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ENGROSSED HOUSE BILL 1388

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State of Washington

58th Legislature

2003 Regular Session

**By** Representatives Woods, Ericksen, Ahern, Schindler, Jarrett, Bush, Shabro, Anderson, Bailey, Talcott, Clements, Chandler, Mielke, Boldt, Newhouse, Schoesler, Nixon, Pearson, Pflug and McMahan

Read first time 01/24/2003. Referred to Committee on Transportation.

1 AN ACT Relating to incentives to increase transportation revenues  
2 by reforming laws limiting the provision of passenger-only ferry  
3 service; amending RCW 47.60.120, 47.64.090, 81.84.010, 81.84.020, and  
4 81.84.060; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the Washington  
7 state department of transportation should focus on its core ferry  
8 mission of moving automobiles on Washington state's marine highways.  
9 The legislature finds that current statutes impose barriers to entities  
10 other than the state operating passenger-only ferries. The legislature  
11 intends to lift those barriers to allow entities other than the state  
12 to provide passenger-only ferry service. The legislature finds that  
13 the provision of this service and the improvement in the mobility of  
14 the citizens of Washington state is legally adequate consideration for  
15 the use of state facilities in conjunction with the provision of the  
16 service, and the legislature finds that allowing the operators of  
17 passenger-only ferries to use state facilities on the basis of legally  
18 adequate consideration does not evince donative intent on the part of  
19 the legislature.

1       **Sec. 2.** RCW 47.60.120 and 1993 c 427 s 1 are each amended to read  
2 as follows:

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

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

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

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

37       (5) This section does not apply to operators of passenger-only  
38 ferry service.

1       **Sec. 3.** RCW 47.64.090 and 1983 c 15 s 27 are each amended to read  
2 as follows:

3       (1) Except as provided in subsection (2) of this section, if any  
4 party assumes the operation and maintenance of any ferry or ferry  
5 system by rent, lease, or charter from the department of  
6 transportation, such party shall assume and be bound by all the  
7 provisions herein and any agreement or contract for such operation of  
8 any ferry or ferry system entered into by the department shall provide  
9 that the wages to be paid, hours of employment, working conditions and  
10 seniority rights of employees will be established by the marine  
11 employees' commission in accordance with the terms and provisions of  
12 this chapter and it shall further provide that all labor disputes shall  
13 be adjudicated in accordance with chapter 47.64 RCW.

14       (2) The department of transportation shall make its terminal, dock,  
15 and pier space available to private operators of passenger-only ferries  
16 if the space can be made available without limiting the operation of  
17 car ferries operated by the department. These private operators are  
18 not bound by the provisions of subsection (1) of this section. Charges  
19 for the equipment and space must be fair market value taking into  
20 account the public benefit derived from the passenger-only ferry  
21 service.

22       **Sec. 4.** RCW 81.84.010 and 1993 c 427 s 2 are each amended to read  
23 as follows:

24       (1) No commercial ferry may hereafter operate any vessel or ferry  
25 for the public use for hire between fixed termini or over a regular  
26 route upon the waters within this state, including the rivers and lakes  
27 and Puget Sound, without first applying for and obtaining from the  
28 commission a certificate declaring that public convenience and  
29 necessity require such operation. Service authorized by certificates  
30 issued before or after July 25, 1993, to a commercial ferry operator  
31 shall be exercised by the operator in a manner consistent with the  
32 conditions established in the certificate or tariffs: PROVIDED, That  
33 no certificate shall be required for a vessel primarily engaged in  
34 transporting freight other than vehicles, whose gross earnings from the  
35 transportation of passengers and/or vehicles, are not more than ten  
36 percent of the total gross annual earnings of such vessel: PROVIDED,  
37 That nothing herein shall be construed to affect the right of any

1 county public transportation benefit area or other public agency within  
2 this state to construct, condemn, purchase, operate, or maintain,  
3 itself or by contract, agreement, or lease, with any person, firm, or  
4 corporation, ferries or boats across or wharfs at or upon the waters  
5 within this state, including rivers and lakes and Puget Sound, provided  
6 such operation is not over the same route or between the same  
7 districts, being served by a certificate holder without first acquiring  
8 the rights granted to the certificate holder under the certificate, nor  
9 shall this chapter be construed to affect, amend, or invalidate any  
10 contract entered into prior to January 15, 1927, for the operation of  
11 ferries or boats upon the waters within this state, which was entered  
12 into in good faith by any county with any person, firm, or corporation,  
13 except that in case of the operation or maintenance by any county,  
14 city, town, port district, or other political subdivision by contract,  
15 agreement, or lease with any person, firm, or corporation, of ferries  
16 or boats across or wharfs at or upon the waters within this state,  
17 including rivers and lakes and Puget Sound, the commission shall have  
18 power and authority to regulate rates and services of such operation or  
19 maintenance of ferries, boats, or wharfs, to make, fix, alter, or amend  
20 said rates, and to regulate service and safety of operations thereof,  
21 in the manner and to the same extent as it is empowered to regulate a  
22 commercial ferry, notwithstanding the provisions of any act or parts of  
23 acts inconsistent herewith.

24 (2) The holder of a certificate of public convenience and necessity  
25 granted under this chapter must initiate service within five years of  
26 obtaining the certificate, except that the holder of a certificate of  
27 public convenience and necessity for passenger-only ferry service in  
28 Puget Sound must initiate service within twenty months of obtaining the  
29 certificate. The certificate holder shall report to the commission  
30 every six months after the certificate is granted on the progress of  
31 the certificated route. The reports shall include, but not be limited  
32 to, the progress of environmental impact, parking, local government  
33 land use, docking, and financing considerations. ((However)) Except in  
34 the case of passenger-only service in Puget Sound, if service has not  
35 been initiated within five years of obtaining the certificate, the  
36 commission may extend the certificate on a twelve-month basis for up to  
37 three years if the six-month progress reports indicate there is  
38 significant advancement toward initiating service.

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

7 **Sec. 5.** RCW 81.84.020 and 1993 c 427 s 3 are each amended to read  
8 as follows:

9 (1) Upon the filing of an application the commission shall give  
10 reasonable notice to the department, affected cities (~~and~~), counties,  
11 and public transportation benefit areas and any common carrier which  
12 might be adversely affected, of the time and place for hearing on such  
13 application. The commission shall have power after hearing, to issue  
14 the certificate as prayed for, or to refuse to issue it, or to issue it  
15 for the partial exercise only of the privilege sought, and may attach  
16 to the exercise of the rights granted by said certificate such terms  
17 and conditions as in its judgment the public convenience and necessity  
18 may require; but the commission shall not have power to grant a  
19 certificate to operate between districts and/or into any territory  
20 prohibited by RCW 47.60.120 or already served by an existing  
21 certificate holder, unless such existing certificate holder has failed  
22 or refused to furnish reasonable and adequate service or has failed to  
23 provide the service described in its certificate or tariffs after the  
24 time period allowed to initiate service has elapsed: PROVIDED, A  
25 certificate shall be granted when it shall appear to the satisfaction  
26 of the commission that the commercial ferry was actually operating in  
27 good faith over the route for which such certificate shall be sought,  
28 on January 15, 1927: PROVIDED, FURTHER, That in case two or more  
29 commercial ferries shall upon said date have been operating vessels  
30 upon the same route, or between the same districts the commission shall  
31 determine after public hearing whether one or more certificates shall  
32 issue, and in determining to whom a certificate or certificates shall  
33 be issued, the commission shall consider all material facts and  
34 circumstances including the prior operation, schedules, and services  
35 rendered by either of the ferries, and in case more than one  
36 certificate shall issue, the commission shall fix and determine the

1 schedules and services of the ferries to which the certificates are  
2 issued to the end that duplication of service be eliminated and public  
3 convenience be furthered.

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

16 (3) Subsection (2) of this section does not apply to an application  
17 for a certificate that is pending as of July 25, 1993.

18 (4) In granting a certificate for passenger-only ferries and  
19 determining what conditions to place on the certificate, the commission  
20 shall consider and give substantial weight to the effect of its  
21 decisions on public agencies operating, or eligible to operate,  
22 passenger-only ferry service.

23 (5) Until March 1, 2005, the commission shall not consider an  
24 application for passenger-only ferry service serving any county in  
25 Puget Sound, unless the public transportation benefit area authority or  
26 ferry district serving that county, by resolution, agrees to the  
27 application.

28 **Sec. 6.** RCW 81.84.060 and 1993 c 427 s 7 are each amended to read  
29 as follows:

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

34 (1) Failure of the certificate holder to initiate service by the  
35 conclusion of the fifth year after the certificate has been granted or  
36 by the conclusion of an extension granted under RCW 81.84.010 (2) or

1 (3), if the commission has considered the progress report information  
2 required under RCW 81.84.010 (2) or (3);

3 (2) Failure of a certificate holder for passenger-only ferry  
4 service in Puget Sound to initiate service by the conclusion of the  
5 twentieth month after the certificate has been granted;

6 (3) Failure of the certificate holder to file an annual report;

7 ((+3)) (4) The filing by a certificate holder of an annual report  
8 that shows no revenue in the previous twelve-month period after service  
9 has been initiated;

10 ((+4)) (5) The violation of any provision of this chapter;

11 ((+5)) (6) The violation of or failure to observe the provisions  
12 or conditions of the certificate or tariffs;

13 ((+6)) (7) The violation of an order, decision, rule, regulation,  
14 or requirement established by the commission under this chapter;

15 ((+7)) (8) Failure of a certificate holder to maintain the  
16 required insurance coverage in full force and effect; or

17 ((+8)) (9) Failure or refusal to furnish reasonable and adequate  
18 service 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 a  
21 provision of this section has been violated.

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