner of a fire protection district you must be a registered voter residing within boundaries of the District. In limited situations, a fire district may be governed by the members of a city or town council that has formed a fire protection district co-extensive with the boundaries of the city or town. To serve as a governing board member of an RFA, you must be an elected official of a participating jurisdiction in the RFA or be a registered voter residing within the RFA depending on the governance structure established under the RFA Plan.

**OATH OF OFFICE.**

You must take an official oath as a condition of taking office. The oath must be taken before a notary, signed and filed with County Auditor.

*I, \_\_\_\_\_ do solemnly swear that I will faithfully and impartially discharge the duties of this office as prescribed by law and to the best of my ability, and that I will support and maintain the Constitution of the State of Washington and of the United States of America.*

**SIZE OF BOARD.**

A board may consist of three, five or seven members. To establish a seven-member board the District must have an annual budget of ten million dollars or more. The number may only be changed by a vote of the citizens (RCW 52.14.015, .017). A District with only full time full paid employees (i.e. no volunteers) must have a five or seven-member board. In the event of a

merger of two or more Districts, a board may have more than five or seven members but this will be temporary, as the number will be reduced by attrition to three, five or seven pursuant to a statutory procedure.

The size of governing board of a regional fire protection service authority will be determined by the RFA Plan approved by the voters at the time of formation of the RFA. There are no statutory limits on the size of an RFA Board.

#### **TERM OF OFFICE.**

Commissioners are elected to six-year terms. Elections are held in odd numbered years. The terms of RFA governing board members may be established in the RFA Plan.

#### **RESIGNATIONS.**

Commissioners may resign for any reason. Resignations are effective when made and cannot be revoked after the effective date of the resignation. There is no requirement that the Board “accept” a resignation.

#### **VACANCIES – CREATION.**

A vacancy may be created in a number of situations including resignation, conviction of a felony, death, a commissioner moving out of the District, or a commissioner’s residence being annexed into an adjacent city. A vacancy may also be created when a commissioner misses, without permission from the board, three consecutive regular meetings when a formal notice procedure is followed. (RCW 52.14.050)

#### **VACANCIES – FILLING.**

If two or more board members remain, the board members have 90 days to fill the vacancy. If not filled within 90 days or only a single board member remains, the County legislative authority fills the vacancy. Individuals appointed to fill a vacancy serve until a new commissioner is elected at the next commissioner election (odd years). The person elected then serves the remainder of the term of that commissioner position.

#### **BOARD POSITIONS.**

The board of commissioners is required to elect a chairperson. No other positions are required although most Districts will also elect a vice chair to serve in the absence of the chair.

## **CHAIRPERSONS ROLE.**

The Chairperson continues to vote, make motions and participate in discussions in the same manner as the other commissioners. In addition, the chair has the specific statutory authority to:

1. Preside over and conduct meetings.
2. Announce executive sessions.
3. Call special meetings.

## **MANDATORY COMMISSIONER TRAINING REQUIREMENTS.**

Every commissioner or member of an RFA governing board is required by statute to engage in Public Records Act, Open Public Meetings Act and record retention training. The training must occur no later than ninety days after the commissioner has taken the oath of office and the training must be completed at least once every four years thereafter. The Washington State Fire Commissioners Association regularly offers the training and can also assist in locating appropriate training from other sources.

## **BOARD OF COMMISSIONERS - MEETINGS**

### **QUORUM.**

A meeting of the board of commissioners only occurs when a quorum of the members is present. A quorum of commissioners is required for the board of commissioners to take action. If a quorum of commissioners is present, any discussion of District business must comply with the open public meetings act. A quorum in a three-member board is two commissioners. A quorum in a five-member board is three commissioners. A quorum in a seven-member board is four commissioners. For larger boards a quorum consists of a majority of the members. A regional fire authority can establish different quorum requirements to meet the needs of the regional fire authority's governance structure.

### **OPEN PUBLIC MEETINGS ACT.**

All meetings of a quorum of commissioners must be held in conformity with the Open Public Meetings Act. The Act broadly defines meeting to include the transaction of the official business of the board including but not limited to "receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations and final actions."



## **REGULAR MEETINGS.**

The board of commissioners is required to have at least one regular meeting per month. The date, time and place of the regular monthly meeting must be established by written resolution of the board and changes to the date, time or place must also be made by resolution. The board may take action on any item of business at a regular meeting regardless of whether such action is identified on an agenda. Regular meetings may also be continued or adjourned to a specific date, time and place if notice of such continuance or adjournment is posted at the meeting site and given in the same manner as provided for special meetings.

## **SPECIAL MEETINGS.**

Any board meeting other than a regular board meeting. The meeting may be called by the chair or by a majority of the board. The board may not take final action on any item not specified in the notice. Notice may be waived in writing or by attending. Notice of a special meeting must meet the following minimum statutory requirements:

1. **Board Member Notice.** Written notice must be delivered to each Board member either personally, by mail, by fax or by e-mail.
2. **Media Notice.** Written notice must be delivered either personally, by mail, by fax or by e-mail to each local newspaper of general circulation and to local radio or television stations *that have submitted a written request to be notified of your special meetings*. The law does **not** require agencies to publish special meeting notices. The requirement of the notice to the news media is to enable the news media to send a reporter to the meeting. If the media wishes to publish the meeting notice it may do so but the district is not required to publish the notice.
3. **Web Site Notice.** Written notice must be posted on the agency's web site **if** the agency has a web site, has personnel assigned by job description or contract to maintain the web site and if the agency employs 10 or more full time equivalent employees.
4. **Posting of Notice.** Written notice must be prominently displayed at the main entrance of the agency's principal location and at the meeting site if the meeting is not held at the agency's principal location.

The notices above must be delivered or posted at least 24 hours in advance of the meeting.

## **EMERGENCY MEETINGS.**

A special board meeting held without the required notice. The chair or a majority of the board may call an emergency meeting only when “an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, ... would make notice impractical and increase the likelihood of such injury or damage.”

## **AGENDA.**

Although not specifically required by statute, an agenda is a recognized and useful tool to run an organized meeting. If an agenda is prepared for a regular meeting and if your district has a web site and more than ten full time equivalent employees, the agenda must be posted online at least 24 hours in advance of the meeting. The agenda may still be modified at the meeting. Generally, the chairperson is responsible for the content of the Agenda. Commissioners may communicate outside of an open public meeting for the limited purpose of informing the chairperson of items to be placed on the agenda. An agenda for a special meeting cannot be amended at the special meeting. The agenda for a regular meeting may be amended or expanded during the meeting. A standard agenda **may** use the following format:

1. Opening of Meeting
2. Pledge of Allegiance
3. Consent Agenda (An option for approving regular, reoccurring and non-controversial items such as minutes, payroll vouchers, etc.)
4. Approval of minutes of prior meeting
5. Voucher review and approval
6. Public Comment (This is discretionary with the board and time and subject matter limitations may be placed on public comment)
7. Correspondence
8. Old Business
9. New Business
10. Chief Report
11. Other Committee Reports
12. Executive Sessions
13. Good of the Order
14. Adjournment

## **MINUTES.**

The board is required by statute to maintain minutes of all meetings (minutes are not required for the executive session portion of a meeting). The minutes will generally be taken by the District Secretary or other designated person but do not become the minutes of the meeting until approved by the board of commissioners. Minutes should not be verbatim but should be a detailed summary of the content of the meeting. Minutes become a permanent record of the District. While meetings may be recorded to assist in minute taking, audiotapes should not be used to replace minutes. At a minimum minutes should reflect the following:

1. Members of the governing body present
2. Verbatim statement of all motions and actions taken by the board
3. The substance of discussions relating to subjects addressed at the meeting

## **RULES OF PROCEDURE ORDER OF BUSINESS.**

A board of commissioners may adopt any rules of procedure that it determines appropriate. A common form is Robert's Rules of Order, Newly Revised. Regardless of the procedural rules adopted, the board retains the right to amend or suspend application of the rules by a simple majority vote at any time. Having a copy of the rules or order at the meeting is generally a good idea in the event procedural issues arise.

## **VOTING.**

With a few statutory exceptions, the board of commissioners' acts by a simple majority vote and this requirement cannot be modified by any procedural rules.

## **AUDIENCE PARTICIPATION.**

Although the board must meet in an open public meeting, the meeting remains a meeting of the board. The public has a right to attend and listen but has no right to participate or interrupt. Most boards will include a public comment session as part of a regular meeting but the law does not require this.

## **BOARD DISPUTES.**

Occasionally there will be disagreements between board members. A minority board member may request that his or her opposition or negative vote to a motion be reflected in the minutes. It is expected that all board members will maintain civility and appropriate behavior even if disagreements arise.

## **COMMITTEES.**

The board may establish committees. However, in a District with a three-member board, any committee with more than one commissioner must conduct all of its meetings as open public meetings in compliance with the open public meetings act.

## **EXECUTIVE SESSIONS.**

Executive sessions are the parts of an open public meeting where the public can be excluded for a limited set of reasons. RCW 42.30.110 contains the narrowly interpreted reasons for which an executive session can be called. The chairperson must announce the purpose and state the end time of the executive session. The open public meeting cannot be resumed until the stated time has arrived even if the executive session concludes earlier than expected. The most commonly invoked provisions are stated as follows:

**RCW 42.30.110(1)(b)** *To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;*

**RCW 42.30.110(1)(c)** *To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public;*

**RCW 42.30.110(1)(d)** *To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs;*

**RCW 42.30.110(1)(f)** *To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;*

**RCW 42.30.110(1)(g)** *To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public;*

**RCW 42.30.110(1)(h)** *To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public;*

**RCW 42.30.110(1)(i)** *To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.*

*This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), "potential litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a) concerning:*

*(A) Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;*

*(B) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or*

*(C) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency;*

*RCW 42.30.140(4)(a) Collective bargaining sessions with employee organizations, including contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement; or (b) that portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by the governing body during the course of any collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress."*

## **BOARD MEMBER COMPENSATION**

### **PER DIEM.**

RCW 52.14.010. Commissioners are entitled to \$128.00 (as adjusted by inflation every five years with the next adjustment occurring January 1, 2019) per meeting "or in performance of other services or duties on behalf of the district." The determination of what constitutes district business and "others services or duties" should be determined by policy of the board of commissioners. The statute places an annual cap of \$12,288.00 on the amount of per diem that a commissioner may receive. A commissioner may waive all or a part of his or her right to receive the per diem if the waiver is made in writing, in advance of earning the per diem.

### **EXPENSE REIMBURSEMENTS.**

Commissioners are entitled to be reimbursed for necessary expenses incurred in attending meetings of the board or when otherwise engaged in district business. The board should adopt clear policies regarding the types of expenses and method for reimbursement of expenses.

### **INSURANCE.**

Commissioners should have liability and errors and omissions insurance covering their actions as a commissioner provided at the cost of the District. Commissioners are also entitled to receive other forms of insurance made available to all firefighters but must personally pay the premiums.

### **SERVICE AS VOLUNTEER.**

A commissioner may serve as a volunteer of the District if the board unanimously passes a resolution authorizing such service. When serving as a volunteer, the commissioner is entitled to receive the same benefits provided to all volunteers but is not entitled to the commissioner per diem for time spent serving as a volunteer.

## **POLICY MAKING**

### **SCOPE OF POLICIES.**

Policymaking is one of the primary roles of the board of commissioners. Policymaking is simply the development of high-level broad plans that embrace the board's general level of service and operational goals.

Procedures include the details of the implementation of policies in specific situations. Care must be taken to insure that existing contract rights are not adversely affected or impaired. Another concern of the board in the adoption of policies and procedures is to firmly establish that the policies and procedures are within the statutory authority of the district and the board and that they do not violate any applicable statutory or regulatory provision.

### **ADOPTION AND ORGANIZATION.**

The board of commissioners should formally adopt general policies in an open public meeting by a majority vote of the board. Responsibility for adopting operational procedures addressing the day-to-day operations of the services provided may be delegated to the Chief. Regardless of the method of adoption, a policy that is adopted and then buried in a file cabinet is no policy at all. Policies can be organized in many ways but the goal should be a system that is 1) easy to use, update and maintain and 2) accessible to all members of the District.

### **POLICY MANUALS.**

Policy manuals or employee handbooks are an effective and often used method to educate employees regarding District policies. Manuals and handbook should include a disclaimer stating that the handbook does not constitute a contract of employment and that the board may revise the policies and procedures included at any time without prior notice.

### **SUSPENSION AND AMENDMENT OF POLICIES.**

Policies may be amended or suspended only by a majority vote of the board of commissioners.

### **RECOMMENDED POLICIES.**

As a commissioner you should work with the board to make sure the district has the following policies and procedures in place and up to date.

Board of Commissioners:  
Commissioner Conduct Policy  
Compensation Policy  
Rules of Procedure  
Ethics Policy

District Services:

- Level of Services (specifics will be established through operational procedures)
- Services outside of District
- Burning Permits (if board chooses to take on responsibility)
- Comprehensive Plan
- Capital Facilities Plan
- Growth Management and Level of Service Contribution

Fiscal Management:

- Voucher Preparation and Approval
- Budget Process
- Credit Cards
- Travel Expenses
- Petty Cash
- Service Charges
- Volunteer Reimbursements
- Resource Use

Equipment:

- Cell Phone
- Vehicle Use
- Inventory control
- Purchasing Equipment and Supplies
- Surplus Property
- Small Works Roster
- Vendor List Procedures
- Small and Attractive Asset/Inventory

Personnel:

- Selection and Hiring
- Employment Standards
- Appearance
- Education and Training
- Drill and Response Requirements
- Non-Discrimination
- Employment Benefits
- Discipline and Termination
- Litigation Defense
- Whistleblower
- Military Leave

Community Relations:

- Public Records Policy
- Medical Records Policy
- Privacy Policy

## **CONFLICTS OF INTEREST/ETHICS**

Chapter 42.23 RCW establishes a limited code of ethics for municipal officers. The code focuses primarily on prohibited financial conflicts of interest. The chapter applies to the board of commissioners of the fire protection district and could apply to the chief and other employees of a district if they have been delegated certain decision-making authority.

### **PROHIBITED FINANCIAL CONFLICTS.**

If any member of the board of commissioners has a prohibited contractual conflict of interest, the board is prohibited from entering the contract. Abstention by the conflicted commissioner does not remove the conflict.

1. You may not have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature that conflicts with the proper discharge of the commissioner's duties.
2. You may not have a beneficial interest, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or under your supervision in whole or in part. This prevents a paid employee from serving as a commissioner for the same district and, under the Washington community property law, generally prevents the husband or wife of a paid employee (except in the capacity of a District Secretary) from serving as a commissioner of a district.
3. You may not accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in any such contract, sale, lease, purchase, or grant.
4. You may not give or receive or agree to receive any compensation, gift, reward, or gratuity from a source other than the fire district, for a matter connected with or related to your services as a commissioner unless provided for by law.
5. You may not receive, accept, take, seek, or solicit, directly or indirectly, anything of economic value as a gift, gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity, or favor would influence your vote, action, or judgment or be considered as part of a reward for action or inaction.



## **ALLOWABLE FINANCIAL CONFLICTS.**

If you have one of the following conflicts, the board may approve the contract but you must declare your financial interest and abstain from voting. These exceptions do not apply if you attempt to influence, other district officers with respect to entering the contract.

1. You, or your spouse may have a financial interest in a contract that does not exceed \$1,500.00 in any calendar month.
2. Employment in an unskilled day labor position for less than \$200.00/month.
3. Your financial interest meets the following definitions of a **remote interest**
  - a. Your interest is that of a nonsalaried officer of a nonprofit corporation.
  - b. Your interest is an employee of a contracting party, and your compensation consists entirely of fixed wages or salary.
  - c. You are a landlord or tenant of the contracting party.
  - d. Your financial interest consists of ownership of less than 1% shareholder of a contracting corporation or cooperative.

## **TWENTY-FIVE BASIC ETHICAL RULES.**

Although chapter 42.23 RCW establishes some specific ethical rules it should not be misconstrued as a complete code of ethics. There are many ethical rules that govern your conduct as a commissioner that can be found throughout the Revised Code of Washington, case law and common sense. The following list summarizes some of these rules:

1. Recognize that public office involves public trust and service to the public.
2. Understand how your powers, duties and authority are limited by statute.
3. Adhere to your Oath: Faithfully and impartially discharge the duties of the office.
4. Do not meet and discuss district business with other commissioners informally.
5. Limit executive sessions to areas allowed by statute.
6. Recognize that public records belong to the public.
7. Do not disclose confidential information.
8. Protect your employees and constituents right to privacy.
9. Secure and maintain confidentiality of medical records.
10. Do not give away public funds.
11. Do not lend public funds.
12. Verify the appropriateness of all expenditures of public funds.
13. Account, with documentation, all uses of petty cash and advance travel funds.
14. Immediately deposit public funds received in district accounts.
15. Do not use or take district resources for personal use.
16. Report misappropriations of public funds to the state auditor.

17. Do not use your position to secure special privileges or exemptions.
18. Do not accept payment or other benefits as a condition of voting or taking actions.
19. Do not lie.
20. Avoid all appearances of unfairness.
21. Do not use force to influence your fellow commissioners.
22. Do not attempt to circumvent or avoid the public bid laws and procedures.
23. Do not remove, alter, mutilate, destroy or conceal protected public records.
24. Practice non-discriminatory conduct as an example to others.
25. Do not use public resources in any political campaign.

## **FINANCING AND BUDGETING**

Your District is financed by a limited number of revenue sources with the primary source being property tax levies. One of your primary responsibilities as a commissioner is to determine the level of funding your taxpayers will support and use those funds in a financially prudent manner as you budget for and manage the District's expenses. A thorough understanding of the types and limits of your revenue sources and the budgetary process is a critical step in becoming an effective commissioner.

### **REVENUE SOURCES – TAX LEVIES**

#### ***ASSESSED VALUATION.***

Property taxes are your primary revenue source. All property taxes are based on the concept of assessed valuation. Assessed valuation includes three elements, the assessed value of property that has previously been on the tax role of the district, the assessed value of new construction and improvements to real property, and the assessed value of private utilities that cross county boundaries established by the Department of Revenue. The County Assessor will notify your district of the assessed values every fall.

#### ***REGULAR TAX LEVY.***

Fire Protection Districts may levy up to \$1.50 per thousand dollars of assessed valuation RCW 52.16.130 (\$.50), 52.16.140 (\$.50) and 52.16.160 (\$.50). Regional fire protection service authorities have identical authority that can be found at RCW 52.26.140, however, the third \$.50 levy in an RFA requires that the RFA have at least one full time, paid employee or contract for the services of at least one full time, paid employee.

#### ***EMERGENCY MEDICAL SERVICE LEVY.***

Pursuant to RCW 84.52.069 fire protection districts and regional fire authorities also have the authority to levy an additional fifty cents (\$.50) per thousand dollars of assessed value to provide emergency medical services for a six year, ten year or on a permanent basis. The levy is available only if neither the county nor any other authorized taxing district imposes the tax within the boundaries of the fire district and only if the voters of the district approve the tax levy by a sixty percent majority. The election must also validate (i.e. the total number of voters

must be no less than 40% of the total number of voters who voted in the most recent general election in the District. In the event less than 40% turnout, the 60% yes vote must be a number equal to forty percent of the total number of voters voting in such taxing district at the last preceding general election.) The funds raised by the EMS levy may only be used to finance emergency medical services. Renewals of an existing EMS levy (regardless of the levy rate) do not have to meet the validation requirement and require only a simple majority vote rather than the 60% super majority that is required when an EMS levy is initially established. If you move from a six year to a ten year or permanent levy, it is considered a new levy and the 60% super majority with validation is required.

#### ***EXCESS TAX LEVY.***

An excess levy is a levy that exceeds the \$1.50 regular tax levy limits and requires sixty percent voter approval and the total number of persons voting at the election must constitute 40% or more of the voters that voted at the most recent general election in the district. Excess levies are often associated with incurring bonded indebtedness.

### **REVENUE SOURCES - NON-TAX REVENUES**

#### ***LOCAL IMPROVEMENT DISTRICTS.***

Fire protection districts are authorized to create local improvement districts to assess a special levy on properties that will be particularly benefited by the improvements purchased with the levy funds. Fire protection districts rarely use this process.

#### ***BENEFIT CHARGES.***

Chapter 52.18 RCW (RCW 52.26.180-.270 for RFAs) authorizes fire protection districts to establish a benefit charge for a period of up to six years on personal property and improvements to real property. The total charge may provide up to sixty percent (60%) of the operating budget of the district. If the district elects to use a benefit charge it may still levy a real property tax at a rate not to exceed one dollar (\$1.00) per thousand dollars of assessed valuation.

The benefit charge is not a property tax but rather is a charge for services provided by the district to the properties in the District. Since the services provided to different properties will vary, the charge need not be equal on all similar properties. The voter approval requirement for the initial benefit charge is sixty percent (60%). The continuation of an existing benefit charge only requires a simple majority.

#### ***OTHER STATUTORY SOURCES OF INCOME.***

There are other limited sources that fire protection districts may consider when attempting to identify revenue sources. The authority for these sources is summarized below:

1. RCW 52.12.131 authorizes fire protection districts to establish EMS fees.

2. RCW 52.12.108 and provisions of the Washington Clean Air Act authorizes a fire protection district, *which has elected to issue and require fire permits*, to recover the costs of unauthorized burns from the property owner.
3. RCW 52.12.111 and RCW 52.12.160 authorizes services outside the boundaries of the district “under conditions prescribed by the fire commissioners.” This would allow the district to establish a fee schedule for out of district responses. If there are areas where the district knows in advance that it will regularly respond, the property owners in those areas should be notified in advance of the policy.
4. RCW 52.30.020 authorizes contracts with state agencies or institution or other municipal corporations that own tax exempt buildings or equipment within the District.
5. RCW 4.24.314 imposes a liability on transporters of hazardous materials and users of hazardous materials to reimburse fire protection districts for their *extraordinary* costs incurred in responding to hazmat incidents.
6. RCW 38.52.430 permits a responding public agency to charge for the cost of an emergency response to an incident caused by an individual who has been found guilty of or has had their prosecution deferred for driving while under the influence of intoxicating liquor or any drug. The liability is limited to \$1,000.00 and if multiple agencies impose fees more than \$1,000.00 the agencies must agree between themselves to the manner in which the fee is distributed.
7. RCW 7.68.080 provides that when a crime victim experiences an injury that “is so serious as to require the victims being taken from the place of injury to a place of treatment, reasonable transportation costs to the nearest place of proper treatment shall be reimbursed from the fund established pursuant to RCW 7.68.090” In this situation a fire district could presumably be reimbursed for the cost of a transport from the victim of crimes compensation fund.
8. RCW 82.02.050 authorizes fire protection districts, in conjunction with cities and counties to develop and impose impact fees. The statute contains numerous requirements and requires a great deal of planning, communication and cooperation with the county or city that has permitting authority in your district.

## **THE BUDGET PROCESS**

### ***THE CONCEPT.***

Once you understand your revenue sources you are then able to plan your expenses. Fire districts, like any governmental entity or business, must go through a formal budgeting process to properly manage its financial affairs. A fire district budget consists of two basic parts, an estimate of the revenue that the district expects to receive during the budget year, taxes and other income, and an estimate of the expenses the district expects to pay during the budget

year. The budget may be amended from time to time during the calendar year, but the tax levy cannot be changed after the county legislative body approves the total county tax levy.

***BUDGET YEAR.***

Fire protection districts must budget on a calendar year cash basis, that is, the district budgets for the receipts to be received during the calendar year and the expenses to be paid during the calendar year. Fire protection districts and regional fire authorities may adopt two year budgets with a one year review.

***BUDGET FILING.***

RCW 84.52.020 requires that the district budget be filed with the county by November 30. The county assessor provides the district with the current year assessed valuation of taxable properties located within the district. Using these values, the District can determine its tax levy based revenues.

***BUDGET HEARING.***

RCW 84.55.120 requires that the board of commissioners hold a public hearing to consider the sources of revenue available to the district prior to adopting a budget and establishing the District tax levies.

***TAX LEVY LIMITATIONS.***

You cannot increase your annual tax levies by more than 1 percent per year unless you get prior voter approval. This is commonly referred to as the 101% limitation. The limit applies to the total dollar amount collected, not the tax levy rate. If a one percent increase is insufficient you must ask the voters to “lift the lid” for a one to six-year period. If you request is for more than one year, you must state the “growth factor” that you want to apply instead of the one percent. To make the new levy amount serve as the base for computing subsequent levies, the lid lift ballot title must specifically state this intent. If the intent is stated, the lid lift is a “permanent” lid lift.

***ESTABLISHING THE TAX LEVY.***

The board of commissioners must establish its tax levy by resolution. This resolution tells the county what tax levy rate you want the county to assess and how much revenue you expect to receive. Keep in mind that taxes are levied in the year prior to collection. For example, your district will levy a tax in 2018 for collection in 2019.

**No Resolution.** If you fail to submit a tax levy resolution, the county will levy the amount levied in the previous year plus an amount for new construction, improvements to property and the increase in state assessed property.

**Tax Levy Resolution.** The resolution is required by RCW 84.55.120 and must show the dollar and percentage increase above the previous year’s levy excluding the amount for new

construction, improvements to property and the increase in state assessed property. The resolution should also recite that a public hearing was held.

**Substantial Need Resolution.** If your District has a population of over 10,000 and if the rate of inflation (Implicit Price Deflator Index) is less than 1%, then you must also pass a Substantial Needs Resolution stating that there is a substantial need to levy the full one percent increase. This Resolution must be passed by a super majority vote, districts with three member boards – two thirds vote, districts with more than three members – majority plus one. As the rate of inflation is rarely less than one percent, the Substantial Needs Resolution is rarely required.

**Resolution Approving Budget and Tax Levy.** The above resolutions do not replace the regular resolution by which the board of commissioners adopts the budget and establishes the district tax levy. This resolution will establish the total tax levy including the amount for new construction, improvements to property and the increase in state assessed property.

**EMS Levy Resolutions.** Districts that have both a regular tax levy and an emergency medical services tax levy should adopt separate resolutions for each tax levy. A single public hearing, however, is adequate if the minutes of the hearing show that both levies were considered.

## **PAYING THE BILLS**

### ***COLLECTION OF DISTRICT FUNDS.***

The county legislative authority is required to levy the fire protection district or RFA tax levy and benefit charge. The tax levy and benefit charge funds are collected by the County and then placed in district funds established with the County treasurer. While districts regularly have an expense fund, reserve fund and general obligation bond fund, they are authorized by RCW 52.16.020 to establish additional funds with the county treasurer. Districts may also establish, by Resolution, a petty cash fund in the name of the District at a local bank.

### ***SPENDING DISTRICT FUNDS.***

**County Issued Warrants.** Board of commissioners must approve and submit vouchers (requests) directing the county auditor to approve and issue warrants (checks) drawn on the district accounts maintained by the county treasurer.

The board of commissioners of the district determines the procedure for approving vouchers, provided that the statutory requirements are complied with. Vouchers may be approved and signed individually or by use of a voucher approval sheet that lists the voucher number, the creditor and the amount of the claim. The vouchers or the voucher approval sheet must be signed by the secretary and auditing officer of the district and by the commissioners. The board should pass a motion to approve the vouchers.

RCW 42.24.180 authorizes districts, providing the statutory bonding requirements are complied with, to establish a procedure for the approval of vouchers prior to the board of commissioners meeting.

**District Issued Warrants.** RCW 52.16.050 allows a district with an operating budget in excess of five million dollars to issue its own warrants. A District with an operating budget between \$250,000 and five million dollars may issue its own warrants if the County agrees. If your District issues its own warrants under RCW 52.16.050, the statute provides that the board of commissioners of the district must audit all payrolls and bills and simply authorize the county treasurer to pay all warrants that the district specifies by date, number, name and amount. The district secretary then actually issues the warrants.

## **INCURRING DEBT**

Fire Districts often have a need to incur debt to fund operations, equipment purchases or capital facility development. As municipal corporations, there are specific limitations and requirements that must be followed prior to incurring debt. Because of the limitations and risks involved with municipal debt, Districts should obtain professional assistance any time it contemplates incurring debt.

## **PURCHASING AND SELLING PROPERTY**

Fire protection districts and RFAs, as municipal corporations, are required to comply with numerous statutory requirements, procedures and restrictions when buying and selling property. Generally, such purchases fall into the following categories:

### **PUBLIC WORKS PROJECTS.**

This includes station construction and improvements to real property and will be governed by public works requirements including prevailing wages, small works rosters and competitive bidding **See Appendix A for a summary of the bid thresholds.**

### **EQUIPMENT MATERIALS AND SUPPLIES.**

Purchases of equipment and supplies involve consideration of whether the purchases must be made pursuant to vendor list procedures or competitive bidding procedures **See Appendix A for a summary of the bid thresholds.**

### **SERVICES.**

Services of architects and engineers require a competitive request for qualification process; there are no statutory requirements for contracting for other services. **See Appendix A.**

### **SALES OF PROPERTY, EQUIPMENT AND SUPPLIES.**

There are no specific statutory requirements for the sale of property equipment or supplies. Prior to disposing of such property, the board should declare, by resolution, the items surplus to the needs of the district. The district should then use commercially reasonable methods to

sell the property. Gifts or donations of property with value are generally prohibited. Adoption of a policy that tracks and manages small and attractive assets and a surplus property policy covering the disposition of supplies and equipment is strongly recommended.

## **RISK MANAGEMENT**

### **LIABILITY.**

As a commissioner you incur additional liability exposure upon taking office. You may find yourself and your spouse as individually named parties in the event a lawsuit is filed against the District. In rare situations you may find yourself the subject of a recall petition.

### **MANAGING LIABILITY THROUGH YOUR ACTIONS.**

The best risk management policy is to insure that all statutory requirements are complied with, such as open public meeting requirements, open public records requirements, bid law requirements, etc.

### **MANAGING LIABILITY THROUGH INSURANCE.**

The board of commissioners has statutory authority to purchase liability insurance coverage under RCW 52.14.071 and RCW 36.16.138. You should confirm that your District has such insurance in place to protect and hold personally harmless the commissioners, officers and employees of the district from liability arising out of the performance, purported performance, or failure of performance, in good faith, of the duties of the position held. The authorized insurance should cover defense costs, settlement costs and monetary judgments.

### **MANAGING LIABILITY THROUGH STATUTE.**

RCW 4.24.470 provides immunity to elected and appointed officials for liability arising out of discretionary decisions. It does not provide immunity for intentional or willful actions.

### **MANAGING LIABILITY THROUGH DISTRICT POLICY.**

The board of commissioners should adopt a policy to establish liability protection for the commissioners and other personnel. RCW 4.96.041 authorizes the board to adopt a policy under which a commissioner may request that the district provide defense costs as well as reimbursement for any judgment entered against the individual. This statute and policy also allows for a defense of a recall action provided the commissioner has acted within the scope of the commissioner's authority.



## **MANAGING LIABILITY WITH CONTRACTS.**

When signing any contract on behalf of the District make sure that the signature block clearly indicates that you are signing in your capacity as a commissioner and not as an individual. For example:

Washington Fire District

By: \_\_\_\_\_  
Name, Commissioner

## **RISK MANAGEMENT - AFTER THE FACT**

### **RESPONDING TO LIABILITIES.**

Fire protection districts are granted certain procedural protections before the District can be sued for tort claims. Chapter 4.96 RCW requires that a claim for damages must be filed sixty days prior to the filing of a lawsuit.

### **CLAIMS AGENT.**

RCW 4.96.020 requires that all districts appoint an agent to receiving damage claims. The identity of the agent, the agent's address and the times when the agent may be reached must be recorded with the County Auditor.

### **TORT CLAIM FORM.**

RCW 4.96.020 also requires that all districts make available a standard tort claim form with instructions on how the form is to be presented and the name, address, and business hours of the agent of the district. The statute contains specific requirements for the form or allows the District to use the standard State Tort Claim Form that can be found on the website of the Office of Financial Management, Risk Management Division. As of January 2017, the web address was: <http://des.wa.gov/SiteCollectionDocuments/RiskManagement/allforms.pdf>

### **CLAIM RESPONSE POLICY.**

In the event a formal claim or summons and complaint is served you as a commissioner should be aware of the claim and you should verify that your District has a formal procedure established to insure that the claims are properly addressed in a timely manner. The following checklist may help a district in establishing a procedure of this nature:

1. On receipt of service of summons and complaint or claim record date, time and name of person served.

2. Notify commissioners, chief and secretary of district.
3. Notify attorney for district.
4. Notify insurance carrier.
5. Locate and preserve all applicable records.
6. Obtain identification of district personnel involved in incident.
7. Caution all personnel not to disclose information unless authorized by board of commissioners.
8. Obtain confidential reports from all involved district personnel for immediate transmittal to attorney. Such reports should be clearly marked “confidential attorney work product.”
9. Establish contact representative to communicate with attorney for district and insurance carrier investigator or attorney.
10. Establish procedure for response to news media and public inquiries.
11. Tender defense of claim or suit to insurance carrier in writing.
12. Arrange meeting with attorney for district and insurance carrier representative.
13. Contact insurance carriers of individuals that are named as defendants.
14. Tender of defense by individuals to private insurance carriers.
15. Schedule meeting of board of commissioners for appropriate action.
16. Review district policies and procedures that are involved in claim.
17. Enact corrective policies and procedures.
18. Review action of district insurance carrier with district attorney. Insurance carrier response could include:
  - 18.1. Unqualified acceptance of defense,
  - 18.2. Denial of coverage, or
  - 18.3. Acceptance of defense with reservation of rights.
19. Board of commissioners’ action regarding the following:
  - 19.1. Challenge of insurance carrier decision, or
  - 19.2. Approve additional actions by district to provide defense.
20. Monitor progress of claim or litigation.

## **RELATIONSHIP TO OTHER GOVERNMENTAL ENTITIES**

As a commissioner it is imperative that you understand the relationship between your fire district and various state and county entities.

## **COUNTY COUNCIL OR COMMISSION.**

Your fire district or RFA is an independent municipal corporation that is separate and distinct from the County. Although, your district is independent you will still need to work with and rely on the county in a variety of areas. The county legislative authority, for example, is required to levy the fire protection district taxes passed by the board of commissioners.

## **COUNTY AUDITOR.**

The county auditor, under RCW 52.16.050 is required to issue warrants on vouchers approved by the board of commissioners of the district. RCW 36.22.090 specifically directs county auditors to issue fire protection district warrants on vouchers that are approved by the board of commissioners. The county auditor has no authority to audit your district. Only the State Auditor has this authority and responsibility

## **COUNTY TREASURER.**

The county treasurer is designated as the financial agent of the fire protection district under RCW 52.16.010. RFAs may use a treasurer other than the county. The county treasurer is required to pay the warrants that have been issued by the county auditor and to provide a monthly written report to the fire protection district regarding activity in its fund accounts.

## **STATE AUDITOR.**

The State Auditor's office has general supervisory authority over a fire protection district. The State Auditor has established an accounting system for fire protection district known as the Basic and Accounting and Reporting System (BARS). The State Auditor is also the entity that will examine the financial affairs of your district (and your district's legal compliance with bid laws, open public meetings etc.) at least once every three years. The district is responsible for the audit costs.

## **STATE ATTORNEY GENERAL.**

The State attorney general does not represent fire protection districts. In the event your district needs legal advice; independent legal counsel must be consulted.

## **DEPARTMENT OF HEALTH.**

The districts emergency medical service volunteers and paid employees are licensed by the Department of Health and are subject to limited control and direction in the chain of command established by chapter 18.71 and 18.73 RCW and the WAC provisions adopted by the Department of Health in chapter 246-976 WAC.

## **MEDICAL PROGRAM DIRECTOR.**

The Medical Program Director of the county or region in which the district is located can control the medical protocol under which the district employees operate at medical emergencies. While the Department of Health and the Medical Program Director do not have the authority to direct the level of emergency medical services that a district must provide, they do have the jurisdiction to determine how the services will be provided and to approve the training and certification of those who will provide the services.

## **WASHINGTON STATE PATROL.**

The Washington State Patrol, which includes the office of the State Fire Marshall under chapter 43.43 RCW has jurisdiction to establish a Statewide Fire Service Mobilization Procedure for natural and man-made disasters. A copy of the current plan can be found at the State Patrols emergency mobilization website [www.wsp.wa.gov/fire/for-the-fire-service](http://www.wsp.wa.gov/fire/for-the-fire-service)

## **DEPARTMENT OF ARCHIVES.**

RCW 40.14.050 requires that the State Division of Archives and Records Management approve a records retention schedule and provide for the destruction of any public records. The statute is implemented in chapters 434-600 WAC through 434-840 WAC. The department has adopted specific records retention schedules for fire districts and other local governments. The schedule should be used as the primary tool for management and disposition of district records and can be found at the Division of Archives web site:

<http://www.sos.wa.gov/archives/RecordsManagement/Records-Retention-Schedules-for-Fire-and-Emergency-Medical-Service-Districts.aspx>

## **LABOR AND INDUSTRIES.**

The Department of Labor and Industries has promulgated and enforces the extensive firefighter safety standards in WAC 296-305. These regulations establish standards of care for all the activities, operations and equipment of fire protection districts of all sizes. While some smaller fire districts may be unable to fully comply with the standards due to budgetary and staffing constraints all districts must be aware of and work toward compliance.

## **BOARD FOR VOLUNTEER FIREFIGHTERS.**

Chapter 41.24 RCW establishes the volunteer firefighters relief and pension fund, which serves as the primary source for volunteer firefighters retirement pensions and workers compensation. The State Board is composed of five members and together with the Board's executive director, works with local boards established for each fire department/district in the state to determine eligibility for benefits. The Board's adopted rules can be found at chapter 491-03 WAC. In

addition, the staff is extremely helpful in addressing issues that may arise under the pension and relief systems.

### **DEPARTMENT OF RETIREMENT SYSTEMS.**

The Department of Retirement Systems DRS controls the various state retirement systems that are available to fire protection district employees including LEOFF and PERS. The DRS website and staff have helpful information relating to employment, benefits and other issues that arise in relation to state employee retirement plans

### **HUMAN RIGHTS COMMISSION.**

The Washington State Human Rights Commission enforces Washington's Law Against Discrimination ([RCW 49.60](#)). The HRC publishes various regulations and guidelines to assist districts with complying with the Law Against Discrimination and may investigate discrimination complaints against your district.

### **EQUAL EMPLOYMENT OPPORTUNITY COMMISSION "EEOC."**

The EEOC investigates and enforces federal anti-discrimination laws, regulations, practices, and policies. Similar to the HRC, the EEOC publishes guidelines and regulations to assist districts with comply with anti-discrimination laws.

### **PUBLIC DISCLOSURE COMMISSION.**

As a commissioner you are familiar with the role of the PDC in election matters. As a sitting commissioner, your primary contact with the PDC will be in its role at enforcing the restrictions on the use of public funds to support ballot measures. The PDC will investigate and act relating to violations of the prohibition.

### **CITIES AND TOWNS.**

Unless a city or town has annexed into a fire protection district or formed a fire district within its boundaries, your primary contact with cities and towns will be limited to service area issues as neighboring jurisdictions. Building a positive relationship between your district and neighboring cities and towns can be valuable if the city or town attempts to expand through annexation. If your district has a city or town annexed into the district, the city or town has no control over your district. In most situations, the primary contact between the district and the annexed city or town relates to building and fire code enforcement.

## **EMPLOYMENT RELATIONSHIPS**

### **DELEGATION OF AUTHORITY.**

Although Title 52 RCW establishes the primary powers for a fire protection district and grants legislative and discretionary functions to the board, the board cannot and should not attempt to do everything. Accordingly, the board will regularly delegate portions of its authority and, therefore, will have a need for employees or volunteers.

Delegation will generally be accomplished by adoption of a policy, job description or resolution describing the authority and designating the individual or entity to whom it is to be delegated. When a board of commissioners decides to delegate the following guidelines should control the delegation:

1. Identify statutory authority and power of the board of commissioners that is appropriate to the action to be taken.
2. Identify the specific authority to be delegated.
3. Identify the positions to which the authority is to be delegated.
4. Identify the conditions under which the authority may be exercised.
5. Establish the purposes to be accomplished by the delegation of the authority.
6. Establish the procedures to be followed in exercising the authority.
7. Establish the limits of the authority.
8. Establish a mechanism to review the actions of the individual to whom the authority has been delegated in the event of an alleged violation.

### **GENERAL LAWS GOVERNING EMPLOYMENT RELATIONSHIPS.**

1. **Washington Law Against Discrimination.** State Statutory and regulatory requirements to prevent discrimination in employment.
2. **Americans with Disabilities Act.** Federal Statutory and regulatory requirements to prevent discrimination in employment.
3. **Washington Industrial Safety and Health Act aka Workers compensation, or Labor and Industries.** Statutes and regulatory requirements relating to working conditions and places of employment.
4. **Fair Labor Standards Act and the Washington State Minimum Wage Act** Statutes and regulatory requirements that regulate hours of employment and overtime pay requirements.
5. **Law Enforcement Officers' and Fire Fighters' Retirement System LEOFF, the Public Employment Retirement System PERS and the Volunteer Firefighters'**

- Relief and Pensions Act.** Establish the various retirement and pension systems available to employees and volunteers of a fire protection district.
6. **Department of Labor and Industries.** Responsible for overseeing statutory and regulatory provisions of the relating to the use of sick leave, family leave and other such areas of employment.
  7. **Public Employment Relation Commission.** Chapter 41.56 RCW establishes the basic rules applicable to labor negotiations and collective bargaining.
  8. **Genetic Information Nondiscrimination Act of 2008 (GINA).** Federal laws prohibiting employment discrimination based on genetic information.
  9. **Family Medical Leave Act (FMLA).** Federal law with State counterpart providing certain leave benefits for care of sick family members. Also provides certain military leave benefits.
  10. **Paid Family Medical Leave.** A program administered by the Employment Security Department under which employees can receive paid leave for family medical issues that is funded by payroll deductions and, for employers with over 50 employees, employer contributions.

## **DEFINING EMPLOYMENT RELATIONSHIPS.**

### ***EMPLOYMENT AT WILL.***

The doctrine provides that the employment relationship is terminable at will, that is, that either the employer or the employee may terminate the employment without cause. This doctrine, while still recognized, is subject to strict limitations. The limitations include the following instances where the doctrine of employment at will may not apply:

1. Where a statute, such as a civil service statute, requires termination for cause only.
2. Where an express written or oral contract provides for termination for cause only.
3. Where the actions of the employer have created an implied contract of employment terminable for cause only.
4. Where the policies, procedures, past practices, employment solicitation materials, employee manuals, verbal assurances, etc. have created an implied contract of employment terminable for cause only.
5. Where an employee's conduct is protected by public policy, i.e. whistleblowers, laws against discrimination.

### ***EMPLOYMENT TERMINABLE FOR CAUSE ONLY.***

An employee that can only be terminated for cause, whether under a collective bargaining agreement, employment contract or pursuant to district policies is afforded a contractual

interest in continued employment. Discipline or termination of such employment that causes a loss of pay or benefits entitles the employee to Due Process.

## **DUE PROCESS.**

Due process of law under the Fifth and Fourteenth Amendments to the United States Constitution require the following procedures:

1. Pre-termination or pre-disciplinary hearing or interview: After an investigation is completed, a pre-termination or pre-disciplinary hearing or interview must be conducted by an impartial official who has not already made a decision in respect to the allegations. The procedure must include the following elements:
  - 1.1. Notice to the employee of the proposed action.
  - 1.2. A statement of the reasons for the proposed action.
  - 1.3. The opportunity for the employee to respond orally or in writing.
  - 1.4. The procedure must be conducted prior to the time a decision to terminate or discipline is made and prior to the time the employee is deprived of any employment benefits.
2. Post-termination or post-disciplinary evidentiary hearing: A post-termination or post-disciplinary evidentiary hearing must be made available to the employee if requested. Unless your district has civil service, the post termination hearing will generally be provided through a Collective Bargaining Agreement grievance and arbitration process or through the courts.

## **DISTRICT RECORDS**

### **OPEN PUBLIC RECORDS ACT.**

The Washington Public Disclosure Law, contained in chapter 42.56 RCW, referred to as the Open Public Records Act, requires that all district records including electronic records, with specific exceptions, be made available for public inspection and copying. It should be remembered that the Open Public Records Act requires disclosure of physical records such as written reports, pictures, recordings, etc. It does not require the creation of a record or force or require that personnel of the district verbally relate observations or opinions when requested to do so by members of the news media or anyone else.

RCW 42.56.210 - .480 provides numerous exemptions from the right of the public to inspect records. The exemptions are narrowly construed and any denial of a records request must state the exemption relied on.



## **FREEDOM OF INFORMATION ACT.**

The Federal Freedom of Information Act does not apply to state agencies and does not preempt the Washington statute. Progressive Animal Welfare Society v. University of Washington, 125 Wash.2d 243, 884 P.2d 592 (1994).

## **MEDICAL RECORDS.**

Medical records and records that contain medical information about identifiable individuals are covered by the Washington Uniform Healthcare Information Act, chapter 70.02 RCW and the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

## **RECORDS POLICIES.**

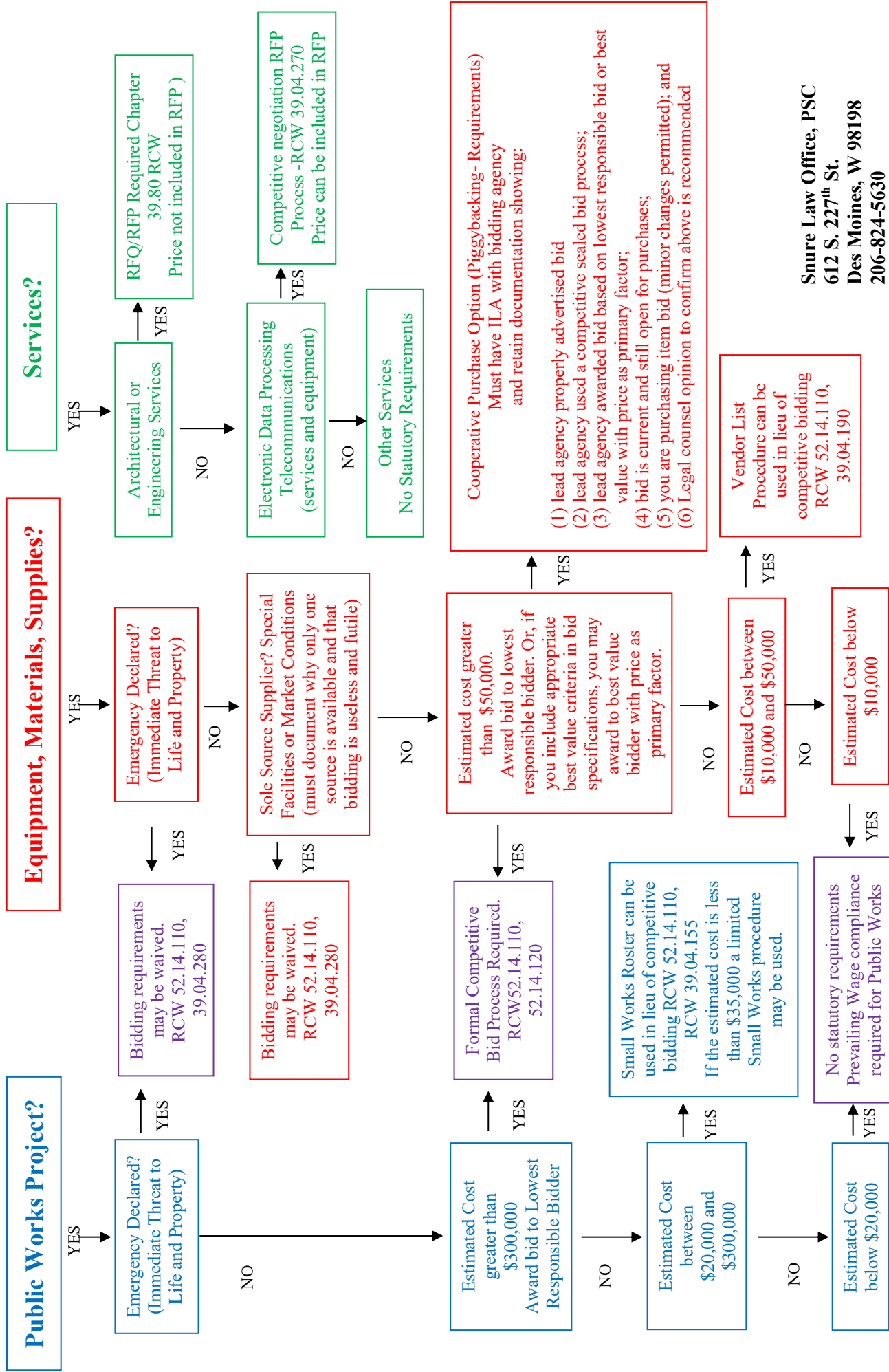
You should confirm that your district has a public records policy and has a designated public records officer, as well as privacy officer with responsibility for medical records, that will be responsible for responding to disclosure requests and for insuring that the requirements and procedures of the district policy and the Act are complied with.

## **SOURCES OF INFORMATION AND ASSISTANCE**

There are various sources of information that are available to fire protection districts and their personnel to aid in resolving the many regular and routine problems and questions that arise in a fire protection district. Some of the sources that are routinely used by fire protection districts are listed below.

- 1. Washington Fire Commissioners Association.** The Association provides valuable service to its members and all districts should seriously consider membership in the Association. WFCA may be contacted through its web site [www.wfca.wa.gov](http://www.wfca.wa.gov) or by phone (800) 491-9322.
- 2. The Washington State Association of Fire Chiefs.** The Association also provides valuable assistance to the member districts. WSAFC may be contacted through its web site [www.wsafc.org](http://www.wsafc.org) or by phone (360) 352-0161.
- 3. Washington State Auditor, Division of Municipal Corporations.** The State Auditor's office, through its district offices, provides pre-audit assistance to fire protection districts.
- 4. The Board for Volunteer Firefighters Relief and Pension System.** The staff of the Board provides assistance in respect to benefits available to volunteer firefighters.
- 5. The Public Disclosure Commission.** The Commission helps municipal corporations to ensure compliance with the public disclosure laws.

# FIRE PROTECTION DISTRICT/RFA BID LAW MATRIX – 2018



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