
SUBSTITUTE HOUSE BILL 1931

State of Washington

53rd Legislature

1993 Regular Session

By House Committee on Transportation (originally sponsored by Representatives Schmidt, Zellinsky and Wood)

Read first time 03/08/93.

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 a new section to chapter 47.60 RCW; adding new
4 sections to chapter 81.84 RCW; prescribing penalties; and providing a
5 contingent effect.

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

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

9 (1) If the department acquires or constructs, maintains, and
10 operates any ferry crossings upon or toll bridges over Puget Sound or
11 any of its tributary or connecting waters, there shall not be
12 constructed, operated, or maintained any other ferry crossing upon or
13 bridge over any such waters within ten miles of any such crossing or
14 bridge operated or maintained by the department excepting such bridges
15 or ferry crossings in existence, and being operated and maintained
16 under a lawfully issued franchise at the time of the location of the
17 ferry crossing or construction of the toll bridge by the department.

18 (2) The Washington utilities and transportation commission may,
19 upon written petition of a commercial ferry operator certificated or

1 applying for certification under chapter 81.84 RCW, and upon notice and
2 hearing, grant a waiver from the ten-mile restriction. The waiver must
3 not be detrimental to the public interest. In making a decision to
4 waive the ten-mile restriction, the commission shall consider, but is
5 not limited to, the impact of the waiver on transportation congestion
6 mitigation, air quality improvement, and the overall impact on the
7 Washington state ferry system. The commission shall act upon a request
8 for a waiver within ninety days after the conclusion of the hearing.
9 A waiver is effective for a period of five years from the date of
10 issuance. At the end of five years the waiver becomes permanent unless
11 appealed within thirty days by the commission on its own motion, the
12 department, or an interested party.

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

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

36 NEW SECTION. Sec. 2. A new section is added to chapter 47.60 RCW
37 to read as follows:

1 The ten-mile distance in RCW 47.60.120 means ten statute miles
2 measured by airline distance. The ten-mile restriction shall be
3 applied by comparing the two end points (termini) of a state ferry
4 crossing to those of a private ferry crossing.

5 **Sec. 3.** RCW 81.84.010 and 1961 c 14 s 81.84.010 are each amended
6 to read as follows:

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

1 and to regulate service and safety of operations thereof, in the manner
2 and to the same extent as it is empowered to regulate a (~~steamboat~~
3 ~~company~~) commercial ferry, notwithstanding the provisions of any act
4 or parts of acts inconsistent herewith.

5 (2) The holder of a certificate of public convenience and necessity
6 granted under this chapter must initiate service within five years of
7 obtaining the certificate. The certificate holder shall report to the
8 commission every six months after the certificate is granted on the
9 progress of the certificated route. The reports shall include, but not
10 be limited to, the progress of environmental impact, parking, local
11 government land use, docking, and financing considerations. However,
12 if service has not been initiated within five years of obtaining the
13 certificate, the commission may extend the certificate on a twelve-
14 month basis for up to three years if the six-month progress reports
15 indicate there is significant advancement toward initiating service.

16 **Sec. 4.** 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
30 (~~shall fail and refuse~~) has failed or refused to furnish reasonable
31 and adequate service or has failed to provide the service described in
32 its certificate or tariffs after the time period allowed to initiate
33 service has elapsed: PROVIDED, A certificate shall be granted when it
34 shall appear to the satisfaction of the commission that (~~such~~
35 ~~steamboat company~~) the commercial ferry was actually operating in good
36 faith over the route for which such certificate shall be sought, on
37 January 15, 1927: PROVIDED, FURTHER, That in case two or more
38 (~~steamboat companies~~) commercial ferries shall upon said date have

1 been operating vessels upon the same route, or between the same
2 districts the commission shall determine after public hearing whether
3 one or more certificates shall issue, and in determining to whom a
4 certificate or certificates shall be issued, the commission shall
5 consider all material facts and circumstances including the prior
6 operation, schedules, and services rendered by either of (~~said~~
7 ~~companies~~) the ferries, and in case more than one certificate shall
8 issue, the commission shall fix and determine the schedules and
9 services of the (~~companies to whom such~~) ferries to which the
10 certificates are issued to the end that duplication of service be
11 eliminated and public convenience be furthered.

12 (2) Before issuing a certificate, the commission shall determine
13 that the applicant has the financial resources to operate the proposed
14 service for at least twelve months, based upon the submission by the
15 applicant of a pro forma financial statement of operations. Issuance
16 of a certificate shall be determined upon, but not limited to, the
17 following factors: Ridership and revenue forecasts; the cost of
18 service for the proposed operation; an estimate of the cost of the
19 assets to be used in providing the service; a statement of the total
20 assets on hand of the applicant that will be expended on the proposed
21 operation; and a statement of prior experience, if any, in such field
22 by the applicant. The documentation required of the applicant under
23 this section shall comply with the provisions of RCW 9A.72.085.

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

26 NEW SECTION. Sec. 5. A new section is added to chapter 81.84 RCW
27 to read as follows:

28 The commission, in granting a certificate to operate as a
29 commercial ferry, shall require the operator to first obtain liability
30 and property damage insurance from a company licensed to write
31 liability insurance in the state or a surety bond of a company licensed
32 to write surety bonds in the state, on each vessel or ferry to be used,
33 in the amount of not less than one hundred thousand dollars for any
34 recovery for personal injury by one person, and not less than one
35 million dollars and in such additional amount as the commission shall
36 determine, for all persons receiving personal injury by reason of one
37 act of negligence, and not less than fifty thousand dollars for damage
38 to property of any person other than the insured; or combined bodily

1 injury and property damage liability insurance of not less than one
2 million one hundred fifty thousand dollars, and to maintain such
3 liability and property damage insurance or surety bond in force on each
4 vessel or ferry while so used. Each policy for liability or property
5 damage insurance or surety bond required by this section must be filed
6 with the commission and kept in full force and effect, and failure to
7 do so is cause for revocation of the operator's certificate.

8 **Sec. 6.** RCW 81.84.030 and 1961 c 14 s 81.84.030 are each amended
9 to read as follows:

10 No certificate or any right or privilege thereunder held, owned, or
11 obtained under the provisions of this chapter shall be sold, assigned,
12 leased, mortgaged, or in any manner transferred, either by the act of
13 the parties or by operation of law, except upon authorization by the
14 commission first obtained. (~~The commission may at any time by its
15 order duly entered after hearing had upon notice to the holder of any
16 certificate hereunder and an opportunity to such holder to be heard,
17 suspend, revoke, alter, or amend any certificate issued under the
18 provisions of this chapter, if the holder thereof wilfully violates or
19 fails to observe the provisions or conditions of the certificate, or
20 the orders, rules or regulations of the commission, or the provisions
21 of this title.~~)

22 **Sec. 7.** RCW 81.84.050 and 1961 c 14 s 81.84.050 are each amended
23 to read as follows:

24 Every (~~steamboat company~~) commercial ferry and every officer,
25 agent, or employee of any (~~steamboat company~~) commercial ferry who
26 violates or who procures, aids, or abets in the violation of any
27 provision of this title, or any order, rule, regulation, or decision of
28 the commission shall incur a penalty of one hundred dollars for every
29 such violation. Each and every such violation shall be a separate and
30 distinct offense, and in case of a continuing violation every day's
31 continuance shall be and be deemed to be a separate and distinct
32 violation. Every act of commission or omission which procures, aids,
33 or abets in the violation shall be considered a violation under the
34 provisions of this section and subject to the penalty herein provided
35 for.

36 The penalty herein provided for shall become due and payable when
37 the person incurring the same receives a notice in writing from the

1 commission describing such violation with reasonable particularity and
2 advising such person that the penalty is due.

3 The commission may, upon written application therefor, received
4 within fifteen days, remit or mitigate any penalty provided for in this
5 section or discontinue any prosecution to recover the same upon such
6 terms as it in its discretion shall deem proper, and shall have
7 authority to ascertain the facts upon all such applications in such
8 manner and under such regulations as it may deem proper.

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

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

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

27 (1) Failure of the certificate holder to initiate service by the
28 conclusion of the fifth year after the certificate has been granted or
29 by the conclusion of an extension granted under RCW 81.84.010(2), if
30 the commission has considered the progress report information required
31 under RCW 81.84.010(2);

32 (2) Failure of the certificate holder to file an annual report;

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

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

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

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

3 (7) Failure of a certificate holder to maintain the required
4 insurance coverage in full force and effect; or

5 (8) Failure to operate and perform reasonable service after
6 initiating service.

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

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

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

25 **Sec. 10.** RCW 81.04.010 and 1991 c 272 s 3 are each amended to read
26 as follows:

27 As used in this title, unless specially defined otherwise or unless
28 the context indicates otherwise:

29 "Commission" means the utilities and transportation commission.

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

31 "Corporation" includes a corporation, company, association, or
32 joint stock association.

33 "Low-level radioactive waste site operating company" includes every
34 corporation, company, association, joint stock association,
35 partnership, and person, their lessees, trustees, or receivers
36 appointed by any court whatsoever, owning, operating, controlling, or

1 managing a low-level radioactive waste disposal site or sites located
2 within the state of Washington.

3 "Low-level radioactive waste" means low-level waste as defined by
4 RCW 43.145.010.

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

6 "Street railroad" includes every railroad by whatsoever power
7 operated, or any extension or extensions, branch or branches thereof,
8 for public use in the conveyance of persons or property for hire, being
9 mainly upon, along, above, or below any street, avenue, road, highway,
10 bridge, or public place within any one city or town, and includes all
11 equipment, switches, spurs, tracks, bridges, right of trackage,
12 subways, tunnels, stations, terminals, and terminal facilities of every
13 kind used, operated, controlled, or owned by or in connection with any
14 such street railroad, within this state.

15 "Street railroad company" includes every corporation, company,
16 association, joint stock association, partnership, and person, their
17 lessees, trustees, or receivers appointed by any court whatsoever, and
18 every city or town, owning, controlling, operating, or managing any
19 street railroad or any cars or other equipment used thereon or in
20 connection therewith within this state.

21 "Railroad" includes every railroad, other than street railroad, by
22 whatsoever power operated for public use in the conveyance of persons
23 or property for hire, with all bridges, ferries, tunnels, equipment,
24 switches, spurs, tracks, stations, and terminal facilities of every
25 kind used, operated, controlled, or owned by or in connection with any
26 such railroad.

27 "Railroad company" includes every corporation, company,
28 association, joint stock association, partnership, or person, their
29 lessees, trustees, or receivers appointed by any court whatsoever,
30 owning, operating, controlling, or managing any railroad or any cars or
31 other equipment used thereon or in connection therewith within this
32 state.

33 "Express company" includes every corporation, company, association,
34 joint stock association, partnership, and person, their lessees,
35 trustees, or receivers appointed by any court whatsoever, who shall
36 engage in or transact the business of carrying any freight,
37 merchandise, or property for hire on the line of any common carrier
38 operated in this state.

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

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

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

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

27 "Transportation of persons" includes any service in connection with
28 the receiving, carriage, and delivery of the person transported and his
29 baggage and all facilities used, or necessary to be used in connection
30 with the safety, comfort, and convenience of the person transported.

31 "Public service company" includes every common carrier.

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

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

36 Every (~~steamboat company~~) commercial ferry shall, on or before
37 the first day of April of each year, file with the commission a
38 statement on oath showing its gross operating revenue from intrastate

1 operations for the preceding calendar year, or portion thereof, and pay
2 to the commission a fee of two-fifths of one percent of the amount of
3 gross operating revenue: PROVIDED, That the fee so paid shall in no
4 case be less than five dollars. The percentage rate of gross operating
5 revenue to be paid in any year may be decreased by the commission by
6 general order entered before March 1st of such year.

7 NEW SECTION. **Sec. 12.** Section 1 of this act takes effect only if
8 legislation authorizing the issuance of general obligation bonds to
9 refund the outstanding toll bridge authority, ferry, and Hood Canal
10 bridge refunding revenue bonds becomes law.

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