

# SENATE BILL REPORT

## SB 6372

As of February 16, 2012

**Title:** An act relating to reducing nontax administration costs associated with the conduct of city and county operations.

**Brief Description:** Reducing nontax administration costs associated with the conduct of city and county operations.

**Sponsors:** Senator Swecker.

**Brief History:**

**Committee Activity:** Government Operations, Tribal Relations & Elections: 1/31/12.

### Brief Summary of Bill

- Limits the State Auditor to conducting examinations of county and city financial affairs to every three years.
- Makes changes to provisions governing arbitration panels for uniformed public employees.
- Establishes additional requirements to be included in the NPDES municipal storm water general permits.
- Establishes that failure to comply with seatbelt or child restraint requirements may be admissible as evidence of negligence.
- Requires a work group of public health partners to report to the Legislature by January 1, 2013.
- Makes numerous changes to public notice requirements for cities and counties.

### SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

**Staff:** Karen Epps (786-7424)

**Background:** Audits. The State Auditor (Auditor) is responsible for conducting financial, accountability, and performance audits and conducts investigations on Whistleblower complaints and reports of fraud. The Auditor must examine the financial affairs of all local

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governments at least once every three years. Audits may be conducted more frequently to address suspected fraud or irregular conduct, at the request of the local government, or as required by federal requirements.

Employment Issues. Employees of cities, counties, and other political subdivisions of the state bargain their wages and working conditions under the Public Employees' Collective Bargaining Act (PECBA) administered by the Public Employment Relations Commission (PERC).

*Collective Bargaining.* The employer and the exclusive bargaining representative have a mutual obligation to negotiate in good faith over specified mandatory subjects of bargaining: grievance procedures and personnel matters, including wages, hours, and working conditions.

*Interest Arbitration.* For uniformed personnel, including law enforcement officers in larger jurisdictions and firefighters, the PECBA recognizes the public policy against strikes as a means of settling labor disputes. To resolve impasses over contract negotiations involving these uniformed personnel, the PECBA requires binding arbitration if negotiations for a contract reach impasse and cannot be resolved through mediation.

For law enforcement officers in larger cities and counties and similar uniformed personnel, the arbitration panel must also consider a comparison of wages, hours, and conditions of employment of like personnel of like employers on the west coast of the United States. For firefighters in all cities and counties and similar uniformed personnel, the arbitration panel must also consider a comparison of wages, hours, and conditions of employment of like personnel of like public fire departments on the west coast of the United States. When an adequate number of comparable employers exist in Washington, other west coast employers may not be considered.

Storm Water and Low Impact Development. The federal Clean Water Act (CWA) establishes the National Pollutant Discharge Elimination System (NPDES) permit system to regulate wastewater and storm water discharges from point sources to surface waters. The NPDES permits are required for anyone who discharges wastewater or storm water to surface waters, or who has a significant potential to impact surface waters. Currently, there are two phases for the NPDES permits to control storm water discharges from municipalities. Phase I permits apply to six local governments – Seattle, Tacoma, and the unincorporated areas of Clark, Pierce, King, and Snohomish Counties. The Phase II permits apply to operators of small municipal separate storm sewer systems serving fewer than 100,000 persons.

Low-impact development (LID) is a storm water and land use management strategy that strives to mimic pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation, and transpiration by emphasizing conservation and use of on-site natural features, site planning, and distributed storm water management practices integrated into the design of a project.

Civil Actions. Any person 16 or older driving or riding in a car is required to wear a seatbelt. The seatbelt statute specifically declares that a person's failure to comply with the seatbelt requirement does not constitute negligence and is not admissible as evidence of negligence in any civil action.

When a child under the age of 16 is riding in a vehicle, the driver must keep the child properly restrained in a child restraint system or with a seatbelt. A person may not operate a vehicle unless all child passengers under the age of 16 years are either wearing a seatbelt or securely fastened in a child restraint system. The child restraint statute provides that failure to comply with the child passenger restraint requirements does not constitute negligence by a parent or legal guardian, and may not be admitted in court as evidence of negligence.

Public Health Recommendations. Public health services in Washington are provided by the Washington State Department of Health (DOH) and the 35 local health jurisdictions. Local health jurisdictions may be structured as a county agency, a city-county agency, or a single agency comprised of multiple counties. The activities of these agencies are generally divided into five categories including preventing and responding to communicable disease; protecting people from environmental health threats; assessing health status; promoting health and preventing chronic disease; and accessing health services.

Public Notice and Publications. Counties and cities have numerous public notice and publishing requirements. For example, promptly after adoption, a full or summarized version of each city ordinance must be published one or more times in the official newspaper of the city. An inadvertent mistake or omission in publishing the full or summarized text does not render the ordinance invalid. Examples of newspaper-based publishing actions that counties must satisfy include the following:

- publishing all legal notices and delinquent tax lists;
- publishing requests for competitive bids and notices related to the disposal of county property;
- publishing notices relating to the creation of areas and districts, including aquifer protection areas, and park and recreation service areas, and local improvement districts and county road districts;
- publishing ordinances regarding levying and fixing taxes, and the completion of a preliminary budget; and
- publishing notices associated with land use and planning actions.

**Summary of Bill:** Audits. The Auditor, with some exceptions, is limited to conducting examinations of county and city financial affairs once every three years. Audits may continue to be conducted more frequently than every three years under specific circumstances, including for local governments that had a finding involving a significant violation of state law or a weakness in internal controls in the preceding year.

Employment Issues. *Collective Bargaining.* Collective bargaining over the use of volunteers by counties and cities is permissive, rather than mandatory.

*Interest Arbitration.* The provisions governing arbitration panels for uniformed public employees are modified to specify that, in making a determination, an arbitration panel may not rely on or give undue consideration to past arbitration decisions. Additionally, a panel must consider the budget priorities of the public organization, as determined by the organization's governing body, financial and budgetary constraints, and internal equity within the organization among employee pay and benefits.

For purposes of making a determination involving law enforcement officers and similar uniformed personnel, the requirement is deleted that an arbitration panel consider like employers be of similar size. For purposes of making a determination involving firefighters and similar uniformed personnel, like public fire departments must be determined by factors that include, but are not limited to, population size and demographics, geographic location, financial conditions, workforce size, assessed valuation, and labor market conditions.

Storm Water and Low-Impact Development. The NPDES municipal storm water general permit to become effective August 1, 2013, for Phase II permittees located west of the crest of the Cascade Mountains must include a process providing for:

- technical training on the benefits of LID by the Department of Commerce and the Washington State University LID technical training program; and
- a review and revision by Phase II permittees of their local development-related codes to remove barriers to, and to specifically authorize, the application of LID principles and best management practices. A staggered four-year schedule with deadlines between June 30, 2015, and June 30, 2018, is established for Phase II permittees in 19 counties.

Phase II permits must satisfy numerous other requirements, including:

- authorizing incentives to permittees to require low-impact development;
- authorizing permittees to offer specific incentives to prospective developers who use LID techniques and best practices that are consistent with the permit; and
- obligating the Department of Ecology (DOE) to develop model practices for jurisdictions to ensure ongoing maintenance of storm water treatment facilities owned by private parties.

The NPDES municipal storm water general permit to become effective August 1, 2013 for Phase II permittees located east of the crest of the Cascade Mountains must include:

- a process by the DOE to develop a collaborative program to monitor the effectiveness of storm water treatments required by the permit; and
- an option allowing jurisdictions to have the DOE perform responsibilities related to measuring the effectiveness of public education and outreach techniques.

Lastly, in preparation for subsequent NPDES municipal storm water general permits, the DOE must review jurisdictional experiences when considering whether and how to expand requirements related to low-impact development.

Civil Actions. A person's failure to comply with the seatbelt or child restraint requirements may be admissible as evidence of negligence in any civil action. The child restraint statute is amended to eliminate the provision that failure to comply with child restraint requirements does not constitute negligence by a parent or legal guardian.

Public Health System Recommendations. The DOH must convene a workgroup of public health partners that must develop recommendations to the Legislature on:

- preferred funding and service delivery methods that ensure a cost-effective, nimble, responsive, and sustainable public health system; and
- the regionalization of certain health services delivered by local health jurisdictions that will save \$5,000,000 in state public health support in the 2011-2013 biennium.

The recommendations must be submitted to the Legislature by January 1, 2013.

Public Notice. Promptly after adoption, cities must post the text of each ordinance on their website and must make the text available at a location designated by the city. Within this same timeframe, cities also must publish an ordinance summary of 50 or fewer words in the official newspaper of the city. A failure to publish an ordinance does not make it invalid. Public notice procedures regarding forthcoming council meetings are amended to provide for the option of posting notice on the city's website.

Numerous public notice and publishing requirements for counties are modified. Counties are authorized to publish summaries of 50 or fewer words rather than the full text in the official newspaper of the county for 47 separate publication requirements applicable to counties and county actions. A failure to publish an ordinance does not render it invalid. Examples of newspaper-based publishing actions that counties may satisfy through the publishing of brief summaries include requirements pertaining to:

- legal notices and delinquent tax lists;
- requests for competitive bids and notices related to the disposal of county property;
- notices relating to the creation of areas and districts, including aquifer protection areas, park and recreation service areas, and local improvement districts and county road districts;
- ordinances regarding levying and fixing taxes, and the completion of a preliminary budget; and
- notices associated with land use and planning actions.

**Appropriation:** None.

**Fiscal Note:** Requested on January 29, 2012.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill provides a number of cost saving measures for cities and counties. One of the concerns from cities and counties is being audited year after year, yet they are acting properly. The bill would allow local governments to be audited every three years. Another big expense is personnel costs, and this bill would amend the binding interest arbitration statutes to reflect the differences in the economies throughout the state. The draft municipal general storm water permit from DOE does too much too fast. Under this permit, Washington would be the first state to require LID. The ability to admit into evidence any civil action factual information about whether a person is properly restrained in a vehicle places the responsibility in the hands of the driver of the vehicle and diminishes the likelihood that local governments will bear the burden of responsibility. There would be great value in convening a workgroup to examine the ways in which a sustainable public health system could be obtained. The public notice changes in this bill will make it easier for the public to find the information they are looking for, while at the same time saving local governments money.

CON: The one-year delay on municipal general storm water permits last year provides fiscal relief to local governments and allows for a longer comment period. The changes in this bill would circumvent the public comment period. If this bill were to pass, DOE would probably need to take a new draft permit out for public comment. The current draft permit has a phased-in approach on LID. This bill essentially eliminates storm water regulations as they would apply to all properties one acre or less. This bill makes LID voluntary and undermines the ongoing permit process. LID is often the cheapest way to develop and the often the best way to address legal obligations and the environmental impacts of development. This bill is extremely problematic administratively speaking and makes a mockery out of CWA. The language in the bill authorizes incentives within the permit. This bill would place an undue burden on DOE. Other permits require LID, and the EPA is moving forward on LID requirements. This bill attacks binding arbitration and takes away some of the rights of collective bargaining of members. Binding arbitration is a last resort. The sections on binding arbitration is a solution looking for a problem. The modernization of the arbitration statutes in this manner will cause more arbitrations. An arbitration panel should not be asked to ignore history and contemplate the last budget resolution by the city or county when making their decision, as this will create some real problems. Arbitration exists because these employees cannot strike. These employees have already made concessions. Removing the ability for an arbitrator to consider past decisions causes the arbitrator to work in a vacuum. Knowing the history of previous decisions is an important part of settling a dispute. The changes in this bill related to the use of volunteers would deny the employees who do the actual work any input into how volunteers can assist them in bettering their communities. It may be likely that this could set up a situation in which volunteers are seen as a threat rather than an asset.

**Persons Testifying:** PRO: Senator Swecker, prime sponsor; Don Gerend, City of Sammamish; Dave Williams, Assn. of WA Cities; Don Krupp, Thurston County Administrator; Scott Merriman, WA State Assn. of Counties.

CON: Don Seeberger, DOE; Bruce Wishart, People for Puget Sound and Sierra Club; Mo McBroom, WA Environmental Council; Chris Wilke, Puget Soundkeeper Alliance; Bud Sizemore, WA State Council of Firefighters; Jamie Daniels, WA Council of Police and Sheriffs; Pat Thompson, WA State Council of County and City Employees.