

HOUSE BILL REPORT

ESHB 3209

As Passed Legislature

Title: An act relating to managing costs of the ferry system.

Brief Description: Managing costs of the ferry system.

Sponsors: House Committee on Transportation (originally sponsored by Representatives Clibborn, Rolfes, Seaquist and Morris).

Brief History:

Committee Activity:

Transportation: 3/4/10 [DPS].

Floor Activity:

Passed House: 3/5/10, 90-8.

Senate Amended.

Passed Senate: 3/10/10, 39-9.

House Concurred.

Passed House: 3/11/10, 81-16.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Modifies collective bargaining between representatives of ferry workers and the state, including eliminating the limitation that an arbitrator may only select from the final offers submitted by the parties at bargaining impasses and changing the factors that an arbitrator takes into consideration in making its decision.
- Allows the Washington State Department of Transportation (WSDOT) to perform maintenance and preservation work on ferry vessels and terminals if the cost of the work is less than \$120,000 versus the current limit of \$60,000, for the remainder of the biennium.
- Updates capital construction guidelines to include vessels and requires all terminal and vessel funding requests that exceed \$5.0 million per project to be accompanied by a pre-design study.
- Reduces the Washington State Ferries insurance appropriation by \$670,000.

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.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 25 members: Representatives Clibborn, Chair; Lias, Vice Chair; Armstrong, Ranking Minority Member; Roach, Assistant Ranking Minority Member; Dickerson, Driscoll, Eddy, Finn, Flannigan, Herrera, Johnson, Klippert, Kristiansen, Moeller, Morris, Nealey, Rolfes, Sells, Shea, Simpson, Springer, Takko, Upthegrove, Williams and Wood.

Minority Report: Do not pass. Signed by 1 member: Representative Ericksen.

Staff: Debbie Driver (786-7143)

Background:

The Washington State Department of Transportation (WSDOT) Ferries Division 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.

The 2009-11 Transportation Budget appropriates \$400.6 million for the operating expenses and \$98.4 million for the capital expenses of the Ferries Division.

The Washington State Ferry (WSF) system is part of the state highway system. State highways may be constructed, altered, repaired, or improved by state work forces or by contractors. The work may be done by state work forces when:

- estimated costs are less than \$60,000; or
- estimated costs are less than \$100,000 and delay of the project would jeopardize a state highway or constitute a danger to the traveling public.

The WSF has a maintenance facility located at Eagle Harbor on Bainbridge Island. The WSDOT employees at the site perform maintenance and preservation work on ferry vessels and terminals within the contracting limits in state law.

Representatives of ferry employees at the WSDOT, who are members of a collective bargaining unit represented by a ferry employee organization, bargain with the state over wages, hours, working conditions, insurance, and health care benefits. The first step in negotiations is to agree on impasse procedures. If the parties fail to agree on procedures, the statutory mediation and arbitration procedures apply.

Under the statutory arbitration process, the arbitrator is limited to deciding between the final offers of the parties on each impasse item, unless the parties have agreed to allow the arbitrator to issue a decision it deems just and appropriate. The statutory factors that the arbitrator must consider in making its decision include:

- past collective bargaining agreements;
- the constitutional and statutory authority of the state;
- the stipulations of the parties;
- the results of a salary survey;

- wage comparisons with other west coast operations doing comparable work, giving consideration to factors peculiar to the area and classifications involved;
- changes in circumstances during the proceedings;
- limitations on ferry toll increases or operating subsidies as the Legislature may impose; and
- other factors that are normally or traditionally taken into consideration.

The arbitration award is not binding on the Legislature and, if the Legislature does not approve the funding, is not binding on the state or ferry employee organization.

Before submitting a funding request to the Legislature, the request must be submitted to the Director of the Office of Financial Management (OFM) by October 1 prior to the legislative session in which it will be considered, and the Director of the OFM must certify the request as feasible financially for the state.

Summary of Engrossed Substitute Bill:

Legislative Findings and Intent.

The Legislature makes several findings and declares intent. The Legislature finds that the WSF system is a critical component of the state's highway system and that ferry system revenues are inadequate to support the capital and operating requirements of the ferry system. As such, and drawing on more than four consecutive years of legislative analysis and operating policy reforms, the Legislature finds that a realignment of the ferry compensation policy framework is an appropriate next step toward the Legislature's long-term goal of assuring sustainable, cost-effective ferry service. Furthermore, the Legislature intends to implement the recommendations from the Joint Transportation Committee ferry study as soon as practicable and establishes legislative intent to make various additional policy changes aimed at further efficiencies and cost savings.

Management Review.

The OFM is required to conduct an expert panel review of Washington State Ferries (WSF) management and WSF is required to provide travel policy data to the Legislature.

Work on Ferry Vessels or Terminals.

State work forces may construct, alter, repair, or improve the WSDOT ferry vessels and terminals if the estimated cost of the work is less than \$120,000, for the remainder of the 2009-11 biennium. An independent analysis to identify methods of reducing out-of-service times for vessel maintenance, preservation and improvement projects is required. The WSF is also required to analyze contracting out versus maintaining in-house work to determine which results in lower out of service vessel time. The DOT is required to develop a proposed vessel maintenance, preservation and improvement program and present it to the transportation committees by December 1, 2010.

Collective Bargaining.

The limitation that an arbitrator may only select from the final offers submitted by the parties at bargaining impasses is eliminated. Instead, unless otherwise agreed to by the employee organization and the state in their impasse procedures, an arbitrator is required to issue a decision it deems just and appropriate with respect to each impasse item. Before the

Governor may submit them to the Legislature, the OFM is required to certify arbitration awards as being feasible financially for the state. Retirement systems or retirement benefits of any kind are not subject to collective bargaining and when a contract expires before a new one is negotiated, the existing contract is effective for up to one year.

The statutory factors that the arbitrator must consider in making its decision are modified. An arbitrator must take into consideration the financial ability of the WSDOT to pay for the compensation and fringe benefit provisions of a collective bargaining agreement.

The arbitrator must also consider the ability of the state to retain ferry employees; the overall compensation for WSF employees and a salary survey prepared by the OFM. The OFM is required to use a nationally recognized firm in the field of HR management and consulting to prepare the salary survey and the Marine Employees Commission (MEC) is no longer required to conduct the salary survey. Marine employees are included in the health care super coalition for bargaining purposes. The WSF may not give free ferry rides to current or former employees and their families -- except current employees if needed for job duties or commuting directly between work and home.

Other Requirements.

Signs informing the public that assaults on Washington state employees will be prosecuted to the full extent of the law must be prominently displayed at each terminal and on each vessel. The DOT is required to investigate frequency, severity, and prosecutorial results of assaults and report incidents and recommendations to House and Senate Transportation Committees during the 2011 session. The appropriation for the WSF insurance policy is reduced by \$670,000, an error to the fuel proviso is corrected and the date of the Life Cycle Cost Model report is changed from March 15, 2010 to December 1, 2010.

An appropriation of \$7.3 million is made from the Puget Sound Ferries Operating Account for the purpose of travel time associated with ferries employees, and the appropriation is contingent upon the WSDOT's provision of travel pay data to the Governor and the Legislature.

Appropriation: The sum of \$7.3 million to the WSDOT.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) The Governor supports many provisions in this legislation, but there are pieces she hasn't reviewed yet. The Governor supports the Eagle Harbor bid limit, which will reduce costs to the system. She also supports the provision that allows arbitrators to take into consideration the state's ability to pay. Other collective bargaining laws for other jobs in this state include this provision. In addition, other state collective bargaining laws do not include the baseball arbitration provision. The bill allows arbitrators to split decisions and come up with a reasonable center ground. In order to create a responsible budget, the Governor needs

the authority to declare financial feasibility for arbitrated contract settlements. Real problems were encountered in the last contract negotiations, because the parties were bargaining off the June forecast but the Governor was budgeting off the November forecast. As a result, there was no opportunity to reflect the forecast changes in the process. It is important for the state to address these issues.

(Available for questions) The Governor is also looking at what management is doing. In the last few years, ferry efficiencies have been achieved by reducing 25 positions, and cutting consulting and other costs. The Governor has made it clear that we are to continue those efforts.

(Opposed) Ferry employees are often required to travel to different terminals and vessels which results in a need for travel-related expenditures. Travel requirements can be a burden to employees as they may travel as much as four to six hours a day and use their personal vehicle for travel purposes. This type of travel is one reason the travel costs are as much as the bill states. In addition, the removal of the steel electric vessels and the removal of the Hood Canal bridge have contributed to increases in travel cost.

Work to improve processes has been done collaboratively with the WSDOT, the Labor Relations Office, and the unions. Last year, when state revenues decreased, the marine employees stepped up and declined salary increases. The marine employees have been working closely with the WSDOT and the WSF to find efficiencies. Implementation of efficiency strategies has helped the system save money. Meetings continue with the WSDOT and the WSF to continue to identify efficiencies.

Much of the bill is extremely difficult for the labor unions to support. Giving up existing and historic bargaining conditions is not easy. Bargaining conditions have been worked for, fought for, and in a lot of cases, traded for during an extended period of time. It is difficult to support the removal of baseball arbitration but the unions are willing to accept this part of the bill. The unions also find it difficult to support the change in the bill regarding the arbitrator's ability to consider the WSDOT's ability to pay the costs of the agreement. The OFM is at the table during the entire collective bargaining agreement process and the bill requires that the OFM certify that the arbitrated agreement is financially feasible. This is not something that is popular but it is another item the unions will accept.

Another concern is comparing ferry employees to other state employees. The jobs in the WSF are not comparable to other state jobs. Ferry employees have to qualify for merchant mariner documents, have to provide transportation identity credentials through homeland security, and if they do not pass background checks, it is fairly easy to lose work or even lose a job. In addition, Coast Guard restrictions are getting more stringent and limiting for employees. There are national standards regarding watch keeping for international boats that ferry employees must adhere to. Ferry workers are trained as emergency responders and are the first responders in an emergency. The employees wear many hats and work in a system that is operating 24 hours a day, seven days a week. These job requirements and work conditions are unique to ferry employees and thus, comparing them to other state employees is not appropriate. Ferry workers should be compared to other workers who have the same standards and work conditions. Instead of referring to the ferry labor unions in the intent

section, it would be better if the language reflected all ferry workers. There is support for increasing the bid limits at Eagle Harbor and for the work outlined in section 7 of the bill.

Persons Testifying: (In support) Peter Bogdanoff, Office of Financial Management and Office of the Governor.

(Available for questions) David Moseley, Washington State Ferries.

(Opposed) Gordon Baxter, Inland Boatmen's Union, Masters, Mates and Pilots Union, Puget Sound Metal Trades Council, and OPEIU Local 8; Tim Saffle, Masters, Mates and Pilots Union; and Jay Ubelhart, Inland Boatmen's Union.

Persons Signed In To Testify But Not Testifying: None.