
**Labor & Workforce Development
Committee**

HB 1512

Brief Description: Concerning Washington state ferry system personnel and projects.

Sponsors: Representatives Armstrong, Clibborn, Angel, Smith, Johnson, Van De Wege, Morris, Kristiansen, Schmick, Rodne, Condotta, Warnick and Ladenburg.

Brief Summary of Bill

- Abolishes the Marine Employees Commission (MEC) and transfers responsibilities associated with the MEC to the Public Employment Relations Commission.
- Increases the threshold from \$2 million to \$6 million for ferry projects with apprenticeship utilization requirements.
- Transfers coverage of ferry employees under the federal Jones Act to coverage under the state Industrial Insurance Act.

Hearing Date: 2/1/11

Staff: Alison Hellberg (786-7152).

Background:

The Washington State Department of Transportation Ferries Division (WSF) operates and maintains ferry vessels and terminals, constructs terminals, and acquires vessels. The system serves eight Washington counties and one Canadian province through 22 vessels and 20 terminals.

Administration of Public Sector Collective Bargaining Laws.

Ferry workers bargain with the state under the Marine Employees' Collective Bargaining Act (MECBA) over wages, hours, working conditions, and insurance. The MECBA is administered by the Marine Employees' Commission (MEC).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Public Employment Relations Commission (PERC) administers and enforces other public sector collective bargaining laws in Washington. The PERC was created in 1975 and originally had the MECBA under its jurisdiction. Prior to 1975, the MEC had administered ferry employee collective bargaining, but it was disbanded in 1975. In 1983, the MEC was re-established, and ferry employee collective bargaining was removed from the PERC's jurisdiction and transferred to the MEC.

Grievance Arbitration Procedures.

Under the MECBA, a collective bargaining agreement may provide procedures for the consideration of ferry employee grievances and of disputes over the interpretation and application of existing agreements. The procedures must provide for the invoking of arbitration only with the approval of the ferry employee organization.

Apprenticeship Utilization.

State agencies under the Governor's authority must require that apprentices enrolled in state-approved apprenticeship training programs participate in public works projects. This requirement was originally established in an executive order issued in 2000, and later codified in legislation enacted in 2005.

Public works by the Department of Transportation (WSDOT) were exempt from these requirements, until legislation enacted in 2006, made them subject to slightly different apprenticeship utilization requirements. For public works by the WSDOT estimated to cost \$2 million dollars or more, at least 15 percent of the labor hours must be performed by apprentices.

Federal Jones Act.

Over 1,000 WSF employees who work on vessels are considered maritime workers and are covered under the the federal Jones Act. Under the Jones Act, maritime workers have some no-fault "maintenance and cure" benefits for illness or injury. These include medical benefits and a daily maintenance stipend until they return to work or are at maximum medical improvement. The Jones Act also provides fault-based claims that allow maritime workers to sue their employer for injuries arising out of employment. Maritime workers can recover if they can show negligence or unseaworthiness of the vessel. The state Industrial Insurance Act does not apply to employers and workers for whom a right or obligation exists under the Jones Act.

The eleventh amendment to the United States Constitution gives states sovereign immunity. This means that the states cannot be sued without their consent. Washington has, by statute, waived its sovereign immunity.

Joint Transportation Commission Budget Proviso Studies.

A pair of budget provisos in the 2010 Supplemental Transportation budget directed the Joint Transportation Committee (JTC) to complete two studies.

The first study required the JTC to conduct a comparison of the processing time of labor-related grievances and hearings at PERC and MEC, and investigate whether the necessary expertise exists at PERC to administer the grievances and hearings currently administered by MEC. The report concluded that:

- PERC processes unfair labor practice and grievance arbitration decisions faster than MEC; and

- PERC has the necessary expertise to administer the grievances and hearings currently administered by MEC.

In the second study, the JTC was directed, "to conduct a comparison of medical, time-loss, vocations and disability benefits available to injured workers, and costs payable by the state of Washington and employees, under the federal Jones Act and Washington's Industrial Insurance Act." The report was required to include information regarding the experience of the Alaska marine highway system. The report made findings regarding the trade-offs for employees between industrial insurance and the federal Jones Act and the costs of both systems.

Summary of Bill:

The MEC is abolished, and the duties and responsibilities of the MEC are transferred to the PERC. The grievance arbitration procedures are modified. Rather than invoking arbitration only with the approval of the employee organization, arbitration may only be invoked by mutual agreement of the employee organization and management.

The contract threshold amount for apprenticeship utilization requirements on WSF public works is increased. On WSF public works estimated to cost \$6 million or more, apprentices must perform no less than 15 percent of the labor hours.

The state's waiver of its sovereign immunity is limited. The waiver does not extend to its tortious conduct that results in an injury, illness, or death of a seaman that arises out of employment with the state. The exclusive remedy for these claims are provided under the state's Industrial Insurance Act, and they may not be brought under the Jones Act.

Appropriation: None.

Fiscal Note: Requested on 01/24/2011.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.