

# Municipal

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# Research News

Municipal Research and Services Center of Washington



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## Public Works Defined

By John Carpita, Public Works Consultant, Municipal Research and Services Center

Four sight-challenged finance officers came across a “project.”

The first finance officer said, “Hmm. This feels like an equipment purchase, since all they are doing is installing a telephone system.”

The second finance officer felt wires poked here and pulled there, felt holes cut in the walls, and sensed that a restroom had been converted to a telephone equipment room and said, “No, this feels like a public works project.”

The third finance officer said, “It can’t be a public works project; there is no sales tax paid, and I don’t smell any prevailing wages.”

The fourth finance officer noted that the workers sounded like agency employees and said, “Hey, let’s get real here. If our agency people are doing this, then it must be maintenance, because our board doesn’t allow us to do public works projects over \$10,000 with our own forces.”

### What Is a Public Works Project?

RCW 39.04.010 states that the term “public work shall include all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein.” Parks departments always seem to insist that they don’t do public works

projects, and that this RCW applies only to public works departments. And every agency seems to have a facilities manager who wants to push the bid limits and do things with his crews that should go out to bid.

All public works projects, including maintenance when performed by contract, must comply with the provisions of RCW 39.12.020 (prevailing wages). But what is ordinary maintenance? What is the difference between ordinary maintenance and maintenance performed by contract? When can something be considered a service and not maintenance? And, here’s a scary thought – just suppose public work bid limits also apply to maintenance contracts!

### Public Works Definitions

RCW 39.04.010, as modified by SHB 2010 (2007), contains basic public works definitions:

- “Award” means the formal decision by the state or municipality notifying a responsible bidder with the lowest responsive bid of the state or municipality’s acceptance of the bid and intent to enter into a contract with the bidder.
- “‘Municipality’ means every city, county, town, district, or other public agency authorized by law to require the execution of public work,” but not the various drainage, diking, and irrigation districts.

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- “Contract” means a contract in writing for the execution of a public work for a fixed or determinable amount duly awarded after advertisement and competitive bid, or a contract awarded under the small works roster process in RCW 39.04.155.
- “Responsible bidder” means a contractor who meets the criteria in section 2 of this act (SHB 2010, Chapter 133, Laws of 2007).
- “Public work” means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, (regardless of the source of funding) or which is by law a lien or charge on any property therein.”(Includes LIDs and GO bond issue projects). “All public works, including maintenance when performed by contract shall

comply with chapter 39.12 RCW (prevailing wages).”

**Public Works, Contracted Maintenance, and Services**

Note that the term “work” is very inclusive, especially in conjunction with “construction, alteration, repair, or improvement.” Also note that this statutory definition of public work includes “work, construction, alteration, repair, or improvement other than ordinary maintenance.”

What is “ordinary maintenance”? The statutes provide no definition; however, WAC 296-127-010(7) (b) (iii), (in the context of prevailing wages) defines it as:

- work not performed by contract that is performed on a regularly scheduled basis (e.g., daily, weekly, monthly, seasonally, semi-annually, but not less frequently than once per year) to service,

check, or replace items that are not broken; and

- work not performed by contract that is not regularly scheduled but is required to maintain the asset so that repair does not become necessary.

Ordinary maintenance performed by agency forces is not a public work and is not subject to either bid laws or prevailing wages. Contracted ordinary maintenance is a public work and is subject to both bid laws and prevailing wages. It should be noted that sometimes there is a fine line between things that are considered maintenance and things that are considered services, to which very few, if any, bid laws apply. See Tables 1 and 2.

**Public Works Bid Limits**

Public works bid laws were established to prevent fraud, collusion, and favoritism in the awarding of public contracts,

Public Works, Contracted Maintenance and Services		
Services	Prevailing Wage	Bid Limits Apply
Contracted professional services	No	No
Contracted non-maintenance services	No	No
Ordinary maintenance (performed by agency forces)	No	No
Public works		
Contracted ordinary maintenance	Yes	Yes
Contracted maintenance	Yes	Yes
Public works	Yes	Yes

Table 1

Contracted Maintenance or Services Examples	
Snowplowing	Service
Street/road striping	Maintenance
Cleaning storm sewer catch basins	Maintenance
Tree trimming	Maintenance
Janitorial (but prevailing wages apply per RCW 39.12.020)	Service
Painting	Maintenance
Street sweeping	Maintenance
This table is based on L&I policy determinations of which MRSc is aware. Call L&I if your situation doesn't fit one of these.	

Table 2

to enable local governments to obtain the best work at the most reasonable prices, and to provide a fair forum for all bidders. Local governments could use competitive bidding (advertisement in designated legal newspapers, sealed bids, and formal bid openings, with competition open to all contractors) for each and every public works and maintenance contract. However, following competitive bidding procedures is often counterproductive and excessively time-consuming for smaller projects. Recognizing this problem, the state legislature has, over the years, established and modified dollar amounts (commonly referred to as bid limits) below which competitive bids are not required for public works projects, and it has provided exemptions and alternatives to the competitive bidding process.

The first consideration in applying public works bid laws is to estimate project costs. Estimated project costs are to include all construction-related work, but not engineering and/or architectural design fees. They are to include all phases of the project and not include donated labor, materials, supplies, etc. MRSC recommends that project cost estimates include applicable sales and use taxes and be based on a competitive bid basis (as opposed to what agency crews can do the work for), although the statutes do not directly address these two issues. If the estimated project cost is below the agency's bid limits (see tables 3 and 4), the agency may construct the project (subject to individual agency

purchasing policies) by use of agency crews (counties have restrictions on day labor construction for road projects), by interlocal agreement with another agency, or by contract with a private contractor.

**Reporting Requirements**

Per the notes above, public agency work or day labor limits are set by the legislature as the amount of public works that can be accomplished using the agency's own work force or by hiring day laborers. Limits are expressed as specific dollar amounts for single or multiple craft projects and/or as percentages of the public works or road fund budgets. (Note: Day labor as used in the county road fund statutes refers specifically to the county's own forces.)

Note these two statutes:

RCW 39.04.070 – Whenever the state or any municipality shall execute any public work by any means or method other than by contract or small works roster, it shall cause to be kept and preserved a full, true and accurate account and record of the costs of executing such work in accordance with the budgeting, accounting, and reporting system provisions prescribed by law for the state agency or municipality.

RCW 43.09.205 – The state auditor shall prescribe a standard form with which the accounts and records of costs of all local gov-

ernments shall be maintained as required under RCW 39.04.070.

Why are these statutes important? There are penalties for doing too much work with an agency's own forces.

For code cities under 20,000, RCW 35.23.352(4) says:

The form required by RCW 43.09.205 shall be to account and record costs of public works in excess of five thousand dollars that are not let by contract.

For code cities over 20,000, the first class city statute (RCW 35.22.620(2)) applies via RCW 35A.40.210(2). RCW 35.22.620(2) (excerpts) states:

If a first class city has public works performed by public employees in any budget period that are in excess of this ten percent limitation, the amount in excess of the permitted amount shall be reduced from the otherwise permitted amount of public works that may be performed by public employees for that city in its next budget period. Twenty percent of the motor vehicle fuel tax distributions to that city shall be withheld if two years after the year in which the excess amount of work occurred, the city has failed to so reduce the amount of public works that it has performed by public employees. The amount so withheld shall be distributed to the city when it has demonstrated in its reports to the

Public Works Bid Limit Summary			
	Bid Advertisement Required	Formal Public Bid Opening Required	Bidding Open To
Bids – \$200,000 and over	Yes	Yes	All licensed contractors
Quotes – Bid limits to \$200,000 (if small works roster is used)	No	No	Licensed contractors on small works roster
Quotes – Below bid limits	No	No	Selected licensed contractors

Table 3

state auditor that the amount of public works it has performed by public employees has been so reduced.

Whenever a first class city has had public works performed in any budget period up to the maximum permitted amount for that budget period, all remaining public works within that budget period shall be done by contract pursuant to public notice and call for competitive bids.

The state auditor shall report to the state treasurer any first class city that exceeds this amount and the extent to which the city has or has not reduced the amount of public works it has performed by public employees in subsequent years.

County road departments follow reporting procedures and forms prescribed by RCWs and WACs as administered by the County Road Administration Board

(CRAB). Other county public works and maintenance activities must be reported, but there do not appear to be any statutory references as there are for cities. Consult the BARS Manual or contact the State Auditor's Office if you need this information.

**Conclusions**

- Public works projects are not exclusive to "public works departments"; public works bidding requirements apply to all departments of an agency.
- Maintenance performed by contract, whether "ordinary" or not, is subject to bid limits and prevailing wage requirements.
- Sometimes there is a thin line between things that are considered maintenance and things that are considered services, to which very few, if any, bid laws apply. When in doubt, contact your legal counsel or MRSC.

- Because there are penalties for doing too much work with an agency's own forces, agencies should be keenly aware of the day labor limits and reporting requirements in the statutes.

**Resources**

- "Purchasing and Bidding Chart for Local Agencies in Washington State," <http://www.mrsc.org/govdocs/PurchasingChartA.xls>
- "Flow Chart for Purchasing and Bidding in Washington Counties," <http://www.mrsc.org/Subjects/PubWorks/pbflowchart.pdf>
- "The Bidding Book for Washington Cities and Towns," <http://www.mrsc.org/publications/O6biddingbook.pdf>
- "The Bidding Book for Washington Counties," <http://www.mrsc.org/Publications/cbb07.pdf>

Bid Limits		
Cities and Towns	Single Craft	Multiple Crafts
First class city over 150,000	\$35,000 <sup>1</sup>	\$70,000 <sup>1</sup>
First class city under 150,000	\$30,000 <sup>1</sup>	\$50,000 <sup>1</sup>
Code city over 20,000	\$30,000 <sup>1</sup>	\$50,000 <sup>1</sup>
Code city under 20,000	\$30,000 <sup>2</sup>	\$45,000 <sup>2</sup>
Second class city and town	\$30,000 <sup>2</sup>	\$30,000 <sup>1</sup>
Counties		
Over 1 million with purchasing department	\$25,000 <sup>3,4</sup>	\$70,000 <sup>3,4</sup>
Under 1 million with purchasing department	\$10,000 <sup>4</sup>	\$10,000 <sup>4</sup>
Under 1 million without purchasing department	\$10,000 <sup>5</sup>	\$10,000 <sup>5</sup>
<sup>1</sup> RCW 35.22.620(2) further limits the dollar value of public works performed by city employees or day labor to ten (10) percent of the total public works construction budget in a given budget period. Work performed within a city by county employees under an interlocal agreement is to be included in this limit. <sup>2</sup> Note 1 does not apply. <sup>3</sup> Also subject to annual limit of 10% of public works construction budget (RCW 36.32.235). <sup>4</sup> If legislative body waives bidding requirements for contracts under that amount. Also subject to day labor limitations for road funds under RCW 36.77.065. <sup>5</sup> If the county chooses to contract for public works, and, if it does, legislative body waives bidding requirements for contracts under that amount. Also subject to day labor limitations for road funds under RCW 36.77.065.		

Table 4

# Did You Know?

## Interesting Tidbits about Washington State

**State Nickname:** The phrase “*The Evergreen State*” appears on Washington license plates and in numerous official and unofficial uses, but it has never been formally adopted. Historian and journalist C. T. Conover is credited with coining it.

**State Song:** Washington’s official anthem, “*Washington, My Home*,” with lyrics by Helen Davis and music by Stuart Churchill, was adopted in 1959. A campaign to substitute the rock classic “Louie Louie” failed in the 1980s.

**State Marine Mammal:** The campaign to designate the *orca* as our state marine mammal was initiated by a second-grade class at Crescent Harbor Elementary School in Oak Harbor. The class gathered more than 1,000 signatures to present to the state legislature. The legislature passed the bill and Governor Christine Gregoire signed it on April 24, 2005, making the killer whale the official state marine mammal.

**State Bird:** The present official state bird is the western or *American goldfinch*, aka “wild canary” (*Cardu-*

*elis tristis*). It was formally adopted in 1951 based on a special election among state school children. The first such election in 1928 resulted in the designation of the meadowlark, but seven other states had already chosen the same species. A later election gave the nod to the goldfinch and the state legislature officially anointed the bright yellow bird in 1951.

**State Insect:** The *green darnier dragonfly* (*Anax junius drury*), also known as a “mosquito hawk,” was approved by the legislature in 1997 as a result of a campaign spearheaded by students at the Crestwood Elementary School in Kent. More than 25,000 students from some 100 schools participated in the final vote.

**State Fish:** The legislature named the *steelhead trout* (*Oncorhynchus mykiss*) the official state fish in 1969. This relative of the salmon is born in freshwater streams then migrates to saltwater where it spends most of its adult life. Unlike salmon, steelheads may return more than once to their birthplace streams to spawn before dying.

**State Flower:** The *Coast Rhododendron* was selected over five other candidates to be Washington’s floral representative at the 1893 Columbia Exposition in Chicago. The 1892 special ballot was limited to women, who did not then have the right to vote in official elections.

**State Tree:** Washington adopted the *western hemlock* (*Tsuga heterophylla*) as its state tree in 1947, after being teased by the *Portland Oregonian* for its glaring lack of a sylvan symbol.

**State Fruit:** The *apple*, one of Washington’s leading agricultural exports, was adopted in 1989 as part of the statehood centennial celebration.

**State Gem:** *Petrified wood* was named the official state gem in 1975.

Information gleaned from “The Online Encyclopedia of Washington State History” at HistoryLink.com, [http://www.historylink.org/essays/output.cfm?file\\_id=5315](http://www.historylink.org/essays/output.cfm?file_id=5315)



# Recent Legislative Changes to Disability Law and the Use of Employee Credit Reports

By Mark Busto, Evan Chinn, and Jillian Barron, Sebris Busto James

The Washington State legislature recently passed two significant laws affecting employers. First, amendments to the Washington Law Against Discrimination (WLAD) have greatly expanded the definition of what is a protected “disability.” Second, state lawmakers enacted limitations on employers’ right to obtain credit reports of job applicants and employees.

## New Definition of Disability – RCW 49.60.040

**Background:** Last year in *McClarty v. Totem Electric*, 157 Wn.2d 214 (2006), the Washington State Supreme Court adopted the federal Americans with Disabilities Act’s (ADA) definition of “disability.” Under the ADA, a “disability” is a physical or mental impairment that *substantially limits one or more major life activities*, or where an individual has a record of or is regarded as having such an impairment. Federal courts have held that the ADA does not protect conditions that: are temporary; are mitigated by medication or other means (such as the use of eyeglasses for poor vision); or, if the limitation is on the ability to work, limit only the ability to perform specific tasks rather than a broad category of jobs. As our August 2006 Note (see website at <http://www.sebrisbusto.com/>) predicted it might, the Washington legislature has concluded *McClarty* improperly narrowed the state’s protections and has enacted a far broader definition of “disability.”

**What’s New?** Under the new legislation, “disability” means a sensory, mental, or physical impairment that is medically cognizable or diagnosable, exists as a record or history, or is perceived to exist. Rejecting ADA case law, the statute explicitly states that a “disability” can be “temporary or permanent, common or uncommon, [and] mitigated or unmitigated.” *Moreover, a disability exists whether or not it limits the ability to work a particular job or*

*in general, or to engage in any other activity covered by the WLAD.* “Impairment” is defined expansively to include any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting virtually any of the body’s systems, as well as mental, developmental, traumatic, and psychological disorders.

To qualify for reasonable accommodation, the employee’s impairment must be known by the employer or shown through an interactive process to exist, and: (1) the impairment must substantially limit the individual’s ability to perform the job, apply or be considered for a job, or access equal benefits, privileges, or terms of employment; or (2) there must be a reasonable likelihood that engaging in job functions without accommodation would aggravate the impairment to the extent that it would substantially limit the employee’s ability to perform the job. If accommodation is sought based on potential aggravation of the impairment, there must be supporting medical documentation. For purposes of accommodation, “a limitation is not substantial if it has only a trivial effect;” the statute provides no other guidance as to the parameters of those terms.

**What Does It Mean?** Washington employers need to be even more aware than before of potential disability-based claims. Given the breadth of the new definition, virtually any physical or mental condition – for example, obesity, acne, a facial scar, or a sprained ankle – may now be considered protected and grounds for a discrimination claim if it adversely impacts employment decisions. Similarly, any condition that limits a person’s ability to perform the job in more than a “trivial” way will trigger an employer’s duty to provide reasonable accommodation. Unfortunately, the outer boundaries of employers’ obligations will only be fully established as cases applying the new law make their way through the courts.

## Fair Credit Reporting and Consumer Privacy – RCW 19.182.020

**Background:** Many employers use outside agencies to provide “consumer reports” on potential and current employees. Such reports may include information concerning the individuals’ credit standing and other characteristics, such as their criminal background. Previously, Washington’s consumer privacy laws required only that employers provide written notice to job applicants and employees that such a report might be obtained; in the case of employees, notice could be satisfied by mentioning the possibility in employee guidelines or manuals.

**What’s New?** The legislature amended Washington’s consumer credit statute to provide greater privacy regarding credit information, in particular. The statute now states that “a person may not procure a consumer report for employment purposes where any information contained in the report bears on the credit worthiness, credit standing, or credit capacity” of a job applicant or employee, with two exceptions. Employers may obtain credit-related information: (1) when the report is substantially related to the individual’s current or potential job, and the reasons for using such information are disclosed to the individual in writing; or (2) when the report is required by law. The statute does not define circumstances in which credit information might be substantially related to a job. Logically, however, that could be true where the employee’s position involves access to and responsibility for business or personal financial information, check-writing authority, or access to large amounts of cash. While silent on the subject, the statute does not appear to prohibit obtaining reports regarding criminal background, general reputation, or personal characteristics, so long as the general notice and procedural requirements of the statute are followed.

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**What Does It Mean? Employers should:**

- Revise general written consent forms for obtaining consumer reports on job applicants or employees to expressly exclude credit information.
- Identify positions for which credit information is relevant. If a credit report will be requested for applicants or employees in those positions, justify the reasons for obtaining a report in writing and make the reasoning available to the employee/applicant in conjunction with the required written consent form.
- Instruct background/credit reporting contractors to refrain from investigating credit worthiness, standing, or capacity unless the consent form specifically states that such information is to be included.
- Use prior job history, references, and work performance to make employment decisions.
- Remove any general notices in manuals and handbooks that credit information might be accessed for employment purposes.▶

**Mark Busto**, Attorney with *Sebris Busto James*, is a seasoned employment law counselor and litigator with a strong professional background in labor-management relations. He has represented employers in discrimination cases before judges and juries in both state and federal court and has arbitrated many labor and employment matters.

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**Evan Chinn** is an associate with *Sebris Busto James* who advises and assists employers in identifying, implementing and maintaining proactive labor and employment practices.

# Ask MRSC

## Summaries of recent inquiries answered by MRSC consultants

### Does the filing of a claim with a city or county toll the statute of limitations for the 60-day claim period?

Yes. The statute of limitations is tolled during the 60-day claim filing period. So, a claimant actually has three years plus 60 days to file a lawsuit. This is specified in the last sentence of RCW 4.96.020:

No action shall be commenced against any local governmental entity for damages arising out of tortious conduct until sixty days have elapsed after the claim has first been presented to and filed with the governing body thereof. The applicable period of limitations within which an action must be commenced shall be tolled during the sixty-day period.

### Are elected officials covered by COBRA?

Looking at the relevant U.S. Code provisions, it looks like elected officials covered by a city's or county's health plan would be entitled to continuation coverage. Continuation coverage for local government employees is provided under the "Public Health Services Act," 42 U.S.C. §300bb-1 et seq., which is very similar to COBRA. Under 42 U.S.C. §300bb-1(a):

In accordance with regulations which the Secretary shall prescribe, each group health plan that is maintained by any State that receives funds under this chapter, by any political subdivision of such a State, or by any agency or instrumentality of such a State or political subdivision, shall provide, in accordance with this subchapter, that each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event is entitled, under the plan, to elect, within the election period, continuation coverage under the plan.

42 U.S.C. §300bb-8(2) provides that:

The term "covered employee" means an individual who is (or was) provided coverage under a group health plan by virtue of the performance of services by the individual for 1 or more persons maintaining the plan."

And, 42 U.S.C. §300bb-8(3)(b) provides that, "In the case of a qualifying event described in section 300bb-3 (2) of this title, the term 'qualified beneficiary' includes the covered employee." A "qualifying event" in section 300bb-3 (2) includes termination of employment, "other than by reason of such employee's gross misconduct."

So, if an elected official is covered by a city's or county's health plan, he or she is a "covered employee," and, upon conclusion of his or her term of office (i.e., termination of employment), the elected official becomes a "qualified beneficiary" entitled to continuation coverage under 42 U.S.C. §300bb-1 et seq.

### Is a public records request satisfied if a city or county directs the inquirer to a link on its website?

The Washington Attorney General's "Model Rules for Public Records" state that an agency may provide access to a public record by posting it on its website. If the requestor does not have Internet access, the agency may provide access to the record by allowing the requestor to view the record on a specific computer terminal open to the public.

Despite the availability of the record on the agency website, a requestor can still make a public records request and inspect the record or obtain a copy of it by paying the appropriate per-page copying charge.

See WAC 44-14-04005 for more information on this issue.

## May a city or county use hotel-motel (lodging) tax monies to pay the salary of an employee who engages in tourism promotion?

We believe that a city or county legislative authority may establish an employee position that engages in tourism promotion and have that position funded by hotel-motel tax monies. However, the position could be funded only in proportion to the amount of time the employee engages in tourism promotion.

RCW 67.28.1815 provides that hotel-motel tax funds may be used “solely for the purpose of paying all or any part of the cost of tourism promotion, acquisition of tourism-related facilities, or operation of tourism-related facilities.” (Emphasis added.) “Tourism promotion” is defined in RCW 67.28.080(6) as:

activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding marketing of special events and festivals designed to attract tourists.

Having an employee position that would involve tourism promotion, as defined above, and that is funded by hotel-motel tax moneys would be permissible under the above statutes. However, if the employee position also involves duties not associated with tourism promotion, that part of the position could not be funded with ho-

tel-motel tax moneys. So, for example, if this position involved tourism promotion for half the time, then 50 percent of the salary for the position, and no more, could be funded with hotel-motel tax moneys.

If a city’s or county’s population exceeds 5000, it is required to establish a “lodging tax committee” pursuant to RCW 67.28.1817 that must first review various matters relating to the hotel-motel tax, including a change in the use of tax funds, before the legislative authority may act upon such matters. The composition and duties of that body are set out in RCW 68.17.1817. So, before a legislative body in a city or county of that size could use hotel-motel tax moneys to fund a tourism promotion position, it must establish a lodging tax committee, if it has not already done so, and it must submit that proposal to the committee for its comments in accordance with the process set out in RCW 67.28.1817.

## Does the state provide insurance coverage for all local government employees who die as a result of a job-related injury?

The 1996 Legislature passed ESSSB 5322 creating a \$150,000 special death benefit for the Law Enforcement Officers’ and Fire Fighters’ Retirement System (LEOFF) and Washington State Patrol Retirement System. This benefit was subsequently extended to members in the Public Employees’ Retirement System (PERS), Teachers’ Retirement System (TRS), and School Employees’ Retirement System (SERS) under HB 1207, passed during the 2003 legislative session. If a member of one of these retirement systems

dies as a result of an “injury” sustained in the course of employment, a \$150,000 special death benefit may be paid to the designated beneficiary.

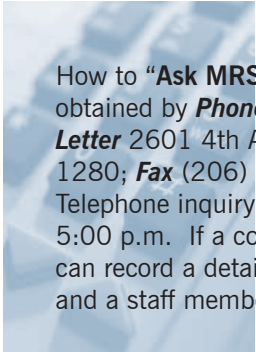
See RCW 41.40.0932 relating to the PERS and RCW 41.26.048 relating to the LEOFF. These benefits are more fully described in the LEOFF Plans 1 and 2 <http://www.drs.wa.gov/member/Plans/LEOFF/default.htm>, and PERS Plans 1, 2 and 3 <http://www.drs.wa.gov/member/Plans/PERS/default.htm> handbooks under the “what benefits do my survivors receive” sections. For further information, contact the state Department of Retirement Systems.

## Does a town council have the authority to confirm the appointment by the mayor of a municipal court judge?

No, based upon language in state law, it does not appear that a town council has the authority to require confirmation for a municipal court judge. RCW 3.50.040, which relates to the appointment of a municipal court judge, provides that:

The legislative authority of a city or town that has the general power of confirmation over mayoral appointments shall have the power to confirm the appointment of a municipal judge.

However, a town council does not have the general power to confirm mayoral appointments. In fact, RCW 35.27.070 provides that all appointive officers “shall hold office at the pleasure of the mayor . . . and shall not be subject to confirmation by the town council.”



How to “Ask MRSC.” Assistance from MRSC may be obtained by **Phone** (206) 625-1300 or 1-800-933-6772; **Letter** 2601 4th Avenue, Suite 800, Seattle, WA, 98121-1280; **Fax** (206) 625-1220; or **E-mail** [mrsc@mrsc.org](mailto:mrsc@mrsc.org). Telephone inquiry service is available from 8:00 a.m. to 5:00 p.m. If a consultant is not immediately available, you can record a detailed request on voice mail 24-hours a day, and a staff member will call back as soon as possible.

# Heads Up

Emerging information for local government

## Minority Population Tops 100 Million

The nation's minority population reached 100.7 million, according to the national and state estimates by demographic characteristics (age, sex, race, and Hispanic origin) released by the U.S. Census Bureau in May. A year ago, the minority population totaled 98.3 million. About one in three U.S. residents is a minority. Putting this in perspective, there are more minorities in this country today than there were people in the United States in 1910. The minority population in the U.S. is larger than the total population of all but 11 countries.

Hispanic remained the largest minority group, with 44.3 million on July 1, 2006, 14.8 percent of the total population. African-American was the second-largest minority group, totaling 40.2 million in 2006. They were followed by Asian (14.9 million), American Indian and Alaska Native (4.5 million), and Native Hawaiian and Other Pacific Islander (1 million). The population of non-Hispanic whites who indicated no other race totaled 198.7 million in 2006. Census Bureau Press Release, May 17, 2007 <http://www.census.gov/Press-Release/www/releases/archives/population/010048.html>

## New Publications

### Planning for Demographic Change *Immigrants and Boomers: Forging a New Social Contract for the Future of America*, Sage Foundation, 2007

Many Americans regard the massive influx of immigrants over the past 30 years with great anxiety, fearing new burdens and unwanted changes to the nation's ethnic, social, and economic identity. Virtually unnoticed in the contentious national debate over immigration is the even more significant demographic change about to occur as the first wave of the Baby Boom generation retires, slowly draining the workforce and straining the federal budget to the breaking point. In this forward-looking new book, noted demographer Dowell Myers proposes a new way of thinking about these

issues and argues that each of these two powerful demographic shifts may hold the keys to resolving the problems presented by the other.

Using California as a bellwether state – where whites are no longer a majority of the population and represent just a third of residents under age 20 – the author provides a glimpse into the future impact of immigration on the rest of the nation. Myers demonstrates that long-established immigrants have been far more successful than the public believes. Among the Latinos who make up the bulk of California's immigrant population, those who have lived in California for over a decade show high levels of social mobility and use of English, and 50 percent of Latino immigrants become homeowners after 20 years. The impressive progress made by immigrant families suggests they have the potential to pick up the slack from aging boomers over the next two decades. Myers suggests that it is in the boomers' best interest to invest in the education and integration of immigrants and their children today in order to bolster the ranks of workers, taxpayers, and homeowners America will depend on 10 to 20 years from now. The author calls for a new social contract between the older and younger generations based on their mutual interests and the moral responsibility of each generation to provide for children and the elderly. (Excerpted from the publisher's summary.) To read chapter one and/or purchase the book, go to the Sage Foundation website at <http://www.russellsage.org/publications/>.

***A Blueprint for Action: Developing a Livable Community for All Ages*** Published last fall was the final report of a study of America's aging population titled *Maturing of America: Getting Communities on Track for an Aging Population*. The project was led by the National Association of Areas on Aging in partnership with the International City/County Management Association, the National Association of Counties, the National League of Cities, and

Partners for Livable Communities, and was funded by a grant from MetLife Foundation. In May, the second publication was issued, *A Blueprint for Action*. This publication provides cities and counties with detailed strategies, practical tools, and proven solutions that may be used to prepare for the large baby boomer population. With the rapid rise in the number of aging baby boomers (by 2030 one in every five Americans will be over the age of 65) localities are now challenged to provide accessible transportation, appropriate affordable housing options, and other supportive services for their aging citizens. To view the publication, go to <http://www.n4a.org/>.

## What's New on the Art Scene?

The ***Arts & Economic Prosperity III*** study of Americans for the Arts, published in May 2007, reported that the nonprofit arts industry generates \$166 billion in economic activity every year resulting in \$29.6 billion in federal, state, and local tax revenues. The study is the most comprehensive economic impact study of the nonprofit arts and culture industry ever conducted in the United States. The nation's nonprofit arts and culture industry has grown steadily since the first analysis by Americans for the Arts in 1992, expanding at a rate greater than inflation. Between 2000 and 2005, spending by organizations and their audiences grew 24 percent, from \$134 billion to \$166.2 billion in total economic activity – \$63.1 billion in spending by organizations and an additional \$103.1 billion in event-related spending by their audiences. To learn more about Arts & Economic Prosperity III, visit [www.AmericansForTheArts.org/EconomicImpact](http://www.AmericansForTheArts.org/EconomicImpact).

**Everett Artspace Lofts** – The city of Everett is partnering with the Arts Council of Snohomish County and the Minnesota-based Artspace to build a premier artist live-work complex in downtown Everett. Everett was selected by Artspace, a national arts group, as a place to develop affordable

and sustainable space for artists. The Everett project will provide 40 units of affordable housing for artists and their families in which to live, work, and display and produce art, as well as space for a new home for the Arts Council of Snohomish County and arts-related commercial space. A long-term ground lease of the Hoyt property in the heart of the central business district is serving as the cornerstone in efforts to raise \$22 million for the Artspace project. The Arts Council of Snohomish County has embarked on a \$6 million capital campaign to build a regional center for visual arts on the building's first floor. Spring 2009 is the expected completion date. See Everett Artspace Lofts <http://www.artspaceusa.org/neighborhood/everettwa/> and the Arts Council web page on the project <http://www.artscouncilofsnoco.org/campaign/project.html>.

**Bellingham's Arts District** – A few cities in Washington – Bremerton, Richland, and Spokane – have designated arts district areas. The newest development is in Bellingham. The *Arts District & Flora Street – Making Places for People* project will provide improvements to the publicly-owned property within the arts district and encourage partnerships to extend improvements to the private sector. The improvements will focus on providing amenities and encouraging activities that will enliven and optimize use of these public spaces. See <http://www.cob.org/pcd/ArtsDistrictFloraStreet.htm>. ■

# New Acquisitions

## New resource materials now available

This list contains new publications, ordinances, and other materials recently received by the MRSC library. We also prepare a more comprehensive list of new acquisitions each month which is posted on our Web site at [www.mrsc.org/library/newacq.htm](http://www.mrsc.org/library/newacq.htm). If you would like to borrow one or more of these publications, please contact Peter Breen in our library at (206) 625-1300 or [library@mrsc.org](mailto:library@mrsc.org).

### Cemeteries

*Grand View Cemetery Master Plan*, Anacortes, WA, 2006 [CE 1.0000 A5 G73 2006]

### Environment

*Climate Change and Water Resources: A Primer for Municipal Water Providers*, prepared by Kathleen Miller and David Yates, jointly sponsored by AWWA Research Foundation and University Corporation for Atmospheric Research (UCAR), 2006 [EN 10.6000 C561 2006]

### Finance

*An Elected Official's Guide to Auditing*, by Stephen J. Gauthier, Revised 2nd ed., Chicago, Government Finance Officers Association, 2002 [F 2.5000 E44 2002]

*An Elected Official's Guide to Audit Committees*, by Stephen J. Gauthier, Chicago, Government Finance Officers Association, 2006 [F 2.5000 E45 2006].

*The Bidding Book for Washington Counties*, Municipal Research and Services Center of Washington, Seattle, 2007 [F 8.3000 B555 2007]

### Governance

*The First 90 Days in Government: Critical Success Strategies for New Public Managers at All Levels*, by Peter H. Daly and Michael Watkins with Cate Reavis, 2006 [G 9.1200 F57 2006]

*APWA Red Book on Qualifications-Based Selection: Guidelines for Public Agencies*, Kansas City, MO, American Public Works Association, 2006 [G 9.5000 R43 2006]

*Benchmarking Performance Indicators for Water and Wastewater Utilities: Survey Data and Analyses Report*, by Angela K. Lafferty and William C. Lauer, Denver, CO, American Water Works Association, 2005 [G 9.7050 B452 2005]

*Managing Local Government Services: A Practical Guide*, edited by Carl W. Stenberg and Susan Lipman Austin, Washington, D.C., ICMA Press, 2007 [G 9.0000 M35 2007]

### Housing

*Workforce Housing: Innovative Strategies and Best Practices*, by Richard Haughey ... et al., Washington DC, Urban Land Institute, 2006 [HO 4.4000 W57 2006]

### Information Services

*Fighting the Good Fight for Municipal Wireless: Applying Lessons from Philadelphia's Wi-Fi Story*, by Craig Settles, Poughkeepsie, NY, Hudson House, 2006 [IS 2.1000 F55 2006]

### Parks and Recreation

*Park and Recreation Plan*, City of Woodland, Woodland, WA, 2006 [P 3.2000 W62 P35 2006]

### Personnel

*State and Local Government Deferred Compensation Programs*, by Kathleen Jenks Harm and John Saeli, rev. ed., Chicago, Government Finance Officers Association, 2006 [PE 10.1200 S83 2006]

*Planning Issues for On-Site and Decentralized Wastewater Treatment*, by Wayne M. Feiden and Eric S. Winkler, Chicago, American Planning Association, 2006 [US 7.0000 P35 2006]

### Planning and Land Use

*Urban Land Use Planning*, by Philip R. Berke ... [et al.], 5th ed., Urbana, University of Illinois Press, 2006 [PL 5.0000 U73 2006]

*Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property*, prepared by Michael S. Grossman, Alan D. Copesey, and Katharine G. Shirey on behalf of The Takings Group, Office of the Washington State Attorney General, Olympia, WA, 2006 [PL 5.6100 W3 A39 2006]

*Planning Policy and Politics: Smart Growth and the States*, by John M. DeGrove, Cambridge, MA, Lincoln Institute of Land Policy, 2005 [PL 8.6270 P53 2005]

*Taking Sustainable Cities Seriously: Economic Development, the Environment, and Quality of Life in American Cities*, by Kent E. Portney, Cambridge, MA, MIT Press, 2003 [PL 14.1000 T34 2003]

*Now that you're on the Board: How to Survive... and Thrive...as a Planning Commissioner*, by Elaine Cogan, Burlington, VT, Champlain Planning Press, 2006 [PL 2.2000 N68 2006]

*SmartCode & Manual*, includes the complete SmartCode version 8.0, Andres Duany [et al.], Ithaca, NY, New Urban Publications, 2006 [PL 8.6270 S534 2006]

*Planning Active Communities*, Marya Morris, general editor, Chicago, American Planning Association, 2006 [PL 14.0000 P53 2006]

### Public Works

*Developing a Public Works Operations Manual*, by William A. Sterling, Kansas City, MO, American Public Works Association, 2006 [PW 1.0000 D49 2006]

### Transportation

*North American Design Standards for Traffic Calming Measures*, Kansas City, MO, American Public Works Association, 2007 [T 3.4600 N68 2007] ■

## New Publication: Getting into Office Coming Soon

The new publication, *Getting into Office: Being Elected or Appointed into Office in Washington Counties, Cities, and Towns*, addresses such issues as how to qualify and run for elective office in cities, towns, and counties, and how to fill office vacancies when they occur. This publication will be available the end of June.

If you would like a copy, it will be available to Washington State municipal officials for purchase or **on loan** (<http://mrsc.org/library/loanrqst.aspx>) from the MRSC Library. To order a publication, please send us an **order form** (<http://mrsc.org/publications/puborder.pdf>) **with payment** (pre-payment is required for all publication purchases). You can also **order online with a credit card** (<http://mrsc.org/publications/order/form.aspx>).

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