



# FIREHOUSE LAWYER

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## FIRE PROTECTION DISTRICTS' REGULAR PROPERTY TAX LEVIES AND RELATED LIMITATIONS

### I. INTRODUCTION

Probably there is no subject more confusing in the state statutes affecting fire protection districts in the State of Washington than the complex web of laws relating to the levy of real property taxes, and the statutory and constitutional limitations pertaining to property taxes and municipal corporations in Washington. The purpose of this article is to discuss the statutes pertaining to the authorized levies of regular property taxes by fire districts, including the levy for emergency medical services. Most of the discussion, however, will center around the limitations imposed by various statutory and constitutional provisions, which as a practical matter are more important factors in

determining revenue base for the fire districts in Washington. Beyond the scope of this article would be any discussion of "benefit charges" authorized under RCW 52.18, or the transport fees frequently collected by emergency medical service providers for advanced life support and/or basic life support services and related transports. See RCW 52.12.131. One of the primary reasons for publication of this article now is the recent change in the law formerly known as the 106% lid law, i.e., RCW 84.55.120 and related statutory provisions, which occurred when Referendum 47 was approved by the voters in November, 1997.

### II. REGULAR PROPERTY TAX LEVY AUTHORIZATIONS

#### A. RCW 52.16.130 (First 50¢)

The first statute authorizing the levy of an ad valorem tax on taxable

property, in the amount of 50¢ per thousand dollars of assessed value, is RCW 52.16.130. By this statute the legislature authorized fire protection districts to levy that amount in addition to the levy allowed for payment of the principal and interest on outstanding general obligation bonds, authorized in RCW 52.16.080. RCW 52.16.130 provides for a \$1.00 per \$1,000.00 of assessed value limitation, and goes on to state that levies in excess of \$1 per \$1,000.00 or in excess of the "aggregate dollar rate limitations" or both may be made if authorized at a special election under RCW 84.52.052 (a so called

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“excess levy” election).<sup>1</sup>

**B. RCW 52.16.140 (Second 50¢)**

The second levy statute is RCW 52.16.140, which authorizes the “second 50¢” to bring fire protection districts up to the \$1.00 limitation. Imposition of this levy is still not allowed to cause the combined levies to exceed the constitutional or statutory limits alluded to above. This section does have a provision allowing the second 50¢ levy in a situation where dollar rates of other taxing districts are released by agreement with

the other taxing districts from their authorized levies.

**C. RCW 52.16.160 (Third 50¢)**

There is a “third 50¢” of regular property taxes that may be levied by those fire protection districts with at least one full time paid employee. This particular statute states that the levy is authorized notwithstanding the dollar rate limitation (\$1.00 per \$1,000.00) contained in RCW 52.16.130. Again, this levy is provided in addition to the levy for payment of bond principal and interest. Finally, this statute makes it clear that it is in addition to RCW 52.16.130 (the first 50¢) and RCW 52.16.140 (the second 50¢). There is some language in this statute requiring that there not be a township in existence, but that does not seem to be a form of municipal organization widely used, at least in Western Washington and therefore that should not be a problem. This particular statute concludes, however, with some language that could be subject to some adverse interpretation. This clause states that the third 50¢ levy “may be made only if it will not affect dollar rates which other taxing districts may lawfully claim nor cause the combined

levies to exceed the constitutional and/or statutory limitations.” Possibly, this last clause in RCW 52.16.160 could be interpreted to mean that this third 50¢ levy is not authorized if it would trigger prorationing or cause an excess over the 1% limitation discussed below. See below.

**D. RCW 84.52.169 (EMS Levy)**

An additional regular property tax levy is allowed for fire protection districts and other types of taxing districts for the provision of emergency medical services. This tax, limited to a maximum of 50¢ per thousand, is authorized for up to six years if a majority of at least 3/5 of the registered voters approve the proposition. There is a validation requirement, requiring that the number of persons voting affirmatively on the EMS proposition shall be at least 3/5 of a number equal to 40% of the total number of voters voting in such taxing district at the last preceding general election when the number of registered voters voting on the EMS proposition does not exceed 40% of the total number of voters voting in such taxing district in the last preceding general election. By contrast,

<sup>1</sup> RCW 84.52.052 authorizes an excess levy election to exceed the limitations of RCW 84.52.050, which is a statute limiting the aggregate of all tax levies upon real and personal property by the state and all taxing districts to a limit of 1% of true and fair value. That 1% limitation will be discussed below in our discussion of the concept of “prorationing”. RCW 84.52.052, the excess levy statute, also allows a levy election to exceed the limitations of RCW 84.55.010 through 84.55.050 which will be referred to herein as the “lid laws” and which were often previously referred to as the 106% lid statute.

when the number of registered voters voting on the EMS proposition does exceed 40% of the total number of voters who voted in the taxing district in the last preceding general election, then a majority of at least 3/5 of the registered voters voting is required. Taxes imposed under this law may be used only for emergency medical care including related personnel costs, training, equipment, supplies, vehicles and structures related to such needs and services. Please note however that the EMS levies are considered regular property tax levies. Therefore, they are subject to the provisions below discussed under the discussion of the Lid Law, RCW 84.55 et seq. As we will see below, the EMS levy is not subject, however, to the \$5.90 aggregate limitation on junior and senior taxing districts. See below.

### III. PROPERTY TAX LIMITATION STATUTES

#### A. RCW 84.52.010 - PRORATIONING

The concept of prorationing is created by this particular statute, which establishes a series of priorities and a series of levies to be cut from the total, referred to herein as the “aggregate rate”. In essence the aggregate rate of

tax levy could be seen as a sort of “onion”, which is peeled off one layer at a time until the total onion of aggregate rate of tax levy comes within the applicable limitation. The limitation of the levies to which the prorationing order of RCW 84.52.010 is applied is set forth in RCW 84.52.050.

#### 1. RCW 84.52.050 - The 1% Limit

This statute provides that the aggregate of all tax levies upon real and personal property by the state and all taxing districts shall not in any year exceed 1% of the true and fair value of such property. That aggregate limitation imposed by law cannot be exceeded except pursuant to Article VII, Section 2 of the state constitution. That allows for a special election.

#### 2. RCW 84.52.043 - The 5.90 Limit

The second limiting statute, which can also lead to prorationing under 84.52.010 is RCW 84.52.043. That statute lists the regular ad valorem tax levies and ranks them according to their status. The statute characterizes some of the levies as those of “senior” taxing districts. For example, the state is a senior taxing district and its levy is limited

to \$3.60. The county is a senior taxing district limited to \$1.80. The county road district is next and may levy \$2.25 and any city or town is next and may levy \$3.375 per thousand. The rest are “junior” taxing districts (A city annexed into a fire district is allowed to increase its levy up to \$3.60 per thousand, less the amount of the fire district and/or library district levies if it is annexed into both of those districts.) Finally, RCW 84.52.043 contains the limitation that the aggregate levies of junior taxing districts and senior taxing districts, other than the state, shall not exceed \$5.90 per thousand dollars of assessed valuation. Certain specified levies are excluded from this \$5.90 limitation, such as EMS levies. To summarize, prorationing is the concept that occurs whenever the 1% of value (RCW 84.52.050) or the \$5.90 aggregate tax limit (RCW 84.52.043) are reached.

## B. THE “LID” STATUTE - RCW 84.55

### 1. The 106% Lid.

Prior to the passage of Referendum 47 in November, 1997, there was a statute known as the “106% lid statute”, set forth in Chapter 84.55 of the Revised Code of Washington. The concept of the 106% lid is that property tax revenues (not the levy amount, but the tax revenues) shall not grow by more than 6% over and above the previous year’s revenues. The figures used are those of the certified levy. The Assessor takes the certified levy in the highest of the three most recent years in which such taxes were levied plus an additional dollar amount for new construction, improvements and increases in assessed value of state assessed property. Typically, the “highest of the three most recent years” is the previous year. The purpose of the language about new construction and improvements is to allow growth in the revenue stream over and above the growth of revenues resulting directly from new construction or property improvements. Thus, in effect, the old RCW 84.55 statutory scheme allowed 6% growth of revenues on regular property taxes irrespective of new

construction and improvements or increases in value of state assessed lands.

### 2. The “Limit Factor”

The effect of Referendum 47 was to substitute for the 6% a concept known as the “limit factor”. The limit factor is established annually under the new system and it is essentially tied to the rate of inflation. The limit factor, for example, for regular property taxes levied in 1997, collectible in 1998, will apparently be 1.9% as compared to the old 6%.

### 3. Overriding the limit factor.

Fortunately, or unfortunately, depending upon your viewpoint, the legislature and the voters by Referendum 47 authorized local governing bodies such as city councils, county councils and boards of fire commissioners to decide by legislative action such as ordinance or resolution that in their case there is a substantial need to go beyond the limit factor in any particular year. Examples of substantial need would be an inability to maintain the current level of services without levying a tax increase greater than the limit factor would allow, changing demands for services or other local circumstances. The

applicable statute provides that in governing bodies of three a majority will suffice. In Boards of four or more, a majority plus one is required. Thus in a five commissioner fire district, four affirmative votes are needed to “override” the limit factor provision and go to a higher percentage. Indeed, some governments have increased the taxes above the limit factor for 1998, but below a 6% increase. **Please note that the term “limit factor” means 106% for taxing districts with a population of less than 10,000 in the calendar year prior to the assessment year.**

### 4. Procedures.

The procedures of RCW 84.55.120 as amended through Referendum 47, are very important. Taxing districts other than the state, collecting regular tax levies, are required to hold a public hearing on revenue sources for the districts upcoming year’s current expense budget. That hearing must include discussion not only of the budget but also possible increases in property tax revenues. Obviously, the hearing must be held prior to the time the district levies the taxes or makes the request of the county Assessor. “Current Expense Budget” means the budget primarily funded by taxes and charges,

reflecting the provision of ongoing services. It does not mean capital budgets or enterprise or special assessment budgets. Thus, any hearing on tax increases should be combined with the public hearing on the budget. The public hearing is more than an open meeting. The taxing district must not only comply with the Open Public Meetings Act, by holding a regular or special meeting to discuss such items, but a public hearing must be held. The difference is that the portion of the meeting devoted to the hearing should be officially opened by the chairperson, and after a brief presentation by a financial officer or assigned party discussing the presentation of the proposed budget and any requests for property tax increases, the public shall be allowed to testify concerning both the budget and the tax increase propositions. After all of the evidence is received, the chairperson should officially close the hearing, announcing that thereafter there may be some discussion by the Board concerning the propositions but the public hearing portion of the meeting is over. At that time, the Board of Commissioners or other members of the governing body would discuss the propositions and move any particular resolutions for

property tax increases under RCW 84.55 and/or make an appropriate resolution to approve the current expense budget (and/or the capital budget) so that the entire fiscal state of the district can be resolved at the end of that hearing. The statute also requires adoption of a separate ordinance or resolution in order to authorize any increase in property tax revenue (excluding new construction, improvements and increases in the value of state assessed property). If no such ordinance or resolution is passed, this statute means that a district levy would be limited to the previous high levy, adding only the new construction and improvements in the assessed value base, as well as the increase in value of state assessed property. Specific notice of hearing is also required, but the statute is silent about the content of the notice and how it is to be published. We recommend one publication in a local newspaper of general circulation in the area and posting in three public places.

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### NOTA BENE:

Since January 1, 1997, I have developed a fire department safety checklist and a set of forms for safety officers. Designed to help fire departments comply with the new WAC 296-305 safety standards, these materials are available to fire departments throughout the state, subject to payment of reasonable copying costs.

In June, 1997, a model Safety Resolution and complete set of operating instructions (SOPs) have been completed, to comply with the "vertical standards".

Please call for information.