
SENATE BILL 6742

State of Washington

58th Legislature

2004 Regular Session

By Senators Horn, Haugen and Oke

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1 AN ACT Relating to using revenue from leasing department of
2 transportation terminal, dock, and pier space for private passenger-
3 only ferry grants; amending RCW 81.84.020; reenacting and amending RCW
4 47.64.090 and 43.79A.040; reenacting RCW 47.60.120 and 81.84.010;
5 adding new sections to chapter 47.60 RCW; and declaring an emergency.

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

7 **Sec. 1.** RCW 47.64.090 and 2003 c 373 s 3 and 2003 c 91 s 1 are
8 each reenacted and amended to read as follows:

9 (1) Except as provided in (~~section 203, chapter 83, Laws of 2003~~)
10 RCW 47.60.656 and subsection (2) of this section, or as provided in
11 (~~section 303, chapter 83, Laws of 2003~~) RCW 36.54.130 and subsection
12 (3) of this section, or as provided in subsection (4) of this section,
13 if any party assumes the operation and maintenance of any ferry or
14 ferry system by rent, lease, or charter from the department of
15 transportation, such party shall assume and be bound by all the
16 provisions herein and any agreement or contract for such operation of
17 any ferry or ferry system entered into by the department shall provide
18 that the wages to be paid, hours of employment, working conditions, and
19 seniority rights of employees will be established by the marine

1 employees' commission in accordance with the terms and provisions of
2 this chapter and it shall further provide that all labor disputes shall
3 be adjudicated in accordance with chapter 47.64 RCW.

4 (2) If a public transportation benefit area meeting the
5 requirements of (~~section 201, chapter 83, Laws of 2003~~) RCW
6 36.57A.200 has voter approval to operate passenger-only ferry service,
7 it may enter into an agreement with Washington State Ferries to rent,
8 lease, or purchase passenger-only vessels, related equipment, or
9 terminal space for purposes of loading and unloading the passenger-only
10 ferry. Charges for the vessels, equipment, and space must be fair
11 market value taking into account the public benefit derived from the
12 ferry service. A benefit area or subcontractor of that benefit area
13 that qualifies under this subsection is not subject to the restrictions
14 of subsection (1) of this section, but is subject to:

15 (a) The terms of those collective bargaining agreements that it or
16 its subcontractors negotiate with the exclusive bargaining
17 representatives of its or its subcontractors' employees under chapter
18 41.56 RCW or the National Labor Relations Act, as applicable;

19 (b) Unless otherwise prohibited by federal or state law, a
20 requirement that the benefit area and any contract with its
21 subcontractors, give preferential hiring to former employees of the
22 department of transportation who separated from employment with the
23 department because of termination of the ferry service by the state of
24 Washington; and

25 (c) Unless otherwise prohibited by federal or state law, a
26 requirement that the benefit area and any contract with its
27 subcontractors, on any questions concerning representation of employees
28 for collective bargaining purposes, may be determined by conducting a
29 cross-check comparing an employee organization's membership records or
30 bargaining authorization cards against the employment records of the
31 employer.

32 (3) If a ferry district is formed under (~~section 301, chapter 83,~~
33 ~~Laws of 2003~~) RCW 36.54.110 to operate passenger-only ferry service,
34 it may enter into an agreement with Washington State Ferries to rent,
35 lease, or purchase vessels, related equipment, or terminal space for
36 purposes of loading and unloading the ferry. Charges for the vessels,
37 equipment, and space must be fair market value taking into account the
38 public benefit derived from the ferry service. A ferry district or

1 subcontractor of that district that qualifies under this subsection is
2 not subject to the restrictions of subsection (1) of this section, but
3 is subject to:

4 (a) The terms of those collective bargaining agreements that it or
5 its subcontractors negotiate with the exclusive bargaining
6 representatives of its or its subcontractors' employees under chapter
7 41.56 RCW or the National Labor Relations Act, as applicable;

8 (b) Unless otherwise prohibited by federal or state law, a
9 requirement that the ferry district and any contract with its
10 subcontractors, give preferential hiring to former employees of the
11 department of transportation who separated from employment with the
12 department because of termination of the ferry service by the state of
13 Washington; and

14 (c) Unless otherwise prohibited by federal or state law, a
15 requirement that the ferry district and any contract with its
16 subcontractors, on any questions concerning representation of employees
17 for collective bargaining purposes, may be determined by conducting a
18 cross-check comparing an employee organization's membership records or
19 bargaining authorization cards against the employment records of the
20 employer.

21 (4) The department of transportation shall make its terminal, dock,
22 and pier space available to private operators of passenger-only ferries
23 if the space can be made available without limiting the operation of
24 car ferries operated by the department. The department may also enter
25 into agreements with private operators of passenger-only ferries for
26 those operators to rent or lease its passenger-only ferry vessels.
27 These private operators are not bound by the provisions of subsection
28 (1) of this section. Charges for the equipment and space must be fair
29 market value taking into account the public benefit derived from the
30 passenger-only ferry service. Revenue from the charges shall be
31 deposited in the passenger-only ferry account created in section 4 of
32 this act.

33 **Sec. 2.** RCW 81.84.020 and 2003 c 373 s 5 are each amended to read
34 as follows:

35 (1) Upon the filing of an application the commission shall give
36 reasonable notice to the department, affected cities, counties, and
37 public transportation benefit areas and any common carrier which might

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

29 (2) Before issuing a certificate, the commission shall determine
30 that the applicant has the financial resources to operate the proposed
31 service for at least twelve months, based upon the submission by the
32 applicant of a pro forma financial statement of operations. Issuance
33 of a certificate shall be determined upon, but not limited to, the
34 following factors: Ridership and revenue forecasts; the cost of
35 service for the proposed operation; an estimate of the cost of the
36 assets to be used in providing the service; a statement of the total
37 assets on hand of the applicant that will be expended on the proposed

1 operation; and a statement of prior experience, if any, in such field
2 by the applicant. The documentation required of the applicant under
3 this section shall comply with the provisions of RCW 9A.72.085.

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

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

11 ~~((5) Until March 1, 2005, the commission shall not consider an
12 application for passenger only ferry service serving any county in
13 Puget Sound, unless the public transportation benefit area authority or
14 ferry district serving that county, by resolution, agrees to the
15 application.))~~

16 NEW SECTION. Sec. 3. A new section is added to chapter 47.60 RCW
17 to read as follows:

18 The department of transportation shall provide grants to private
19 operators of passenger-only ferries whose routes operating on routes
20 serving terminals, docks, or pier space under RCW 47.64.090 to provide
21 service on routes utilizing those facilities. The grants shall be from
22 the passenger-only ferry account and shall be used to contract for
23 reduced-cost tickets based on services provided by the private
24 operators for the benefit of the passenger-only ferry users. The
25 amount of the grant each year to each operator is limited to the amount
26 paid annually by each operator for use of the facilities under RCW
27 47.64.090. No appropriation is required for department expenditures
28 from the account.

29 NEW SECTION. Sec. 4. A new section is added to chapter 47.60 RCW
30 to read as follows:

31 The passenger-only ferry account is hereby created in the custody
32 of the state treasurer as a nonappropriated account. Moneys paid by
33 private operators of passenger-only ferries for use of terminals,
34 docks, pier space, or vessels under RCW 47.64.090 shall be deposited
35 into the account and shall be used by the department of transportation
36 to fund grants pursuant to section 3 of this act.

1 **Sec. 5.** RCW 47.60.120 and 2003 c 373 s 2 and 2003 c 83 s 204 are
2 each reenacted to read 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 the operation of passenger-only

1 ferry service by public transportation benefit areas meeting the
2 requirements of RCW 36.57A.200 or to the operation of passenger-only
3 ferry service by ferry districts.

4 **Sec. 6.** RCW 81.84.010 and 2003 c 373 s 4 and 2003 c 83 s 211 are
5 each reenacted to read as follows:

6 (1) No commercial ferry may hereafter operate any vessel or ferry
7 for the public use for hire between fixed termini or over a regular
8 route upon the waters within this state, including the rivers and lakes
9 and Puget Sound, without first applying for and obtaining from the
10 commission a certificate declaring that public convenience and
11 necessity require such operation. Service authorized by certificates
12 issued before or after July 25, 1993, to a commercial ferry operator
13 shall be exercised by the operator in a manner consistent with the
14 conditions established in the certificate or tariffs: PROVIDED, That
15 no certificate shall be required for a vessel primarily engaged in
16 transporting freight other than vehicles, whose gross earnings from the
17 transportation of passengers and/or vehicles, are not more than ten
18 percent of the total gross annual earnings of such vessel: PROVIDED,
19 That nothing herein shall be construed to affect the right of any
20 county public transportation benefit area or other public agency within
21 this state to construct, condemn, purchase, operate, or maintain,
22 itself or by contract, agreement, or lease, with any person, firm, or
23 corporation, ferries or boats across or wharfs at or upon the waters
24 within this state, including rivers and lakes and Puget Sound, provided
25 such operation is not over the same route or between the same
26 districts, being served by a certificate holder without first acquiring
27 the rights granted to the certificate holder under the certificate, nor
28 shall this chapter be construed to affect, amend, or invalidate any
29 contract entered into prior to January 15, 1927, for the operation of
30 ferries or boats upon the waters within this state, which was entered
31 into in good faith by any county with any person, firm, or corporation,
32 except that in case of the operation or maintenance by any county,
33 city, town, port district, or other political subdivision by contract,
34 agreement, or lease with any person, firm, or corporation, of ferries
35 or boats across or wharfs at or upon the waters within this state,
36 including rivers and lakes and Puget Sound, the commission shall have
37 power and authority to regulate rates and services of such operation or

1 maintenance of ferries, boats, or wharfs, to make, fix, alter, or amend
2 said rates, and to regulate service and safety of operations thereof,
3 in the manner and to the same extent as it is empowered to regulate a
4 commercial ferry, notwithstanding the provisions of any act or parts of
5 acts inconsistent herewith.

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

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

27 **Sec. 7.** RCW 43.79A.040 and 2003 c 403 s 9, 2003 c 313 s 10, 2003
28 c 191 s 7, 2003 c 148 s 15, 2003 c 92 s 8, and 2003 c 19 s 12 are each
29 reenacted and amended to read as follows:

30 (1) Money in the treasurer's trust fund may be deposited, invested,
31 and reinvested by the state treasurer in accordance with RCW 43.84.080
32 in the same manner and to the same extent as if the money were in the
33 state treasury.

34 (2) All income received from investment of the treasurer's trust
35 fund shall be set aside in an account in the treasury trust fund to be
36 known as the investment income account.

1 (3) The investment income account may be utilized for the payment
2 of purchased banking services on behalf of treasurer's trust funds
3 including, but not limited to, depository, safekeeping, and
4 disbursement functions for the state treasurer or affected state
5 agencies. The investment income account is subject in all respects to
6 chapter 43.88 RCW, but no appropriation is required for payments to
7 financial institutions. Payments shall occur prior to distribution of
8 earnings set forth in subsection (4) of this section.

9 (4)(a) Monthly, the state treasurer shall distribute the earnings
10 credited to the investment income account to the state general fund
11 except under (b) and (c) of this subsection.

12 (b) The following accounts and funds shall receive their
13 proportionate share of earnings based upon each account's or fund's
14 average daily balance for the period: The Washington promise
15 scholarship account, the college savings program account, the
16 Washington advanced college tuition payment program account, the
17 agricultural local fund, the American Indian scholarship endowment
18 fund, the students with dependents grant account, the basic health plan
19 self-insurance reserve account, the contract harvesting revolving
20 account, the Washington state combined fund drive account, the
21 Washington international exchange scholarship endowment fund, the
22 developmental disabilities endowment trust fund, the energy account,
23 the fair fund, the fruit and vegetable inspection account, the game
24 farm alternative account, the grain inspection revolving fund, the
25 juvenile accountability incentive account, the law enforcement
26 officers' and fire fighters' plan 2 expense fund, the local tourism
27 promotion account, the passenger-only ferry account, the produce
28 railcar pool account, the rural rehabilitation account, the stadium and
29 exhibition center account, the youth athletic facility account, the
30 self-insurance revolving fund, the sulfur dioxide abatement account,
31 the children's trust fund, and the investing in innovation account.
32 However, the earnings to be distributed shall first be reduced by the
33 allocation to the state treasurer's service fund pursuant to RCW
34 43.08.190.

35 (c) The following accounts and funds shall receive eighty percent
36 of their proportionate share of earnings based upon each account's or
37 fund's average daily balance for the period: The advanced right of way
38 revolving fund, the advanced environmental mitigation revolving

1 account, the city and county advance right-of-way revolving fund, the
2 federal narcotics asset forfeitures account, the high occupancy vehicle
3 account, the local rail service assistance account, and the
4 miscellaneous transportation programs account.

5 (5) In conformance with Article II, section 37 of the state
6 Constitution, no trust accounts or funds shall be allocated earnings
7 without the specific affirmative directive of this section.

8 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
9 preservation of the public peace, health, or safety, or support of the
10 state government and its existing public institutions, and takes effect
11 immediately.

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