



Colorado State Fire Chiefs' Association

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MEMORANDUM

To: CSFCA Legislative Committee
From: Paul L. Cooke, Executive Director
Subject: Proposed and Potential Legislation Affecting the Fire Service – 2010 Legislative Session
Date: November 18, 2009

This memo describes the proposed and potential legislation affecting the fire service for the 2010 Legislative Session that is known to the CSFCA, as of November 18, 2009.

The following topics of proposed/potential legislation are addressed in more detail below:

- Urban Renewal and Tax Increment Financing Reform
- Residential Sprinkler System Legislation
- Colorado Prescribed Burning Act (Colorado Prescribed Fire Council)
- Police Officers' and Firefighters' Pension Reform Commission
- Transportation Legislation Review Committee - Reduce Waste Tire Stockpile Risks
- Establish Limits on Property & Casualty Insurance Policy Wildfire Mitigation Requirements
- Amending Definition of "Employee" in Workers Comp Statutes to Include Volunteer Support Organizations, Such as Fire Corps (Florissant FPD)
- Property Tax Credits for Volunteer Firefighters (Mesa County)
- Firefighter Collective Bargaining
- Interim Committee to Study Issues Related to Pinnacol Assurance

Urban Renewal and Tax Increment Financing Reform

In light of the ever-increasing use of Urban Renewal and Tax Increment Financing by municipalities, the CSFCA joined URA and TIF reform efforts in order to address the impacts they create for fire protection districts. During the 2008 and 2009 sessions, several bills were introduced that sought to reform the URA and TIF statutes. Among these were two bills, supported by the CSFCA, which would have exempted the property tax revenue of emergency services districts from TIF.

When the final URA bill died last session, the parties were "put on notice" that they needed to get together to address the issues, else the legislature would devise its own solution. In response, a group of county commissioners and mayors created an ad-hoc committee (co-chaired by Mayor Ed Tauer, Aurora and Commissioner Kathay Rennels, Larimer County) to look at the issue of URA/TIF reform.

"Serving the Chief Fire Officers of Colorado Since 1968"

The “Mayors and Commissioners” Urban Renewal Reform Working Group has held a series of meetings over the summer and may be proposing legislation for the 2010 session. The CSFCA supports reforming the Colorado Urban Renewal Law to address the adverse impact on fire protection districts, and has made recommendations for statutory changes.

Both Rep. Dickey Lee Hullinghorst (D-Boulder) and Rep. Randy Fischer (D-Fort Collins) have pulled bill titles and are considering legislation in the 2010 session. Rep. Hullinghorst may be running a bill on behalf of the “Mayors and Commissioners” Urban Renewal Reform Working Group. Her bill may be limited to greater transparency in the URA approval process, although she is considering a process for including other taxing entities in the process (along the lines that we proposed).

Rep. Fischer proposing is a bill to prohibit the inclusion of agricultural land in a URA, unless one of the following conditions is met:

- The land is a Brownfield or contaminated with hazardous materials; or
- All taxing entities affected by the URA agree with the inclusion of the agricultural land; or
- The agricultural land is at least 2/3rds contiguous with adjoining urban development.

He is also considering a provision for resetting the base assessed value of agricultural land included in a URA to the vacant land value, and possibly making this a subject of negotiation between the affected taxing entities.

Both Rep. Hullinghorst and Rep. Fischer will be looking for CSFCA participation in their respective coalitions in support of their bills.

Lead: CSFCA Urban Renewal Reform Working Group

Policy Guidance: Urban Renewal Authorities and Tax Increment Financing: Impacts on Fire Protection Districts at: http://www.colofirechiefs.org/10Legislature/Issue_Brief_URA_&_TIF_v4.pdf

Residential Sprinkler System Legislation

The Joint Ad-Hoc Residential Sprinkler Committee (FMAC/CCICBO) is recommending legislation for the 2010 session to transfer the regulation of residential sprinklers from the Division of Fire Safety (DFS) to the Examining Board of Plumbers (board).

- This is based on the committee’s philosophy that all residential sprinkler regulation should be located under one agency that defines the training, certification, review, and inspection processes.
- DFS has determined that it would need to conduct approximately 7,400 additional inspections as a result of widespread adoption of RSS requirements, if the responsibility remains within DFS.

The committee is recommending the following course of action:

- The installation of residential sprinklers in one- and two-family dwellings and townhouses designed to NFPA 13D or IRC P2904 should be regulated by the board and local building departments. This applies whether the “house” was built under the IBC, IRC, UBC, NFPA 5000, etc.
- Current DFS regulations should be amended to exempt these sprinkler installations from their rules. A corresponding amendment to the board regulations should be made to begin regulating residential sprinklers.
- Installers (sprinkler or plumber) should be held to the same standards. Training and certifications still needs to be detailed, but suggestions included requiring something similar to current DFS requirements for 13D (hydraulically-calculated) systems, the new ICC certification for P2904 systems, or manufacturer’s training for specialized systems.
- Inspector qualifications need to be addressed, but suggestions included using current DFS requirements for 13D (hydraulically-calculated) systems and current plumbing inspector requirements for P2904 systems.

Lead: Joint Ad-Hoc Residential Sprinkler Committee (Mike Dell'Orfano, FMAC and Greg Wheeler, CCICC)

Policy Guidance: Joint Ad-Hoc Residential Sprinkler Committee’s Adoption Guidance Document at: http://www.colofirechiefs.org/sprinkler/RSS_Adoption_Guidance.pdf

Note: It is also possible that the Home Builders Association will propose legislation that would prohibit local jurisdictions from adopting residential sprinkler system requirements, as has been done in several other states.

Colorado Prescribed Burning Act

Colorado law “declares that the use of fire is an effective and appropriate resource management tool. It further finds and declares that prescribed burning is necessary and desirable to improve the health of Colorado's forest, rangeland, and prairie ecosystems and to mitigate the fire danger in the wild-urban interface.” While state statutes support the use of prescribed burning, direction for implementation is not clear. Currently, Colorado law provides guidance for prescribed burns solely in agricultural settings.

The Colorado Prescribed Fire Council is proposing the "Colorado Prescribed Burning Act" as an attempt to clarify conflicting state statutes and legislation and provide clear direction for prescribed fire on private land by establishing a state wide Prescribed Burning Act. As proposed, the Prescribed Burning Act will provide the following:

1. Clear definition of how and when a landowner can have a prescribed fire on their property.
2. Structure for legal prescribed burn operations.
3. Oversight of Prescribed Burning qualifications and operations.
4. Established liabilities, liability exemptions and penalties for prescribed burn personnel and landowners.

Draft of Proposed Legislation:

[http://www.colofirechiefs.org/wildfire/Colorado Prescribed Burning Act 063009.pdf](http://www.colofirechiefs.org/wildfire/Colorado_Prescribed_Burning_Act_063009.pdf)

CSFCA Lead: Wildland Fire Section

Police Officers' and Firefighters' Pension Reform Commission

Legislation proposed by the FPPA Board for the Police Officers' and Firefighters' Pension Reform Commission for introduction in 2010:

Bill Number: LLS No. 10-0116 **Prime Sponsors:** Sen. Tochtrop, Rep. Labuda

Bill Title: Concerning the Repeal of the Authority of The Board of Directors of the FPPA to Affiliate with a Local Money Purchase Pension Plan.

Link to Bill: http://www.colofirechiefs.org/10Legislature/FPPA_Bill_1.pdf

Summary: **Police Officers' and Firefighters' Pension Reform Commission.** Repeals the authority of the board of directors of FPPA to enter into an agreement with an employer establishing a money purchase pension plan for the purpose of having the board administer the plan and manage the investment of the moneys of the plan. Eliminates a cash fund and audit requirement related to the affiliated plan.

Position: Monitor (Recommended Position)

Status: Adopted by Police Officers' and Firefighters' Pension Reform Commission and was approved by Legislative Council to go forward as an Interim Committee Bill.

Comments

Currently there are no such affiliated local money purchase plans and FPPA does not anticipate any that will ever seek affiliation.

Bill Number: LLS No. 10-0117 **Prime Sponsors:** Rep. Waller, Sen. Tochtrop

Bill Title: Concerning the Extension of the Term of the Retired Member of the Board of Directors of the FPPA.

Link to Bill: http://www.colofirechiefs.org/10Legislature/FPPA_Bill_2.pdf

Summary: **Police Officers' and Firefighters' Pension Reform Commission.** Extends the term of the retired firefighter or police officer serving as a member of the board of directors of the FPPA from 4 years to 6 years.

Position: Monitor (Recommended Position)

Status: Adopted by Police Officers' and Firefighters' Pension Reform Commission and was approved by Legislative Council to go forward as an Interim Committee Bill.

Comments

The FPPA Board feels that an extended term for the rotating membership would be of more value to FPPA because of the learning curve required for Board participation.

Bill Number: LLS No. 10-0119 **Prime Sponsors:** Rep. Riesberg, Sen. Williams
Bill Title: Concerning the Discretion of the Board of Directors of the FPPA to Adopt Rules Regarding the Return to Work by a Member Participating in the Defined Benefit System of the Association Who Elects Retirement.
Link to Bill: http://www.colofirechiefs.org/10Legislature/FPPA_Bill_3.pdf
Summary: **Police Officers' and Firefighters' Pension Reform Commission.** Allows the board of directors of the fire and police pension association to adopt rules, in the board's discretion, suspending the distribution of benefits to any retired member participating in the defined benefit system who, after electing a retirement, has returned to work with an employer who also participates in the defined benefit system.

Allows the board of directors to adopt rules upon findings by the board that allow a member who has elected a retirement to continue to receive retirement benefits and earn additional benefits.

Position: Monitor (Recommended Position)
Status: Adopted by Police Officers' and Firefighters' Pension Reform Commission and was approved by Legislative Council to go forward as an Interim Committee Bill.

Comments

Bill Number: LLS No. 10-0120 **Prime Sponsors:** Sen. Tochtrop, Rep. Labuda
Bill Title: Concerning a Member-Approved Increase in the Member Contribution Rate to the Statewide Defined Benefit Plan Administered by the FPPA.
Link to Bill: http://www.colofirechiefs.org/10Legislature/FPPA_Bill_4.pdf
Summary: **Police Officers' and Firefighters' Pension Reform Commission.** Permits the board of directors of the FPPA to increase the member contribution rate for the statewide defined benefit plan if the increase:

- Does not require an increase in the employer contribution rate or adversely affect the plan's status under federal law; and
- Is approved by a supermajority of active plan members and a majority of the employers.

Permits the board to eliminate the increase in the member contribution rate so long as the requirements for an increase are met. Makes conforming amendments to ensure that the increase in the member contribution rate does not change other requirements related to the plan.

Position: Monitor (Recommended Position)

Status: Adopted by Police Officers' and Firefighters' Pension Reform Commission and was approved by Legislative Council to go forward as an Interim Committee Bill.

Comments

Bill Number: LLS No. 10-0157 **Prime Sponsors:** Sen. Morse, Rep. Labuda

Bill Title: Concerning a Volunteer Firefighter Pension Plan.

Link to Bill: http://www.colofirechiefs.org/10Legislature/10-0157_01.pdf

Summary: **Police Officers' and Firefighters' Pension Reform Commission.** Makes the following changes to the "Volunteer Firefighter Pension Act":

- Eliminates the exclusion of the reimbursement for lost wages from the definition of "compensation", as the term is used in the definition of "volunteer firefighter";
- Permits retired fire department members, including those who have returned to active service, to serve on the board of trustees of a volunteer firefighter pension fund;
- Eliminates an investment restriction on a trustee of a fund; and
- Eliminates the requirement that the board of trustees of a fund deliver a copy of a report on the condition of the fund to the board of directors of its fire protection district.

Position: Passive Support (Recommended Position)

Status: Adopted by Police Officers' and Firefighters' Pension Reform Commission and was approved by Legislative Council to go forward as an Interim Committee Bill.

Comments

Dino Ross of Ireland Stapleton recommended these changes to the Volunteer Firefighters Pension Act for the reasons stated:

- Amends the definition of "compensation" to exclude salary lost as a consequence of actual firefighting duties causing the absence of the volunteer firefighter from normal employment. This change is indicated as the US DOL has determined that such payments fail the threshold issue of volunteerism and would likely create an employment relationship under the FLSA.
- Amends the composition of the Pension Board to include fire department members, retired fire department members, or retired fire department members returned to active service. Current law only allows fire department members to serve in the two seats not held by the District Board of Directors and some departments no longer have active volunteers.
- Eliminates the requirement that the Pension Board of a fire protection district make an annual report to the board of directors of the district on the condition of the fund. The rationale for this is the Board of Trustees of a Pension Fund within a Fire District is comprised of the five members of the Fire District Board. As such, the Fire District Board is as fully aware of the status of the Pension Fund as the Board of Trustees.

- Eliminates the requirement that the Pension Board hold at all times hold fixed-income obligations having a book value or cost of not less than sixty percent of the total contributions made to the trust less the amounts paid out. The rationale for this is the non-FPPA paid firefighter pension funds are governed by the prudent investor statute set forth in Article 1.1 of Title 15, C.R.S. There is no logical reason why an additional investment restriction is imposed of a non-FPPA Volunteer Pension Fund.

According to Dino Ross, Arvada Fire Chief Jon Greer is prepared to testify in support of this bill.

Transportation Legislation Review Committee

Legislation affecting the fire service proposed by the Transportation Legislation Review Committee for introduction in 2010:

Bill Number: LLS No. 10-0192 **Prime Sponsors:** Rep. Looper, Rep. Primavera

Bill Title: Concerning Increased Authority to Regulate Waste Tires.

Link to Bill: http://www.colofirechiefs.org/10Legislature/BILL_B_10-0192.pdf

Summary: **Transportation Legislation Review Committee.** Current law gives several departments authority over fees collected upon the sale of new motor vehicle tires to deal with waste tires. The bill consolidates all such authority in the department of public health and environment and adds requirements for fire prevention planning, registration, decals, and manifests for certain waste tire haulers and waste tire facilities.

Section 11 creates several new sections of law that:

- Specify requirements for decals and manifests;
- Require the registration of waste tire facilities;
- Require, as a condition of maintaining their registration, that certain waste tire facilities submit to the department a waste tire inventory reduction plan and process 100% of the waste tires accepted by that facility each year;
- Impose requirements relating to financial responsibility for closure and reclamation of waste tire facilities;
- Establish fees, give the commission general rule-making authority regarding waste tires, set penalties, and identify enforcement authorities;
- Create a waste tire advisory committee; and
- Create a waste tire fund, used for the department's costs in administering the program.

Position: Bill is under review, no recommended position yet.

Status: Adopted by Transportation Legislation Review Committee and was approved by Legislative Council to go forward as an Interim Committee Bill.

Comments

After reviewing the proposed legislation and meeting with the sponsor, the CSFCA proposed amendments to the original bill: http://www.colofirechiefs.org/10Legislature/LLS_10-0192_CSFCA_Amendment.pdf. The Waste Tire Stakeholders group accepted all of the amendments proposed by the CSFCA thus far, and the proposed bill that went forward to Legislative Council contained the CSFCA amendments.

Establish Limits on Property & Casualty Insurance Policy Wildfire Mitigation Requirements

Certain Property and Casualty Insurance Companies have established defensible space requirements for properties in WUI areas that exceed IUWIC and Firewise standards. In some cases they are requiring property owners to go beyond their properties and onto public or private properties of neighbors to mitigate fuels in order to maintain insurance coverage.

The proposed legislation would establish limits on what a Property and Casualty Insurance Company can require in terms of defensible space and other wildfire mitigation efforts.

This issue was brought to the CSFCA by Genesee Fire Rescue (Bill Easterling) and Golden Fire Department (Jerry Stricker & Rocco Snart).

CSFCA Lead: Wildland Fire Section

Amending Definition of “Employee” in Workers Comp Statutes to Include Volunteer Support Organizations, Such as Fire Corps

Pinnacol Assurance denied a Workers Comp claim involving a non-firefighting volunteer of the Florissant Fire Protection District that was injured on an incident while performing rehab. The basis for denial was that Fire Corps or Fire Department Auxiliaries are not covered under the State Statute which says who can be covered under Workers Compensation. According to Pinnacol, Fire Corps or Auxiliary are not actually fighting fires and therefore not covered under CRS 8-40-202(1)(a)(I)(A).

Timothy Gablehouse has advised that amendment to the definition of “employee” in the Workers Comp statutes should address this issue. The suggested change is in CAPITOL letters:

(1) "Employee" means:

(a)(I)(A) Every person in the service of the state, or of any county, city, town, or irrigation, drainage, or school district or any other taxing district therein, or of any public institution or administrative board thereof under any appointment or contract of hire, express or implied; and every elective official of the state, or of any county, city, town, or irrigation, drainage, or school district or any other taxing district therein, or of any public institution or administrative board thereof; and every member of the military forces of the state of Colorado while engaged in active service on behalf of the state under

orders from competent authority. Police officers and firefighters who are regularly employed shall be deemed employees within the meaning of this paragraph (a), as shall also sheriffs and deputy sheriffs, regularly employed, and all persons called to serve upon any posse in pursuance of the provisions of section 30-10-516, C.R.S., during the period of their service upon such posse, and all members of volunteer fire departments, including any person receiving a retirement pension under section 31-30-1122, C.R.S., who serves as an active volunteer firefighter of a fire department subsequent to retirement pursuant to section 31-30-1132, C.R.S., or any person ordered by the chief or designee of the chief's at the scene of an emergency or during the period of an emergency to become a member of that department for the duration of an emergency, and to perform the duties of a firefighter, and only if the person who is so ordered reports any claim within ten days of cessation of the emergency, volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, VOLUNTEER SUPPORT ORGANIZATIONS OR TEAMS CREATED BY THE FIRE DISTRICTS OR DEPARTMENTS, and volunteer search teams in any county, city, town, municipality, or legally organized fire protection district or ambulance district in the state of Colorado, and all members of the civil air patrol, Colorado wing, while said persons are actually performing duties as volunteer firefighters or as members of such volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, or volunteer search teams or as members of the civil air patrol, Colorado wing, and while engaged in organized drills, practice, or training necessary or proper for the performance of such duties. Members of volunteer police departments, volunteer police reserves, and volunteer police teams or groups in any county, city, town, or municipality, while actually performing duties as volunteer police officers, may be deemed employees within the meaning of this paragraph (a) at the option of the governing body of such county or municipality.

Property Tax Credits for Volunteer Firefighters

Over the summer, representatives of the Mesa County Fire Chiefs Association discussed the concept of property tax credits for volunteer firefighters with legislators from their area. However, they are currently looking at trying to do this at the county level without legislation.

The lead on this effort in Mesa County is Chief Rick Weber of Lands End Fire Protection District at 970-245-6782 or rickweber@wildblue.net.

Firefighter Collective Bargaining

During the 2009 Legislative Session, the Colorado Professional Fire Fighters Association (CPFFA) advocated for the passage of SB09-180, Concerning Collective Bargaining by Employees of Public Safety Agencies. The amended bill, which would have imposed collective bargaining on municipalities, fire authorities, and fire protection districts with more than 50 employees, passed both houses of the Legislature, but was vetoed by the Governor.

Unconfirmed reports are that CPFFA will introduce a similar bill in the 2010 Legislative Session.

Interim Committee to Study Issues Related to Pinnacol Assurance

The Interim Committee to Study Issues Related to Pinnacol Assurance has proposed a total of 7 bills and Legislative Council has approved all 7 to be introduced as Interim Committee Bills in the 2010 session. These bills can be found at:

<http://www.colorado.gov/cs/Satellite?c=Page&cid=1242822336368&pagename=CGA-LegislativeCouncil%2FCLCLayout>

A total of 7 additional bills related to Pinnacol Assurance were not adopted by the Interim Committee but may be introduced by individual legislators.

Questions concerning this memo should be directed to:

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