
SUBSTITUTE SENATE BILL 5647

State of Washington

52nd Legislature

1991 Regular Session

By Senate Committee on Transportation (originally sponsored by Senators Nelson, McMullen and Patterson; by request of Legislative Transportation Committee).

Read first time March 6, 1991.

1 AN ACT Relating to regulation of steamboat operators; amending RCW
2 47.60.120, 81.84.010, 81.84.020, 81.84.030, 81.84.050, 81.04.010, and
3 81.24.030; adding new sections to chapter 81.84 RCW; and prescribing
4 penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 47.60.120 and 1984 c 7 s 307 are each amended to read
7 as follows:

8 (1) If the department acquires or constructs, maintains, and
9 operates any ferry crossings upon or toll bridges over Puget Sound or
10 any of its tributary or connecting waters, there shall not be
11 constructed, operated, or maintained any other ferry crossing upon or
12 bridge over any such waters within ten miles of any such crossing or
13 bridge operated or maintained by the department excepting such bridges
14 or ferry crossings in existence, and being operated and maintained

1 under a lawfully issued franchise at the time of the location of the
2 ferry crossing or construction of the toll bridge by the department.

3 (2) The ten-mile distance in subsection (1) of this section means
4 ten statute miles measured by airline distance. The ten-mile
5 restriction shall be applied by comparing the two end points (termini)
6 of a state ferry crossing to those of a private ferry crossing.

7 (3) The department shall not maintain and operate any ferry
8 crossing or toll bridge over Puget Sound or any of its tributary or
9 connecting waters that would infringe upon any franchise lawfully
10 issued by the state and in existence and being exercised at the time of
11 the location of the ferry crossing or toll bridge by the department,
12 without first acquiring the rights granted to such franchise holder
13 under the franchise.

14 (4) While any revenue bonds issued by the department under the
15 provisions of this chapter are outstanding no additional bonds may be
16 issued for the purposes of acquiring, constructing, operating, or
17 maintaining any ferries or toll bridges within the aforesaid ten mile
18 distance by the department unless the revenues of any such additional
19 ferries or toll bridges are pledged to the bonds then outstanding to
20 the extent provided by the resolution authorizing the issue of the
21 outstanding bonds. The provisions of this section are binding upon the
22 state, and all of its departments, agencies, and instrumentalities, as
23 well as any and all private, political, municipal, and public
24 corporations and subdivisions, including cities, towns, counties, and
25 other political subdivisions, and the prohibitions of this section
26 shall restrict and limit the powers of the legislature of the state in
27 respect to the matters herein mentioned so long as any of such bonds
28 are outstanding and unpaid and shall be deemed to constitute a contract
29 to that effect for the benefit of the holders of all such bonds.

1 **Sec. 2.** RCW 81.84.010 and 1961 c 14 s 81.84.010 are each amended
2 to read as follows:

3 (1) No (~~steamboat company shall~~) commercial ferry may hereafter
4 operate any vessel or ferry for the public use for hire between fixed
5 termini or over a regular route upon the waters within this state,
6 including the rivers and lakes and Puget Sound, without first applying
7 for and obtaining from the commission a certificate declaring that
8 public convenience and necessity require such operation. Service
9 authorized by certificates issued before or after the effective date of
10 this act to a commercial ferry operator shall be exercised by the
11 operator in a manner consistent with the conditions established in the
12 certificate or tariffs: PROVIDED, That no certificate shall be
13 required for a vessel primarily engaged in transporting freight other
14 than vehicles, whose gross earnings from the transportation of
15 passengers and/or vehicles, are not more than ten percent of the total
16 gross earnings of such vessel: PROVIDED, That nothing herein shall be
17 construed to affect the right of any county within this state to
18 construct, condemn, purchase, operate, or maintain, itself or by
19 contract, agreement, or lease, with any person, firm, or corporation,
20 ferries or boats across or wharfs at or upon the waters within this
21 state, including rivers and lakes and Puget Sound, provided such
22 operation is not over the same route or between the same districts,
23 being served by a certificate carrier, nor shall this chapter be
24 construed to affect, amend, or invalidate any contract entered into
25 prior to January 15, 1927, for the operation of ferries or boats upon
26 the waters within this state, which was entered into in good faith by
27 any county with any person, firm, or corporation, except that in case
28 of the operation or maintenance by any county, city, town, port
29 district, or other political subdivision by contract, agreement, or
30 lease with any person, firm, or corporation, of ferries or boats across

1 or wharfs at or upon the waters within this state, including rivers and
2 lakes and Puget Sound, the commission shall have power and authority to
3 regulate rates and services of such operation or maintenance of
4 ferries, boats, or wharfs, to make, fix, alter, or amend said rates,
5 and to regulate service and safety of operations thereof, in the manner
6 and to the same extent as it is empowered to regulate a (~~steamboat~~
7 ~~company~~) commercial ferry, notwithstanding the provisions of any act
8 or parts of acts inconsistent herewith.

9 (2) The holder of a certificate of public convenience and necessity
10 granted under this chapter must initiate service within three years of
11 obtaining the certificate. The certificate holder shall report to the
12 commission every six months after the certificate is granted on the
13 progress of the certificated route. The reports shall include, but not
14 be limited to, the progress of environmental impact, parking, local
15 government land use, docking, and financing considerations.

16 **Sec. 3.** RCW 81.84.020 and 1961 c 14 s 81.84.020 are each amended
17 to read as follows:

18 (1) Upon the filing of an application the commission shall give
19 reasonable notice to the department, affected cities and counties, and
20 any common carrier which might be adversely affected, of the time and
21 place for hearing on such application. The commission shall have power
22 after hearing, to issue the certificate as prayed for, or to refuse to
23 issue it, or to issue it for the partial exercise only of the privilege
24 sought, and may attach to the exercise of the rights granted by said
25 certificate such terms and conditions as in its judgment the public
26 convenience and necessity may require; but the commission shall not
27 have power to grant a certificate to operate between districts and/or
28 into any territory prohibited by RCW 47.60.120 or already served by an
29 existing certificate holder, unless such existing certificate holder

1 (~~shall fail and refuse~~) has failed or refused to furnish reasonable
2 and adequate service or has failed to provide the service described in
3 its certificate or tariffs: PROVIDED, A certificate shall be granted
4 when it shall appear to the satisfaction of the commission that (~~such~~
5 ~~steamboat company~~) the commercial ferry was actually operating in good
6 faith over the route for which such certificate shall be sought, on
7 January 15, 1927: PROVIDED, FURTHER, That in case two or more
8 (~~steamboat companies~~) commercial ferries shall upon said date have
9 been operating vessels upon the same route, or between the same
10 districts the commission shall determine after public hearing whether
11 one or more certificates shall issue, and in determining to whom a
12 certificate or certificates shall be issued, the commission shall
13 consider all material facts and circumstances including the prior
14 operation, schedules, and services rendered by either of (~~said~~
15 ~~companies~~) the ferries, and in case more than one certificate shall
16 issue, the commission shall fix and determine the schedules and
17 services of the (~~companies to whom such~~) ferries to which the
18 certificates are issued to the end that duplication of service be
19 eliminated and public convenience be furthered.

20 (2) Before issuing a certificate, the commission shall determine
21 that the applicant has the financial resources to operate the proposed
22 service for at least twelve months, based upon the submission by the
23 applicant of a pro forma financial statement of operations. Issuance
24 of a certificate shall be determined upon, but not limited to, the
25 following factors: Ridership and revenue forecasts; the cost of
26 service for the proposed operation; an estimate of the cost of the
27 assets to be used in providing the service, sworn to before a notary
28 public; a statement of the total assets on hand of the applicant that
29 will be expended on the proposed operation, sworn to before a notary

1 public; and a statement of prior experience, if any, in such field by
2 the applicant, sworn to before a notary public.

3 (3) Subsection (2) of this section does not apply to an application
4 for a certificate that is pending as of the effective date of this act.

5 NEW SECTION. **Sec. 4.** A new section is added to chapter 81.84 RCW
6 to read as follows:

7 The commission, in granting a certificate to operate as a
8 commercial ferry, shall require the operator to first obtain liability
9 and property damage insurance from a company licenced to write
10 liability insurance in the state or a surety bond of a company licensed
11 to write surety bonds in the state, on each vessel or ferry to be used,
12 in the amount of not less than one hundred thousand dollars for any
13 recovery for personal injury by one person, and not less than one
14 million dollars and in such additional amount as the commission shall
15 determine, for all persons receiving personal injury by reason of one
16 act of negligence, and not less than fifty thousand dollars for damage
17 to property of any person other than the insured, and to maintain such
18 liability and property damage insurance or surety bond in force on each
19 vessel or ferry while so used. Each policy for liability or property
20 damage insurance or surety bond required by this section must be filed
21 with the commission and kept in full force and effect, and failure to
22 do so is cause for revocation of the operator's certificate.

23 **Sec. 5.** RCW 81.84.030 and 1961 c 14 s 81.84.030 are each amended
24 to read as follows:

25 No certificate or any right or privilege thereunder held, owned, or
26 obtained under the provisions of this chapter shall be sold, assigned,
27 leased, mortgaged, or in any manner transferred, either by the act of
28 the parties or by operation of law, except upon authorization by the

1 commission first obtained. ((The commission may at any time by its
2 order duly entered after hearing had upon notice to the holder of any
3 certificate hereunder and an opportunity to such holder to be heard,
4 suspend, revoke, alter, or amend any certificate issued under the
5 provisions of this chapter, if the holder thereof wilfully violates or
6 fails to observe the provisions or conditions of the certificate, or
7 the orders, rules or regulations of the commission, or the provisions
8 of this title.))

9 **Sec. 6.** RCW 81.84.050 and 1961 c 14 s 81.84.050 are each amended
10 to read as follows:

11 Every ((~~steamboat company~~)) commercial ferry and every officer,
12 agent, or employee of any ((~~steamboat company~~)) commercial ferry who
13 violates or who procures, aids, or abets in the violation of any
14 provision of this title, or any order, rule, regulation, or decision of
15 the commission shall incur a penalty of one hundred dollars for every
16 such violation. Each and every such violation shall be a separate and
17 distinct offense, and in case of a continuing violation every day's
18 continuance shall be and be deemed to be a separate and distinct
19 violation. Every act of commission or omission which procures, aids,
20 or abets in the violation shall be considered a violation under the
21 provisions of this section and subject to the penalty herein provided
22 for.

23 The penalty herein provided for shall become due and payable when
24 the person incurring the same receives a notice in writing from the
25 commission describing such violation with reasonable particularity and
26 advising such person that the penalty is due.

27 The commission may, upon written application therefor, received
28 within fifteen days, remit or mitigate any penalty provided for in this
29 section or discontinue any prosecution to recover the same upon such

1 terms as it in its discretion shall deem proper, and shall have
2 authority to ascertain the facts upon all such applications in such
3 manner and under such regulations as it may deem proper.

4 If the amount of such penalty is not paid to the commission within
5 fifteen days after receipt of notice imposing the same or, if
6 application for remission or mitigation has not been made, within
7 fifteen days after the violator has received notice of the disposition
8 of such application, the attorney general shall bring an action to
9 recover the penalty in the name of the state of Washington in the
10 superior court of Thurston county or of some other county in which such
11 violator may do business. In all such actions the procedure and rules
12 of evidence shall be the same as in ordinary civil actions except as
13 otherwise herein provided. All penalties recovered by the state under
14 this chapter shall be paid into the state treasury and credited to the
15 public service revolving fund.

16 NEW SECTION. **Sec. 7.** A new section is added to chapter 81.84 RCW
17 to read as follows:

18 The commission, upon complaint by an interested party, or upon its
19 own motion after notice and opportunity for hearing, may cancel,
20 revoke, suspend, alter, or amend a certificate issued under this
21 chapter on any of the following grounds:

22 (1) Failure of the certificate holder to initiate service by the
23 conclusion of the third year after the certificate has been granted if
24 the commission has considered the progress report information required
25 under RCW 81.84.010(2);

26 (2) Failure of the certificate holder to file an annual report as
27 required under section 8 of this act;

1 (3) The filing by a certificate holder of an annual report that
2 shows no revenue in the previous twelve-month period after service has
3 been initiated;

4 (4) The violation of any provision of this chapter;

5 (5) The violation or failure to observe the provisions or
6 conditions of the certificate or tariffs;

7 (6) The violation of an order, decision, rule, regulation, or
8 requirement established by the commission under this chapter; or

9 (7) Failure of a certificate holder to maintain the required
10 insurance coverage in full force and effect.

11 The commission shall take appropriate action within thirty days
12 upon a complaint by an interested party or of its own finding that a
13 provision of this section has been violated.

14 NEW SECTION. **Sec. 8.** A new section is added to chapter 81.84 RCW
15 to read as follows:

16 (1) Every commercial ferry operator shall at the close of each year
17 file with the commission, a report covering the operations during the
18 preceding calendar year. The report must include a statement of gross
19 operating revenue for the route covered by the certificate of public
20 convenience and necessity and must contain the data and information
21 required by and be prepared on forms for that purpose obtained from the
22 commission. The annual report must be filed with the commission as
23 soon after the close of each calendar year as possible, but in no event
24 later than April 1st of the following year.

25 (2) Every commercial ferry operator shall on or before the first
26 day of April of each year file with the commission a statement showing
27 the gross operating revenue of such company for the preceding calendar
28 year. The annual report required by subsection (1) of this section

1 must contain the statement of gross operating revenue and other
2 information required by subsection (1) of this section.

3 NEW SECTION. **Sec. 9.** A new section is added to chapter 81.84 RCW
4 to read as follows:

5 The commission may, with or without a hearing, issue temporary
6 certificates to operate under this chapter, but only after it finds
7 that the issuance of the temporary certificate is necessary due to an
8 immediate and urgent need and is otherwise consistent with the public
9 interest. The certificate may be issued for a period of up to one
10 hundred eighty days. The commission may prescribe such special rules
11 and impose special terms and conditions on the granting of the
12 certificate as in its judgment are reasonable and necessary in carrying
13 out this chapter. The commission shall collect a filing fee, not to
14 exceed two hundred dollars, for each application for a temporary
15 certificate. The commission shall not issue a temporary certificate to
16 operate on a route for which a certificate has been issued or for which
17 an application by another commercial ferry operator is pending.

18 **Sec. 10.** RCW 81.04.010 and 1981 c 13 s 2 are each amended to read
19 as follows:

20 As used in this title, unless specially defined otherwise or unless
21 the context indicates otherwise:

22 "Commission" means the utilities and transportation commission.

23 "Commissioner" means one of the members of such commission.

24 "Corporation" includes a corporation, company, association, or
25 joint stock association.

26 "Person" includes an individual, a firm, or copartnership.

27 "Street railroad" includes every railroad by whatsoever power
28 operated, or any extension or extensions, branch or branches thereof,

1 for public use in the conveyance of persons or property for hire, being
2 mainly upon, along, above, or below any street, avenue, road, highway,
3 bridge, or public place within any one city or town, and includes all
4 equipment, switches, spurs, tracks, bridges, right of trackage,
5 subways, tunnels, stations, terminals, and terminal facilities of every
6 kind used, operated, controlled, or owned by or in connection with any
7 such street railroad, within this state.

8 "Street railroad company" includes every corporation, company,
9 association, joint stock association, partnership, and person, their
10 lessees, trustees, or receivers appointed by any court whatsoever, and
11 every city or town, owning, controlling, operating, or managing any
12 street railroad or any cars or other equipment used thereon or in
13 connection therewith within this state.

14 "Railroad" includes every railroad, other than street railroad, by
15 whatsoever power operated for public use in the conveyance of persons
16 or property for hire, with all bridges, ferries, tunnels, equipment,
17 switches, spurs, tracks, stations, and terminal facilities of every
18 kind used, operated, controlled, or owned by or in connection with any
19 such railroad.

20 "Railroad company" includes every corporation, company,
21 association, joint stock association, partnership, or person, their
22 lessees, trustees, or receivers appointed by any court whatsoever,
23 owning, operating, controlling, or managing any railroad or any cars or
24 other equipment used thereon or in connection therewith within this
25 state.

26 "Express company" includes every corporation, company, association,
27 joint stock association, partnership, and person, their lessees,
28 trustees, or receivers appointed by any court whatsoever, who shall
29 engage in or transact the business of carrying any freight,

1 merchandise, or property for hire on the line of any common carrier
2 operated in this state.

3 "Common carrier" includes all railroads, railroad companies, street
4 railroads, street railroad companies, (~~steamboat companies~~)
5 commercial ferries, express companies, car companies, sleeping car
6 companies, freight companies, freight line companies, and every
7 corporation, company, association, joint stock association,
8 partnership, and person, their lessees, trustees, or receivers
9 appointed by any court whatsoever, and every city or town, owning,
10 operating, managing, or controlling any such agency for public use in
11 the conveyance of persons or property for hire within this state.

12 "Vessel" includes every species of watercraft, by whatsoever power
13 operated, for public use in the conveyance of persons or property for
14 hire over and upon the waters within this state, excepting all
15 towboats, tugs, scows, barges, and lighters, and excepting rowboats and
16 sailing boats under twenty gross tons burden, open steam launches of
17 five tons gross and under, and vessels under five tons gross propelled
18 by gas, fluid, naphtha, or electric motors.

19 "~~Steamboat company~~ Commercial ferry" includes every
20 corporation, company, association, joint stock association,
21 partnership, and person, their lessees, trustees, or receivers,
22 appointed by any court whatsoever, owning, controlling, leasing,
23 operating, or managing any vessel over and upon the waters of this
24 state.

25 "Transportation of property" includes any service in connection
26 with the receiving, delivery, elevation, transfer in transit,
27 ventilation, refrigeration, icing, storage, and handling of the
28 property transported, and the transmission of credit.

29 "Transportation of persons" includes any service in connection with
30 the receiving, carriage, and delivery of the person transported and his

1 baggage and all facilities used, or necessary to be used in connection
2 with the safety, comfort, and convenience of the person transported.

3 "Public service company" includes every common carrier.

4 The term "service" is used in this title in its broadest and most
5 inclusive sense.

6 **Sec. 11.** RCW 81.24.030 and 1981 c 13 s 5 are each amended to read
7 as follows:

8 Every (~~steamboat company~~) commercial ferry shall, on or before
9 the first day of April of each year, file with the commission a
10 statement on oath showing its gross operating revenue from intrastate
11 operations for the preceding calendar year, or portion thereof, and pay
12 to the commission a fee of two-fifths of one percent of the amount of
13 gross operating revenue: PROVIDED, That the fee so paid shall in no
14 case be less than five dollars. The percentage rate of gross operating
15 revenue to be paid in any year may be decreased by the commission by
16 general order entered before March 1st of such year.