
ENGROSSED SUBSTITUTE SENATE BILL 6212

State of Washington

56th Legislature

2000 Regular Session

By Senate Committee on Transportation (originally sponsored by Senators T. Sheldon, Haugen and Oke)

Read first time 02/08/2000.

1 AN ACT Relating to passenger-only ferries; amending RCW 81.84.010,
2 81.84.060, and 47.60.120; adding new sections to chapter 81.104 RCW;
3 adding a new chapter to Title 81 RCW; creating new sections; and
4 declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** The operation of passenger-only ferries
7 within the state is a matter of public interest. If the department of
8 transportation discontinues its operations on passenger-only ferry
9 crossings, or decides not to pursue passenger-only ferry crossings that
10 have been previously budgeted and approved by the transportation
11 commission, the public interest requires that persons and entities
12 other than the department be allowed the opportunity to operate
13 passenger-only ferry service on those crossings. The lease of
14 passenger-only ferries and facilities from the department, or provision
15 of money, equipment, or materials, or the provision of equipment,
16 materials, services, or facilities at below-market value by a public
17 entity, to allow an entity to operate passenger-only ferry service is
18 for the benefit of the public to ensure adequate passenger-only ferry
19 service along passenger-only ferry crossings.

1 NEW SECTION. **Sec. 2.** As used in this chapter:

2 (1) "Commission" means the Washington utilities and transportation
3 commission.

4 (2) "Department" means the Washington department of transportation.

5 (3) "Passenger-only ferry" means any vessel operating for the
6 public use for hire over a regular route between fixed termini,
7 excluding:

8 (a) Auto ferries;

9 (b) Charter service, as defined in RCW 81.84.005;

10 (c) Excursion service, as defined in RCW 81.84.005;

11 (d) Common carrier ferries, defined as vessels primarily engaged in
12 transporting freight other than vehicles, whose gross earnings from the
13 transportation of passengers are not more than ten percent of the total
14 gross earnings of the vessel;

15 (e) Launch service, defined as the transportation of either
16 passengers, or freight, or both, to or from a vessel underway, at
17 anchor, or at a dock; and

18 (f) All vessels or services described in RCW 81.84.007.

19 (4) "Passenger-only ferry operator" includes, but is not limited
20 to, a nonprofit corporation, public-private partnership, transit
21 agency, municipality, private entity, person, or any combination of
22 them.

23 (5) "Public participation" includes the provision of money,
24 equipment, or materials, or the provision of equipment, materials,
25 services, or facilities at below-market value by a public entity.

26 NEW SECTION. **Sec. 3.** (1) All applications to operate passenger-
27 only ferry service upon the waters of this state, including rivers,
28 lakes, and Puget Sound are subject to the provisions of this chapter.
29 Any public entities, nonprofit corporation, public-private partnership,
30 transit agency, municipality, private entity, person, or any
31 combination of them, may apply to the commission for a permit to
32 operate passenger-only ferry service.

33 (2) Applicants who filed an application under chapter 81.84 RCW
34 before February 1, 2000, will have the first option for a passenger-
35 only ferry permit under this chapter for the ferry crossing applied for
36 in chapter 81.84 RCW.

37 (3) The commission may, upon written application, and upon notice
38 and hearing, grant a passenger-only ferry permit to operate service at

1 a passenger-only ferry crossing that was discontinued by the
2 department, or at any other ferry crossing upon the waters of this
3 state, including rivers, lakes, and Puget Sound. The commission shall
4 act on an application for a passenger-only ferry permit within ninety
5 days after the conclusion of the hearing. A passenger-only ferry
6 permit is effective for an initial period of five years. The
7 commission may revoke or cancel the permit on its own motion if the
8 passenger-only ferry permit holder has not initiated service within one
9 year after the commission grants the permit. The commission may renew
10 passenger-only ferry permits for periods of three years, subject to
11 compliance with all rules, and provision of adequate service.

12 (4)(a) In deciding whether to grant a passenger-only ferry permit
13 the commission shall consider, at a minimum:

- 14 (i) The applicant's ability to initiate service within one year;
- 15 (ii) The adequacy of service to the community;
- 16 (iii) The effect of the applicant's proposed service on operation
17 of auto ferry service by the department; and
- 18 (iv) The effect of the applicant's proposed service on
19 transportation congestion mitigation.

20 (b) When determining whether an applicant can initiate service, the
21 commission shall consider, at a minimum, whether the applicant:

- 22 (i) Has sufficient financial resources, which may include public
23 participation;
- 24 (ii) Has sufficient experience and knowledge of ferry operations;
- 25 (iii) Has made or is making arrangements for parking, docking,
26 vessels, and coordination of ground transportation; and
- 27 (iv) Has identified or met any local government land use or
28 environmental requirements.

29 (c) When determining whether an applicant will provide adequate
30 service to the community, the commission shall consider, at a minimum:

- 31 (i) How the proposed service compares to that previously provided
32 by the department along the crossing, if applicable;
- 33 (ii) Whether the applicant has coordinated its service with ground
34 transportation; and
- 35 (iii) The number of runs the applicant proposes to operate.

36 (5) The commission may grant only one passenger-only ferry permit
37 for operation at a particular ferry crossing for a given time period.

1 (6) The department shall designate an employee with knowledge of
2 ferry operations as a technical advisor to assist the commission in
3 implementing this chapter.

4 NEW SECTION. **Sec. 4.** (1) The department shall immediately notify
5 the commission when it becomes apparent that the department will
6 discontinue one or more passenger-only ferry crossings or that it has
7 decided not to pursue one or more passenger-only ferry crossings that
8 had been previously budgeted and approved by the transportation
9 commission. The commission shall compile a mailing list of interested
10 persons that includes, at a minimum: All certificated commercial ferry
11 operators; all common carrier vessel operators; all affected counties,
12 municipalities, public transportation benefit areas, metropolitan
13 municipal corporations, and regional transit authorities; and all other
14 persons who have notified the commission in writing that they desire to
15 be on the mailing list.

16 (2) The commission shall notify all persons on the mailing list
17 that one or more passenger-only ferry crossing routes are eligible
18 under this chapter for issuance of a passenger-only ferry permit. The
19 commission shall accept written petitions from qualified applicants for
20 a period of one hundred twenty days from the date of the notice unless
21 the commission makes a finding that the public interest requires a
22 shorter notice period, in which case the minimum notice period is
23 thirty days from the date of the notice.

24 (3) To the extent that the department, before the effective date of
25 this section, has made the decision to discontinue one or more
26 passenger-only ferry crossings or has decided not to pursue one or more
27 passenger-only ferry crossings that had been previously budgeted and
28 approved by the transportation commission, the commission shall compile
29 the mailing list and make notification to interested persons as soon as
30 practicable after that date.

31 NEW SECTION. **Sec. 5.** The commission, in issuing a permit to a
32 passenger-only ferry operator, shall require that liability and
33 property damage insurance be acquired and maintained on each vessel or
34 ferry to be used to provide service, in the amount of not less than one
35 hundred thousand dollars for any recovery for personal injury by one
36 person, and not less than one million dollars and in an additional
37 amount that the commission determines, for all persons receiving

1 personal injury and property damage by reason of one act of negligence,
2 and not less than fifty thousand dollars for damage to property of any
3 person other than the insured; or combined bodily injury and property
4 damage liability insurance of not less than one million dollars. Proof
5 of liability or property damage insurance or surety bond required by
6 this section must be filed with the commission and kept in full force
7 and effect, and failure to do so is cause for cancellation of the
8 operator's permit.

9 NEW SECTION. **Sec. 6.** A passenger-only ferry permit holder may
10 lease passenger-only ferries and facilities from the department as long
11 as the lease of the ferries or facilities does not conflict with the
12 operation of the Washington state ferry system.

13 NEW SECTION. **Sec. 7.** No passenger-only ferry permit granted under
14 this chapter may be sold, assigned, leased, mortgaged, or in any manner
15 transferred, either by the act of the permit holder, or by operation of
16 law, without first obtaining the commission's approval.

17 NEW SECTION. **Sec. 8.** For the purposes of this section only,
18 passenger-only ferry operators are considered to be commercial ferries
19 as defined in chapter 81.84 RCW and shall comply with RCW 81.24.030
20 requiring annual report filing and payment of regulatory fees and RCW
21 81.84.040 requiring the payment of application filing fees.

22 NEW SECTION. **Sec. 9.** The commission may adopt rules for operation
23 of passenger-only ferry service, to include rules concerning the
24 process for issuing a passenger-only ferry permit, determining adequacy
25 of service, and establishing fares. The degree and level of regulation
26 may vary with the degree and level of public participation.

27 NEW SECTION. **Sec. 10.** If the department decides to resume service
28 on a passenger-only ferry crossing, the commission shall not renew any
29 existing passenger-only ferry permit for that crossing previously
30 granted by it. During the remainder of the term of the permit, the
31 Washington state ferry system shall not extend similar or competing
32 passenger-only ferry services along that crossing, except upon a proper
33 showing that the passenger-only ferry operator is not providing
34 adequate service. Nothing in this section precludes the Washington

1 state ferry system from entering into an agreement with the passenger-
2 only ferry permit holder, or purchasing or condemning the permit
3 authority or equipment.

4 NEW SECTION. **Sec. 11.** The commission, upon complaint by an
5 interested party, or on its own motion after notice and opportunity for
6 hearing, may cancel, revoke, suspend, alter, or amend a permit issued
7 under this chapter on any of the following grounds:

8 (1) Failure of the permit holder to initiate the proposed service
9 within one year after the permit has been granted;

10 (2) Violation of any provision of this chapter;

11 (3) Violation of or failure to observe the provisions or conditions
12 of the permit or tariff;

13 (4) Violation of an order, decision, rule, regulation, or
14 requirement established by the commission under this chapter;

15 (5) Failure of a permit holder to maintain the required insurance
16 coverage in full force and effect; or

17 (6) Failure or refusal to furnish reasonable and adequate service
18 after initiating service.

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

22 NEW SECTION. **Sec. 12.** All applicable provisions of this title
23 relating to procedure, powers of the commission, and penalties apply to
24 the operation and regulation of passenger-only ferry operators under
25 this chapter, except as those provisions may conflict with this chapter
26 and rules adopted under it by the commission.

27 NEW SECTION. **Sec. 13.** If any provision of this chapter or its
28 application to any person or circumstance is held invalid, the
29 remainder of the chapter or application of the provision to other
30 persons or circumstances is not affected.

31 **Sec. 14.** RCW 81.84.010 and 1993 c 427 s 2 are each amended to read
32 as follows:

33 (1) Except for certificates to provide commercial ferry service
34 issued before February 1, 2000, all applications for passenger-only
35 ferry service must be filed under section 3 of this act. Except for

1 ferries granted permits under that section, no commercial ferry may
2 hereafter operate any vessel or ferry for the public use for hire
3 between fixed termini or over a regular route upon the waters within
4 this state, including the rivers and lakes and Puget Sound, without
5 first applying for and obtaining from the commission a certificate
6 declaring that public convenience and necessity require such operation.
7 Service authorized by certificates issued before or after July 25,
8 1993, to a commercial ferry operator shall be exercised by the operator
9 in a manner consistent with the conditions established in the
10 certificate or tariffs: PROVIDED, That no certificate shall be
11 required for a vessel primarily engaged in transporting freight other
12 than vehicles, whose gross earnings from the transportation of
13 passengers and/or vehicles, are not more than ten percent of the total
14 gross annual earnings of such vessel(~~(:—PROVIDED, That)~~).

15 (2) Nothing ((herein shall be construed to)) in this chapter
16 affects the right of any county public transportation authority, public
17 transportation benefit area authority, or other public agency within
18 this state to construct, condemn, purchase, operate, or maintain,
19 itself or by contract, agreement, or lease, with any person, firm, or
20 corporation, ferries or boats across or wharfs at or upon the waters
21 within this state, including rivers and lakes and Puget Sound, provided
22 such operation is not over the same route or between the same
23 districts, being served by a certificate holder without first acquiring
24 the rights granted to the certificate holder under the certificate(~~(,~~
25 ~~nor shall this chapter be construed to affect, amend, or invalidate any~~
26 ~~contract entered into prior to January 15, 1927, for the operation of~~
27 ~~ferries or boats upon the waters within this state, which was entered~~
28 ~~into in good faith by any county with any person, firm, or corporation,~~
29 ~~except that in case of the operation or maintenance by any county,~~
30 ~~city, town, port district, or other political subdivision by contract,~~
31 ~~agreement, or lease with any person, firm, or corporation, of ferries~~
32 ~~or boats across or wharfs at or upon the waters within this state,~~
33 ~~including rivers and lakes and Puget Sound, the commission shall have~~
34 ~~power and authority to regulate rates and services of such operation or~~
35 ~~maintenance of ferries, boats, or wharfs, to make, fix, alter, or amend~~
36 ~~said rates, and to regulate service and safety of operations thereof,~~
37 ~~in the manner and to the same extent as it is empowered to regulate a~~
38 ~~commercial ferry, notwithstanding the provisions of any act or parts of~~
39 ~~acts inconsistent herewith)).~~

1 ~~((2))~~ (3) The holder of a certificate of public convenience and
2 necessity granted under this chapter must initiate service within five
3 years of obtaining the certificate. The certificate holder shall
4 report to the commission every six months after the certificate is
5 granted on the progress of the certificated route. The reports shall
6 include, but not be limited to, the progress of environmental impact,
7 parking, local government land use, docking, and financing
8 considerations. However, if service has not been initiated within five
9 years of obtaining the certificate, the commission may extend the
10 certificate on a twelve-month basis for up to three years if the six-
11 month progress reports indicate there is significant advancement toward
12 initiating service.

13 ~~((3) The commission shall review certificates in existence as of
14 July 25, 1993, where service is not being provided on all or any
15 portion of the route or routes certificated. Based on progress reports
16 required under subsection (2) of this section, the commission may grant
17 an extension beyond that provided in subsection (2) of this section.
18 Such additional extension may not exceed a total of two years.))~~

19 **Sec. 15.** RCW 81.84.060 and 1993 c 427 s 7 are each amended to read
20 as follows:

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

25 (1) Failure of the certificate holder to initiate service by the
26 conclusion of the fifth year after the certificate has been granted or
27 by the conclusion of an extension granted under RCW 81.84.010 ~~((2) or
28 (3))~~, if the commission has considered the progress report information
29 required under RCW 81.84.010 ~~((2) or (3))~~;

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

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

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

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

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

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

3 (8) Failure or refusal to furnish reasonable and adequate service
4 after initiating service.

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

8 **Sec. 16.** RCW 47.60.120 and 1993 c 427 s 1 are each amended to read
9 as follows:

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

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

23 (3) The Washington utilities and transportation commission may,
24 upon written petition of a commercial ferry operator certificated or
25 applying for certification under chapter 81.84 RCW, or upon written
26 petition from a passenger-only ferry operator as provided for under
27 section 3 of this act, and upon notice and hearing, grant a waiver from
28 the ten-mile restriction. The waiver must not be detrimental to the
29 public interest. In making a decision to waive the ten-mile
30 restriction, the commission shall consider, but is not limited to, the
31 impact of the waiver on transportation congestion mitigation, air
32 quality improvement, and the overall impact on the Washington state
33 ferry system. The commission shall act upon a request for a waiver
34 within ninety days after the conclusion of the hearing. A waiver is
35 effective for a period of five years from the date of issuance. At the
36 end of five years the waiver becomes permanent unless appealed within
37 thirty days by the commission on its own motion, the department, or an
38 interested party.

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

8 NEW SECTION. **Sec. 17.** A new section is added to chapter 81.104
9 RCW to read as follows:

10 High-capacity transportation systems may operate passenger-only
11 ferry service. This includes responsibility for system implementation.
12 Contracts and agreements to operate passenger-only ferry service may
13 include public-private partnerships, design-build, turnkey, and super
14 turnkey purchasing methods authorized under federal law applicable to
15 joint development projects, such as P.L. 105-178 and 62 Fed. Reg.
16 12266.

17 NEW SECTION. **Sec. 18.** A new section is added to chapter 81.104
18 RCW to read as follows:

19 RCW 81.104.100 and 81.104.110 do not apply to an assumption of a
20 high-capacity responsibility, route, or plan element by one agency from
21 another, such as the assumption by a local transit agency of the
22 responsibility, route, or plan element of a state transportation agency
23 if the assuming agency undertakes all the obligations of the planning
24 process and the assumption is approved by the appropriate regional
25 planning process.

26 NEW SECTION. **Sec. 19.** (1) The joint task force on ferries is
27 created, to be composed of:

28 (a) Eight members of the legislature selected as follows:

29 (i) Four members of the senate, two from each of the major
30 caucuses, to be appointed by the chair of the senate transportation
31 committee;

32 (ii) Four members of the house of representatives, two from each of
33 the major caucuses, to be appointed by the cochairs of the house of
34 representatives transportation committee; and

35 (b) At least one person designated by the cochairs representing
36 each of the following:

1 (i) Ferry advisory committees;
2 (ii) Persons who do not use ferries;
3 (iii) Labor organizations representing ferry workers;
4 (iv) Washington State Ferries;
5 (v) Transit operators;
6 (vi) The office of financial management; and
7 (vii) Other groups as deemed appropriate by the cochairs of the
8 task force.

9 (2) The transportation committees shall provide staff support as
10 mutually agreed by the cochairs of the joint select committee. The
11 chair of the senate transportation committee and the cochairs of the
12 house of representatives transportation committee shall designate the
13 cochairs.

14 NEW SECTION. **Sec. 20.** The joint task force on ferries shall meet
15 during the interim and report back to the transportation committees of
16 the senate and house of representatives by December 15, 2000. The task
17 force is charged with development of an orderly process to examine all
18 possible solutions that are presented to the task force, including, but
19 not limited to, continued operation of passenger-only ferry service by
20 Washington State Ferries, state and local partnerships, local
21 partnerships, government and nonprofit partnerships, and private
22 operations. The task force shall consider public options first,
23 nonprofit options second, and private operations third.

24 The report to the senate and house of representatives
25 transportation committees must include, but is not limited to, analysis
26 and recommendations on the following:

27 (1) Continued operation of all current passenger-only ferry routes
28 and levels of service by Washington State Ferries;

29 (2) Continued operation of selected passenger-only ferry routes or
30 reduced levels of service on selected routes;

31 (3) Operation of selected routes by any public entity or
32 combination of public entities;

33 (4) Operation of selected routes by any nonprofit entity or
34 combination of nonprofit entities;

35 (5) Operation of selected routes by any private entity or
36 combination of private entities;

37 (6) Ferry fare equity between ferry routes of different lengths;

1 (7) Establishment of a target for recovery of operating costs from
2 fare revenue when operations include participation by a public entity;
3 and

4 (8) In consultation with Washington State Ferries, the feasibility
5 of transferring an auto ferry to cover a route between
6 Vashon/Southworth and downtown Seattle if passenger-only service is
7 discontinued.

8 NEW SECTION. **Sec. 21.** Sections 1 through 13 of this act
9 constitute a new chapter in Title 81 RCW.

10 NEW SECTION. **Sec. 22.** Sections 19 and 20 of this act are
11 necessary for the immediate preservation of the public peace, health,
12 or safety, or support of the state government and its existing public
13 institutions, and take effect immediately.

--- END ---