

SENATE BILL REPORT

SB 5647

AS REPORTED BY COMMITTEE ON TRANSPORTATION, MARCH 6, 1991

Brief Description: Regulating steamboat operators.

SPONSORS: Senators Nelson, McMullen and Patterson; by request of Legislative Transportation Committee.

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: That Substitute Senate Bill No. 5647 be substituted therefor, and the substitute bill do pass.

Signed by Senators Patterson, Chairman; Nelson, Vice Chairman; Barr, Erwin, Conner, Madsen, McMullen, Oke, Snyder, and Thorsness.

Staff: Vicki Fabre (786-7313)

Hearing Dates: February 20, 1991; March 6, 1991

BACKGROUND:

Since 1927, for-hire (common carrier) vessels and ferries operating between fixed termini or over regular routes on Washington waters have been regulated by the Washington Utilities and Transportation Commission (WUTC) as steamboat companies under Chapter 81.84 RCW. The entry standard for granting a certificate is "public convenience and necessity (PC&N)."

Two types of private ferry service exists: private passenger and freight ferries, and launch services. Launch services provide ship-to-shore transportation of freight and a ship's crew for large ships anchored in Washington waters. To date, the WUTC has granted 18 steamboat certificates. One additional application for a certificate is pending.

A steamboat certificate holder normally has exclusive rights to the route granted. This means a certificate, once granted, may remain outstanding indefinitely, with or without activity, unless the certificate provides otherwise; the certificate holder fails to provide reasonable and adequate service; or the certificate holder violates the requirements of the certificate.

In addition to determining whether the applicant meets the PC&N test, the WUTC must consider whether the proposed service violates the requirements of RCW 47.60.120 which prohibits the construction and operation of commercial ferry crossings within ten miles of a state ferry crossing. This is commonly referred to as the "ten-mile rule."

In 1989, a commercial ferry service, Puget Sound Express (PSE), applied to the WUTC for service between Port Townsend and Seattle, serving the intermediate point of Kingston and later asked for expanded service from Kingston to Seattle. With the advent of this and other applications for (and interest in providing) commercial passenger-only service, the issue of competition with the state ferry system service and potential violation of the "ten-mile rule" led the Department of Transportation to ask for an Attorney General's Opinion on the relationship between the "ten-mile" rule and the UTC issued certificates for commercial ferry service. The Attorney General Opinion, which was issued in November 1990, found that the ten mile distance is ten highway miles measured in airline distance and is applied by comparing the two end points of a commercial ferry crossing to the two end points of a state crossing. If the former is within ten miles of the latter, the crossing is prohibited.

An interim legislative subcommittee comprised of House and Senate Transportation Committee members was formed at the direction of the Legislative Transportation Committee (LTC) following the 1990 session, and had as one of its tasks the examination of the certification process for private passenger ferries. The following issues were identified during the subcommittee's review of the subject:

- The provision of statutory notice to interested parties, particularly DOT and cities and counties.
- The financial responsibility of private companies and their ability to provide reasonable, reliable service over time.
- The need to strengthen conditions under which the WUTC would be able to grant an additional certificate when an existing certificate holder is not providing adequate service.
- The absence in existing law of a procedure for determining and taking action on a certificate that is dormant.
- The absence of a statutory definition of the "ten-mile rule" and a competition standard that protects the Washington State Ferries (WSF) against a drain on its revenue by a competing commercial ferry service.
- The absence of a mechanism that would give Washington State Ferries (WSF) the ability to designate certain routes for potential service which would not be available for private certification for a specified period of time.

The Joint Subcommittee on Marine Transportation developed proposed legislation addressing the aforementioned issues and submitted it in the form of a recommendation to the LTC with the intention that legislation be introduced by the LTC in the 1991 legislative session.

SUMMARY :

The Transportation Commission is authorized to declare its intention to operate a ferry crossing by adopting a written resolution declaring such intention to operate within two years, thereby precluding the Washington Utilities and Transportation Commission (WUTC) from issuing a certificate for private, commercial ferry service on the proposed route during the two-year period.

The "ten mile rule" is defined in statute as ten statute miles measured by airline distance, and is applied by comparing the end points or termini of a state ferry crossing to those of a private ferry crossing.

The "ten-mile rule" is amended to include a competition standard which prohibits any competing private commercial ferry crossing that causes a reduction in passenger or vehicle traffic on any Washington State Ferries (WSF) route, planned or actual, of more than 10 percent. The WUTC must make the determination of whether there is a traffic reduction after considering evidence presented by the traffic engineering firm employed by the Department of Transportation (DOT) under ferry bond covenant requirements.

The DOT may not maintain or operate any state ferry crossing that infringes upon a franchise issued by the WUTC if it is in existence and being exercised on a regular basis for a period of at least 120 consecutive days (unless otherwise restricted by the franchise certificate or tariffs) without first acquiring the rights granted to the franchise holder under the franchise. The determination as to whether the 120-day requirement has been met is determined by the WUTC.

A standard of service is included which requires steamboat operators to exercise a certificate to the fullest possible extent so as to render reasonable service to the public.

Dormancy is established by requiring that the holder of a certificate initiate private, commercial passenger ferry service within one year of obtaining the certificate.

The WUTC cannot grant a certificate to operate in any territory already served by an existing certificate holder unless the certificate holder has failed to provide and sustain the type and frequency of service described in its certificate or tariffs.

Financial responsibility criteria which must be considered by the WUTC in assessing the viability of a proposed private, commercial passenger ferry service are established. The WUTC must determine if the applicant has the financial resources to operate the proposed service for at least 12 months, regardless of revenue generated. The WUTC is also required to consider such factors as ridership and revenue forecasts, the cost of the service for the proposed operation, an estimate of the cost of the assets to be used in providing the service, and a statement of prior experience.

A certificate holder is required to obtain liability and property damage insurance on each vessel or ferry to be used.

Conditions under which the WUTC is required to cancel, revoke, suspend, alter, or amend a certificate are established. These include: failure to initiate service by the end of the first 12-month period of certification, failure of the certificate holder to file an annual report, or failure of the certificate holder to observe the provisions or conditions of the certificate or tariffs. After notice and a hearing, the WUTC is required to act within 30 days on its motion or that of an interested party.

Certificate holders are required to file an annual report no later than April 1 of the following year. The report must include a statement of gross operating revenue for the vessel covered by the certificate.

The WUTC is authorized to issue temporary certificates for a period of up to 180 days after a finding that issuance of such certificates is necessary due to an immediate and urgent need and is otherwise consistent with the public interest.

EFFECT OF PROPOSED SUBSTITUTE:

All references to "steamboat operator" are changed to "commercial ferry operator."

The provision authorizing the Transportation Commission to adopt a written resolution declaring its intention to operate a ferry crossing within two years is deleted.

The language establishing a competition standard which prohibits any commercial ferry crossing that causes a traffic reduction of more than 10 percent in passenger or vehicle traffic on any Washington State Ferries (WSF) route, planned or actual, is eliminated.

The provision conditioning the takeover of an existing route by WSF on operation of the route by the certificate holder for a period of at least 120 consecutive days, unless otherwise restricted by the certificate or tariffs, is deleted.

The standard of service is revised to require that the certificate be exercised by the operator in a manner consistent with the condition established in the certificate or tariffs.

Dormancy is established by requiring that the holder of a certificate initiate service within three years of obtaining the certificate. The certificate holder is required to report to the commission every six months on the progress of the certificated route. The progress report must include, at a minimum, environmental impact, parking, docking, and financing considerations.

The commission must determine the financial ability of an applicant to operate the proposed service for at least 12

months, based upon the submission by the applicant of a pro forma financial statement of operations. The financial responsibility provisions do not apply to a certificate pending as of the effective date of the act.

The limits for liability and property damage insurance on each vessel used in the operation are raised from not less than \$25,000 for personal injury by one person to \$100,000; from not less than \$10,000 for all persons receiving personal injury by reason of one act of negligence to not less than \$1 million; from not less than \$10,000 for damage to property of any person, other than the insured, to \$50,000.

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR:

Changes in current law are necessary to provide the Washington Utilities and Transportation Commission with clearer guidelines for granting certificates to commercial ferry operators and for insuring that the service provided meets the public need and is reliable.

TESTIMONY AGAINST: None

TESTIFIED: PRO: Jim Boldt, Clipper Navigation; Carol Monohon, Don Trotter, UTC; Alice Tawresey, Transportation Commission; Steve Ross, Marine Engineers and Masters, Mates and Pilots