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**SUBSTITUTE SENATE BILL 6212**

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**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 and 81.84.060; adding new sections to chapter 81.104 RCW; adding a new  
3 chapter to Title 81 RCW; creating new sections; and declaring an  
4 emergency.

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

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

1 for the benefit of the public to ensure adequate and continued  
2 passenger-only ferry service along passenger-only ferry crossings.

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

4 (1) "Commission" means the Washington utilities and transportation  
5 commission.

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

7 (3) "Passenger-only ferry operator" includes, but is not limited  
8 to, a nonprofit corporation, public-private partnership, transit  
9 agency, municipality, private entity, person, or any combination of  
10 them.

11 (4) "Public participation" includes the provision of money,  
12 equipment, or materials, or the provision of equipment, materials,  
13 services, or facilities at below-market value by a public entity.

14 NEW SECTION. **Sec. 3.** (1) If the department discontinues one or  
15 more passenger-only ferry crossings on Puget Sound or any of its  
16 tributary or connecting waters, whether or not the department has  
17 initiated service on that crossing, any nonprofit corporation,  
18 public-private partnership, transit agency, municipality, private  
19 entity, person, or any combination of them, may apply to the commission  
20 for a permit to operate a passenger-only ferry service at the crossing  
21 where service was discontinued by the department.

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

26 (3) The commission may, upon written application, and upon notice  
27 and hearing, grant a passenger-only ferry permit to operate service at  
28 a passenger-only ferry crossing that was discontinued by the  
29 department. The commission shall act on an application for a  
30 passenger-only ferry permit within ninety days after the conclusion of  
31 the hearing. A passenger-only ferry permit is effective for an initial  
32 period of five years. The commission may revoke or cancel the permit  
33 on its own motion if the passenger-only ferry permit holder has not  
34 initiated service within one year after the commission grants the  
35 permit. The commission may renew passenger-only ferry permits for  
36 periods of three years, subject to compliance with all rules, and  
37 provision of adequate service.

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

3 (i) The applicant's ability to initiate service within one year;

4 (ii) The adequacy of service to the community;

5 (iii) The effect of the applicant's proposed service on the  
6 continued operation of the auto ferry service by the department; and

7 (iv) The effect of the applicant's proposed service on  
8 transportation congestion mitigation.

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

11 (i) Has sufficient financial resources, which may include public  
12 participation;

13 (ii) Has sufficient experience and knowledge of ferry operations;

14 (iii) Has made or is making arrangements for parking, docking,  
15 vessels, and coordination of ground transportation; and

16 (iv) Has identified or met any local government land use or  
17 environmental requirements.

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

20 (i) How the proposed service compares to that previously provided  
21 by the department along the crossing;

22 (ii) Whether the applicant has coordinated its service with ground  
23 transportation; and

24 (iii) The number of runs the applicant proposes to operate.

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

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

30 NEW SECTION. **Sec. 4.** (1) The department shall immediately notify  
31 the commission when it becomes apparent that the department will  
32 discontinue one or more passenger-only ferry crossings or that it has  
33 decided not to pursue one or more passenger-only ferry crossings that  
34 had been previously budgeted and approved by the transportation  
35 commission. The commission shall compile a mailing list of interested  
36 persons that includes, at a minimum: All certificated commercial ferry  
37 operators; all common carrier vessel operators; all affected counties,  
38 municipalities, public transportation benefit areas, metropolitan

1 municipal corporations, and regional transit authorities; and all other  
2 persons who have notified the commission in writing that they desire to  
3 be on the mailing list.

4 (2) The commission shall notify all persons on the mailing list  
5 that one or more passenger-only ferry crossing routes are eligible  
6 under this chapter for issuance of a passenger-only ferry permit. The  
7 commission shall accept written petitions from qualified applicants for  
8 a period of one hundred twenty days from the date of the notice unless  
9 the commission makes a finding that the public interest requires a  
10 shorter notice period, in which case the minimum notice period is  
11 thirty days from the date of the notice.

12 (3) To the extent that the department, before the effective date of  
13 this section, has made the decision to discontinue one or more  
14 passenger-only ferry crossings or has decided not to pursue one or more  
15 passenger-only ferry crossings that had been previously budgeted and  
16 approved by the transportation commission, the commission shall compile  
17 the mailing list and make notification to interested persons as soon as  
18 practicable after that date.

19 NEW SECTION. **Sec. 5.** The commission, in issuing a permit to a  
20 passenger-only ferry operator, shall require that liability and  
21 property damage insurance be acquired and maintained on each vessel or  
22 ferry to be used to provide service, in the amount of not less than one  
23 hundred thousand dollars for any recovery for personal injury by one  
24 person, and not less than one million dollars and in an additional  
25 amount that the commission determines, for all persons receiving  
26 personal injury and property damage by reason of one act of negligence,  
27 and not less than fifty thousand dollars for damage to property of any  
28 person other than the insured; or combined bodily injury and property  
29 damage liability insurance of not less than one million dollars. Proof  
30 of liability or property damage insurance or surety bond required by  
31 this section must be filed with the commission and kept in full force  
32 and effect, and failure to do so is cause for cancellation of the  
33 operator's permit.

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

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

5        NEW SECTION.    **Sec. 8.** For the purposes of this section only,  
6 passenger-only ferry operators are considered to be commercial ferries  
7 as defined in chapter 81.84 RCW and shall comply with RCW 81.24.030  
8 requiring annual report filing and payment of regulatory fees. To the  
9 extent that regulatory fees paid by passenger-only ferry operators are  
10 insufficient to cover the total costs of regulation, the commission may  
11 use interest earnings of surplus balances credited to the public  
12 service revolving fund to cover those costs.

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

18        NEW SECTION.    **Sec. 10.** If the department decides to resume service  
19 on a passenger-only ferry crossing, the commission shall not renew any  
20 existing passenger-only ferry permit for that crossing previously  
21 granted by it. During the remainder of the term of the permit, the  
22 Washington state ferry system shall not extend similar or competing  
23 passenger-only ferry services along that crossing, except upon a proper  
24 showing that the passenger-only ferry operator is not providing  
25 adequate service. Nothing in this section precludes the Washington  
26 state ferry system from entering into an agreement with the passenger-  
27 only ferry permit holder, or purchasing or condemning the permit  
28 authority or equipment under RCW 36.57A.090.

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

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

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

1 (3) Violation of or failure to observe the provisions or conditions  
2 of the permit or tariff;

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

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

7 (6) Failure or refusal to furnish reasonable and adequate service  
8 after initiating service.

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

12 NEW SECTION. **Sec. 12.** All applicable provisions of this title  
13 relating to procedure, powers of the commission, and penalties apply to  
14 the operation and regulation of persons under this chapter, except as  
15 those provisions may conflict with this chapter and rules adopted under  
16 it by the commission.

17 NEW SECTION. **Sec. 13.** If any provision of this chapter or its  
18 application to any person or circumstance is held invalid, the  
19 remainder of the chapter or application of the provision to other  
20 persons or circumstances is not affected.

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

23 (1) Except for certificates to provide passenger-only ferry service  
24 issued before February 1, 2000, all applications for passenger-only  
25 ferry service must be filed under section 3 of this act. Except for  
26 ferries granted permits under that section, no commercial ferry may  
27 hereafter operate any vessel or ferry for the public use for hire  
28 between fixed termini or over a regular route upon the waters within  
29 this state, including the rivers and lakes and Puget Sound, without  
30 first applying for and obtaining from the commission a certificate  
31 declaring that public convenience and necessity require such operation.  
32 Service authorized by certificates issued before or after July 25,  
33 1993, to a commercial ferry operator shall be exercised by the operator  
34 in a manner consistent with the conditions established in the  
35 certificate or tariffs: PROVIDED, That no certificate shall be  
36 required for a vessel primarily engaged in transporting freight other

1 than vehicles, whose gross earnings from the transportation of  
2 passengers and/or vehicles, are not more than ten percent of the total  
3 gross annual earnings of such vessel(~~(:—PROVIDED, That)~~).

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

29 ~~((+2))~~ (3) The holder of a certificate of public convenience and  
30 necessity granted under this chapter must initiate service within five  
31 years of obtaining the certificate. The certificate holder shall  
32 report to the commission every six months after the certificate is  
33 granted on the progress of the certificated route. The reports shall  
34 include, but not be limited to, the progress of environmental impact,  
35 parking, local government land use, docking, and financing  
36 considerations. However, if service has not been initiated within five  
37 years of obtaining the certificate, the commission may extend the  
38 certificate on a twelve-month basis for up to three years if the six-

1 month progress reports indicate there is significant advancement toward  
2 initiating service.

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

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

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

15 (1) Failure of the certificate holder to initiate service by the  
16 conclusion of the fifth year after the certificate has been granted or  
17 by the conclusion of an extension granted under RCW 81.84.010 ~~((2) or  
18 (3))~~, if the commission has considered the progress report information  
19 required under RCW 81.84.010 ~~((2) or (3))~~;

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

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

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

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

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

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

31 (8) Failure or refusal to furnish reasonable and adequate service  
32 after initiating service.

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

36 NEW SECTION. **Sec. 16.** A new section is added to chapter 81.104  
37 RCW to read as follows:



1 High-capacity transportation systems may operate passenger-only  
2 ferry service. This includes responsibility for system implementation.  
3 Contracts and agreements to operate passenger-only ferry service may  
4 include public-private partnerships, design-build, turnkey, and super  
5 turnkey purchasing methods authorized under federal law applicable to  
6 joint development projects, such as P.L. 105-178 and 62 Fed. Reg.  
7 12266.

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

10 RCW 81.104.100 and 81.104.110 do not apply to an assumption of a  
11 high-capacity responsibility, route, or plan element by one agency from  
12 another, such as the assumption by a local transit agency of the  
13 responsibility, route, or plan element of a state transportation agency  
14 if the assuming agency undertakes all the obligations of the planning  
15 process and the assumption is approved by the appropriate regional  
16 planning process.

17 NEW SECTION. **Sec. 18.** (1) The joint task force on ferries is  
18 created, to be composed of:

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

20 (i) Four members of the senate, two from each of the major  
21 caucuses, to be appointed by the chair of the senate transportation  
22 committee;

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

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

28 (i) Ferry advisory committees;

29 (ii) Persons who do not use ferries;

30 (iii) Labor organizations representing ferry workers;

31 (iv) Washington State Ferries;

32 (v) Transit operators;

33 (vi) The office of financial management; and

34 (vii) Other groups as deemed appropriate by the cochairs of the  
35 task force.

36 (2) The transportation committees shall provide staff support as  
37 mutually agreed by the cochairs of the joint select committee. The

1 chair of the senate transportation committee and the cochairs of the  
2 house of representatives transportation committee shall designate the  
3 cochairs.

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

14 The report to the senate and house of representatives  
15 transportation committees must include, but is not limited to, analysis  
16 and recommendations on the following:

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

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

21 (3) Operation of selected routes by any public entity or  
22 combination of public entities;

23 (4) Operation of selected routes by any nonprofit entity or  
24 combination of nonprofit entities;

25 (5) Operation of selected routes by any private entity or  
26 combination of private entities;

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

28 (7) Establishment of a target for recovery of operating costs from  
29 fare revenue when operations include participation by a public entity;  
30 and

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

35 NEW SECTION. **Sec. 20.** Sections 1 through 13 of this act  
36 constitute a new chapter in Title 81 RCW.

1        NEW SECTION.    **Sec. 21.**    Sections 18 and 19 of this act are  
2 necessary for the immediate preservation of the public peace, health,  
3 or safety, or support of the state government and its existing public  
4 institutions, and take effect immediately.

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