

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1931

53rd Legislature
1993 Regular Session

Passed by the House April 24, 1993
Yeas 94 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate April 24, 1993
Yeas 41 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1931** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1931

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 1993 Regular Session

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

17 (2) The ten-mile distance in subsection (1) of this section means
18 ten statute miles measured by airline distance. The ten-mile

1 restriction shall be applied by comparing the two end points (termini)
2 of a state ferry crossing to those of a private ferry crossing.

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

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

24 ~~((While any revenue bonds issued by the department under the~~
25 ~~provisions of this chapter are outstanding no additional bonds may be~~
26 ~~issued for the purposes of acquiring, constructing, operating, or~~
27 ~~maintaining any ferries or toll bridges within the aforesaid ten mile~~
28 ~~distance by the department unless the revenues of any such additional~~
29 ~~ferries or toll bridges are pledged to the bonds then outstanding to~~
30 ~~the extent provided by the resolution authorizing the issue of the~~
31 ~~outstanding bonds. The provisions of this section are binding upon the~~
32 ~~state, and all of its departments, agencies, and instrumentalities, as~~
33 ~~well as any and all private, political, municipal, and public~~
34 ~~corporations and subdivisions, including cities, towns, counties, and~~
35 ~~other political subdivisions, and the prohibitions of this section~~
36 ~~shall restrict and limit the powers of the legislature of the state in~~
37 ~~respect to the matters herein mentioned so long as any of such bonds~~
38 ~~are outstanding and unpaid and shall be deemed to constitute a contract~~
39 ~~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 annual earnings of such vessel: PROVIDED, That nothing herein
17 shall be construed to affect the right of any county public
18 transportation benefit area or other public agency within this state to
19 construct, condemn, purchase, operate, or maintain, itself or by
20 contract, agreement, or lease, with any person, firm, or corporation,
21 ferries or boats across or wharfs at or upon the waters within this
22 state, including rivers and lakes and Puget Sound, provided such
23 operation is not over the same route or between the same districts,
24 being served by a certificate ((~~carrier~~)) holder without first
25 acquiring the rights granted to the certificate holder under the
26 certificate, nor shall this chapter be construed to affect, amend, or
27 invalidate any contract entered into prior to January 15, 1927, for the
28 operation of ferries or boats upon the waters within this state, which
29 was entered into in good faith by any county with any person, firm, or
30 corporation, except that in case of the operation or maintenance by any
31 county, city, town, port district, or other political subdivision by
32 contract, agreement, or lease with any person, firm, or corporation, of
33 ferries or boats across or wharfs at or upon the waters within this
34 state, including rivers and lakes and Puget Sound, the commission shall
35 have power and authority to regulate rates and services of such
36 operation or maintenance of ferries, boats, or wharfs, to make, fix,
37 alter, or amend said rates, and to regulate service and safety of
38 operations thereof, in the manner and to the same extent as it is
39 empowered to regulate a ((~~steamboat company~~)) commercial ferry,

1 notwithstanding the provisions of any act or parts of acts inconsistent
2 herewith.

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

14 (3) The commission shall review certificates in existence as of the
15 effective date of this act, where service is not being provided on all
16 or any portion of the route or routes certificated. Based on progress
17 reports required under subsection (2) of this section, the commission
18 may grant an extension beyond that provided in subsection (2) of this
19 section. Such additional extension may not exceed a total of two
20 years.

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

23 (1) Upon the filing of an application the commission shall give
24 reasonable notice to the department, affected cities and counties, and
25 any common carrier which might be adversely affected, of the time and
26 place for hearing on such application. The commission shall have power
27 after hearing, to issue the certificate as prayed for, or to refuse to
28 issue it, or to issue it for the partial exercise only of the privilege
29 sought, and may attach to the exercise of the rights granted by said
30 certificate such terms and conditions as in its judgment the public
31 convenience and necessity may require; but the commission shall not
32 have power to grant a certificate to operate between districts and/or
33 into any territory prohibited by RCW 47.60.120 or already served by an
34 existing certificate holder, unless such existing certificate holder
35 ((shall fail and refuse)) has failed or refused to furnish reasonable
36 and adequate service or has failed to provide the service described in
37 its certificate or tariffs after the time period allowed to initiate
38 service has elapsed: PROVIDED, A certificate shall be granted when it

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

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

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

31 NEW SECTION. Sec. 4. A new section is added to chapter 81.84 RCW
32 to read as follows:

33 The commission, in granting a certificate to operate as a
34 commercial ferry, shall require the operator to first obtain liability
35 and property damage insurance from a company licensed to write
36 liability insurance in the state or a surety bond of a company licensed
37 to write surety bonds in the state, on each vessel or ferry to be used,
38 in the amount of not less than one hundred thousand dollars for any

1 recovery for personal injury by one person, and not less than one
2 million dollars and in such additional amount as the commission shall
3 determine, for all persons receiving personal injury and property
4 damage by reason of one act of negligence, and not less than fifty
5 thousand dollars for damage to property of any person other than the
6 insured; or combined bodily injury and property damage liability
7 insurance of not less than one million dollars, and to maintain such
8 liability and property damage insurance or surety bond in force on each
9 vessel or ferry while so used. Each policy for liability or property
10 damage insurance or surety bond required by this section must be filed
11 with the commission and kept in full force and effect, and failure to
12 do so is cause for revocation of the operator's certificate.

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

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

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

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

1 or abets in the violation shall be considered a violation under the
2 provisions of this section and subject to the penalty herein provided
3 for.

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

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

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

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

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

32 (1) Failure of the certificate holder to initiate service by the
33 conclusion of the fifth year after the certificate has been granted or
34 by the conclusion of an extension granted under RCW 81.84.010 (2) or
35 (3), if the commission has considered the progress report information
36 required under RCW 81.84.010 (2) or (3);

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

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 of 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;

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

11 (8) Failure or refusal to furnish reasonable and adequate service
12 after initiating service.

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

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

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

31 **Sec. 9.** RCW 81.04.010 and 1991 c 272 s 3 are each amended to read
32 as follows:

33 As used in this title, unless specially defined otherwise or unless
34 the context indicates otherwise:

35 "Commission" means the utilities and transportation commission.

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

1 "Corporation" includes a corporation, company, association, or
2 joint stock association.

3 "Low-level radioactive waste site operating company" includes every
4 corporation, company, association, joint stock association,
5 partnership, and person, their lessees, trustees, or receivers
6 appointed by any court whatsoever, owning, operating, controlling, or
7 managing a low-level radioactive waste disposal site or sites located
8 within the state of Washington.

9 "Low-level radioactive waste" means low-level waste as defined by
10 RCW 43.145.010.

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

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

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

27 "Railroad" includes every railroad, other than street railroad, by
28 whatsoever power operated for public use in the conveyance of persons
29 or property for hire, with all bridges, ferries, tunnels, equipment,
30 switches, spurs, tracks, stations, and terminal facilities of every
31 kind used, operated, controlled, or owned by or in connection with any
32 such railroad.

33 "Railroad company" includes every corporation, company,
34 association, joint stock association, partnership, or person, their
35 lessees, trustees, or receivers appointed by any court whatsoever,
36 owning, operating, controlling, or managing any railroad or any cars or
37 other equipment used thereon or in connection therewith within this
38 state.

1 "Express company" includes every corporation, company, association,
2 joint stock association, partnership, and person, their lessees,
3 trustees, or receivers appointed by any court whatsoever, who shall
4 engage in or transact the business of carrying any freight,
5 merchandise, or property for hire on the line of any common carrier
6 operated in this state.

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

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

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

29 "Transportation of property" includes any service in connection
30 with the receiving, delivery, elevation, transfer in transit,
31 ventilation, refrigeration, icing, storage, and handling of the
32 property transported, and the transmission of credit.

33 "Transportation of persons" includes any service in connection with
34 the receiving, carriage, and delivery of the person transported and his
35 baggage and all facilities used, or necessary to be used in connection
36 with the safety, comfort, and convenience of the person transported.

37 "Public service company" includes every common carrier.

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

1 **Sec. 10.** RCW 81.24.030 and 1981 c 13 s 5 are each amended to read
2 as follows:

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

--- END ---