

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5974

Chapter 374, Laws of 2003

58th Legislature
2003 Regular Session

FERRIES--BUSINESS PRACTICES

EFFECTIVE DATE: 7/27/03

Passed by the Senate April 25, 2003
YEAS 47 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House April 16, 2003
YEAS 97 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved May 20, 2003.

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr.,
Secretary of the Senate of the
State of Washington, do hereby
certify that the attached is
SUBSTITUTE SENATE BILL 5974 as
passed by the Senate and the House
of Representatives on the dates
hereon set forth.

MILTON H. DOUMIT JR.

Secretary

FILED

May 20, 2003 - 2:47 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5974

AS AMENDED BY THE HOUSE

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By Senate Committee on Highways & Transportation (originally sponsored by Senators Benton, Haugen, Horn and Oke)

READ FIRST TIME 03/10/03.

1 AN ACT Relating to the exercise of sound business practices to
2 enhance revenues for Washington State Ferries; and amending RCW
3 47.60.135, 47.60.140, 47.60.150, 47.60.326, and 47.60.330.

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

5 **Sec. 1.** RCW 47.60.135 and 1997 c 323 s 2 are each amended to read
6 as follows:

7 (1) The charter use of Washington State Ferry vessels when
8 established route operations and normal user requirements are not
9 disrupted is permissible. In establishing chartering agreements,
10 Washington State Ferries shall consider the special needs of local
11 communities and interested parties. Washington State Ferries shall use
12 sound business judgment and be sensitive to the interests of existing
13 private enterprises.

14 (2) Consistent with the policy as established in subsection (1) of
15 this section, the (~~general manager~~) chief executive officer of the
16 Washington State Ferries may approve agreements for the chartering of
17 Washington State Ferry vessels to groups or individuals, including
18 hazardous material transporters, in accordance with the following:

1 (a) Vessels may be committed to charter only when established route
2 operation and normal user requirements are not disrupted or
3 inconvenienced. If a vessel is engaged in the transport of hazardous
4 materials, the transporter shall pay for all legs necessary to complete
5 the charter, even if the vessel is simultaneously engaged in an
6 operational voyage on behalf of Washington State Ferries.

7 (b) Charter rates for vessels must be established at actual vessel
8 operating costs plus ~~((fifty percent of such actual costs rounded to
9 the nearest fifty dollars))~~ a market-rate profit margin. Actual vessel
10 operating costs include, but are not limited to, all labor, fuel, and
11 vessel maintenance costs incurred due to the charter agreement,
12 including deadheading and standby.

13 ~~((Recognizing the need for stabilized charter rates in order to
14 encourage use of vessels, rates must be established and revised July
15 1st of each year and must remain fixed for a one year period unless
16 actual vessel operating costs increase five percent or more within that
17 year, in which case the charter rates must be revised in accordance
18 with (b) of this subsection.~~

19 ~~(d) All charter agreements must be in writing and substantially in
20 the form of (e) of this subsection and available, with calculations,
21 for inspection by the legislature and the public.~~

22 ~~(e)) Parties chartering Washington State Ferry vessels shall
23 comply with all applicable laws, rules, and regulations during the
24 charter voyage, and failure to so comply is cause for immediate
25 termination of the charter voyage.~~

26 ~~(("CHARTER CRUISE AGREEMENT~~

27 ~~On this day of,, Washington State Ferries
28 (WSF) and, hereinafter called Lessee, enter into this
29 agreement for rental of a ferry vessel for the purpose of a charter
30 voyage to be held on, the parties agree as follows:~~

31 ~~1. WSF agrees to supply the vessel (subject to change)
32 for the use of the Lessee from the period from to
33 on (date).~~

34 ~~2. The maximum number of passengers; or in the case of hazardous
35 materials transports, trucks and trailers; that will be accommodated on
36 the assigned vessel is This number MAY NOT be exceeded.~~

~~3. The voyage will originate at, and the route of travel during the voyage will be as follows:~~

~~.~~

~~4. The charge for the above voyage is dollars (\$) plus a property damage deposit of \$350 for a total price of \$, to be paid by cashier's check three working days before the date of the voyage at the offices of the WSF at Seattle Ferry Terminal, Pier 52, Seattle, Washington 98104. The Lessee remains responsible for property damage in excess of \$350.~~

~~5. WSF is responsible only for the navigational operation of the chartered ferry and in no way is responsible for directing voyage activities, providing equipment, or any food service.~~

~~6. Other than for hazardous materials transport, the voyage activities must be conducted exclusively on the passenger decks of the assigned ferry. Voyage patrons will not be permitted to enter the pilot house or the engine room, nor shall the vehicle decks be used for any purpose other than loading or unloading of voyage patrons or hazardous materials.~~

~~7. If the Lessee or any of the voyage patrons will possess or consume alcoholic beverages aboard the vessel, the Lessee must obtain the appropriate licenses or permits from the Washington State Liquor Control Board. The Lessee must furnish copies of any necessary licenses or permits to WSF at the same time payment for the voyage is made. Failure to comply with applicable laws, rules, and regulations of appropriate State and Federal agencies is cause for immediate termination of the voyage, and WSF shall retain all payments made as liquidated damages.~~

~~8. WSF is not obligated to provide shoreside parking for the vehicles belonging to voyage patrons.~~

~~9. The Lessee recognizes that the primary function of the WSF is for the cross Sound transportation of the public and the maintaining of the existing schedule. The Lessee recognizes therefore the right of WSF to cancel a voyage commitment without liability to the Lessee due to unforeseen circumstances or events that require the use of the chartered vessel on its scheduled route operations. In the event of~~

1 ~~such a cancellation, WSF agrees to refund the entire amount of the~~
2 ~~charter fee to the Lessee.~~

3 ~~10. The Lessee agrees to hold WSF harmless from, and shall process~~
4 ~~and defend at its own expense, all claims, demands, or suits at law or~~
5 ~~equity, of whatever nature brought against WSF arising in whole or in~~
6 ~~part from the performance of provisions of this agreement. This~~
7 ~~indemnity provision does not require the Lessee to defend or indemnify~~
8 ~~WSF against any action based solely on the alleged negligence of WSF.~~

9 ~~11. This writing is the full agreement between the parties.~~

10 ~~..... WASHINGTON STATE FERRIES~~

11 ~~Lessee~~

12 ~~By:..... By:.....~~

13 ~~General Manager"))~~

14 **Sec. 2.** RCW 47.60.140 and 1995 1st sp.s. c 4 s 2 are each amended
15 to read as follows:

16 (1) The department is empowered to operate such ferry system,
17 including all operations, whether intrastate or international, upon any
18 route or routes, and toll bridges as a revenue-producing and self-
19 liquidating undertaking. The department has full charge of the
20 construction, rehabilitation, rebuilding, enlarging, improving,
21 operation, and maintenance of the ferry system, including toll bridges,
22 approaches, and roadways incidental thereto that may be authorized by
23 the department, including the collection of tolls and other charges for
24 the services and facilities of the undertaking. The department has the
25 exclusive right to enter into leases and contracts for use and
26 occupancy by other parties of the concessions and space located on the
27 ferries, wharves, docks, approaches, parking lots, and landings,
28 including the selling of commercial advertising space and licenses to
29 use the Washington State Ferries trademarks, but, except as provided in
30 subsection (2) of this section, no such leases or contracts may be
31 entered into for more than ten years, nor without a competitive
32 contract process, except as otherwise provided in this section. The
33 competitive process shall be either an invitation for bids in
34 accordance with the process established by chapter 43.19 RCW, or a
35 request for proposals in accordance with the process established by RCW

1 47.56.030. All revenues from commercial advertising, concessions,
2 parking, leases, and contracts must be deposited in the Puget Sound
3 ferry operations account in accordance with RCW 47.60.150.

4 (2) As part of a joint development agreement under which a public
5 or private developer constructs or installs improvements on ferry
6 system property, the department may lease all or part of such property
7 and improvements to such developers for that period of time, not to
8 exceed fifty-five years, or not to exceed thirty years for those areas
9 located within harbor areas, which the department determines is
10 necessary to allow the developer to make reasonable recovery on its
11 initial investment. Any lease entered into as provided for in this
12 subsection that involves state aquatic lands shall conform with the
13 Washington state Constitution and applicable statutory requirements as
14 determined by the department of natural resources. That portion of the
15 lease rate attributable to the state aquatic lands shall be distributed
16 in the same manner as other lease revenues derived from state aquatic
17 lands as provided in RCW 79.24.580.

18 (3) The department shall include in the strategic planning and
19 performance assessment process, as required by RCW 43.88.090, an
20 analysis of the compatibility of public and private partnerships with
21 the state ferry system's core business, and the department's efforts to
22 maximize nonfarebox revenues and provide benefit to the public users of
23 the ferry system facilities. The department shall include an
24 assessment of the need for an open solicitation to identify and select
25 possible public or private partnerships in order to maximize the value
26 of projects and the state's investment in current and future ferry
27 system operations.

28 (a) When the department determines that an open solicitation is
29 necessary, a request for proposal shall be released, consisting of an
30 open solicitation outlining functional specifications to be used as the
31 basis for selecting partnerships in the project.

32 (b) Any responses to the request for proposal shall be evaluated,
33 at a minimum, on the basis of compatibility with the state ferry
34 system's core business, potential to maximize nonfarebox revenue,
35 longevity of the possible partnership commitment, and benefit to the
36 public users of the ferry system facilities.

37 (c) If no responses are received, or those that are received are
38 incompatible with ferry system operations, or do not meet the criteria

1 stated in (b) of this subsection, the state ferry system may proceed
2 with state ferry system operating strategies designed to achieve state
3 ferry system objectives without established partnerships.

4 **Sec. 3.** RCW 47.60.150 and 1999 c 94 s 26 are each amended to read
5 as follows:

6 Subject to the provisions of RCW 47.60.326, the schedule of charges
7 for the services and facilities of the system shall be fixed and
8 revised from time to time by the commission so that the tolls and other
9 revenues deposited in the Puget Sound ferry operations account for
10 maintenance and operation, and all moneys in the Puget Sound capital
11 construction account available for debt service will yield annual
12 revenue and income sufficient, after allowance for all operating,
13 maintenance, and repair expenses to pay the interest and principal and
14 sinking fund charges for all outstanding revenue bonds, and to create
15 and maintain a fund for ordinary renewals and replacements: PROVIDED,
16 That if provision is made by any resolution for the issuance of revenue
17 bonds for the creation and maintenance of a special fund for
18 rehabilitating, rebuilding, enlarging, or improving all or any part of
19 the ferry system then such schedule of tolls and rates of charges shall
20 be fixed and revised so that the revenue and income will also be
21 sufficient to comply with such provision.

22 All income and revenues as collected by the ferry system from any
23 source shall be paid to the state treasurer for the account of the
24 department and deposited into the Puget Sound ferry operations account.
25 Nothing in this section requires tolls on the Hood Canal bridge except
26 as may be required by any bond covenants.

27 **Sec. 4.** RCW 47.60.326 and 2001 1st sp.s. c 1 s 1 are each amended
28 to read as follows:

29 (1) In order to maintain an adequate, fair, and economically sound
30 schedule of charges for the transportation of passengers, vehicles, and
31 commodities on the Washington state ferries, the department of
32 transportation each year shall conduct a full review of such charges.

33 (2) Prior to February 1st of each odd-numbered year the department
34 shall transmit to the transportation commission a report of its review
35 together with its recommendations for the revision of a schedule of
36 charges for the ensuing biennium. The commission on or before July 1st

1 of that year shall adopt as a rule, in the manner provided by the
2 Washington administrative procedure act, a schedule of charges for the
3 Washington state ferries for the ensuing biennium commencing July 1st.
4 The schedule may initially be adopted as an emergency rule if necessary
5 to take effect on, or as near as possible to, July 1st.

6 (3) The department in making its review and formulating
7 recommendations and the commission in adopting a schedule of charges
8 may consider any of the following factors:

9 (a) The amount of subsidy available to the ferry system for
10 maintenance and operation;

11 (b) The time and distance of ferry runs;

12 (c) The maintenance and operation costs for ferry runs with a
13 proper adjustment for higher costs of operating outmoded or less
14 efficient equipment;

15 (d) The efficient distribution of traffic between cross-sound
16 routes;

17 (e) The desirability of reasonable commutation rates for persons
18 using the ferry system to commute daily to work;

19 (f) The effect of proposed fares in increasing walk-on and
20 vehicular passenger use;

21 (g) The effect of proposed fares in promoting all types of ferry
22 use during nonpeak periods;

23 (h) The estimated revenues that are projected to be earned by the
24 ferry system from commercial advertisements, parking, contracts,
25 leases, and other sources;

26 (i) Such other factors as prudent managers of a major ferry system
27 would consider.

28 (4) If at any time during the biennium it appears that projected
29 revenues from the Puget Sound ferry operations account and any other
30 operating subsidy available to the Washington state ferries will be
31 less than the projected total cost of maintenance and operation of the
32 Washington state ferries for the biennium, the department shall
33 forthwith undertake a review of its schedule of charges to ascertain
34 whether or not the schedule of charges should be revised. The
35 department shall, upon completion of its review report, submit its
36 recommendation to the transportation commission which may in its sound
37 discretion revise the schedule of charges as required to meet necessary
38 maintenance and operation expenditures of the ferry system for the

1 biennium or may defer action until the regular annual review and
2 revision of ferry charges as provided in subsection (2) of this
3 section.

4 (5) The provisions of RCW 47.60.330 relating to public
5 participation shall apply to the process of revising ferry tolls under
6 this section.

7 (6) Under RCW 43.135.055, the transportation commission may
8 increase ferry tolls included in the schedule of charges adopted under
9 this section by a percentage that exceeds the fiscal growth factor.

10 (7) Notwithstanding the provisions of this section and chapter
11 81.28 RCW, and using sound business judgment, the chief executive
12 officer of the ferry system may authorize the use of promotional,
13 discounted, and special event fares to the general public and
14 commercial enterprises for the purpose of maximizing capacity use and
15 the revenues collected by the ferry system. The department shall
16 report to the transportation commission a summary of the promotional,
17 discounted, and special event fares offered during each fiscal year and
18 the financial results from these activities.

19 **Sec. 5.** RCW 47.60.330 and 1983 c 15 s 26 are each amended to read
20 as follows:

21 (1) Before a substantial expansion or curtailment in the level of
22 service provided to ferry users, or a revision in the schedule of ferry
23 tolls or charges, the department of transportation shall consult with
24 affected ferry users. The consultation shall be: (a) By public
25 hearing in affected local communities; (b) by review with the affected
26 ferry advisory committees pursuant to RCW 47.60.310; (c) by conducting
27 a survey of affected ferry users; or (d) by any combination of (a)
28 through (c). Promotional, discount, and special event fares that are
29 not part of the published schedule of ferry charges or tolls are
30 exempt. The department shall report an accounting of all exempt
31 revenues to the transportation commission each fiscal year.

32 (2) There is created a ferry system productivity council consisting
33 of a representative of each ferry advisory committee empanelled under
34 RCW 47.60.310, elected by the members thereof, and two representatives
35 of employees of the ferry system appointed by mutual agreement of all
36 of the unions representing ferry employees, which shall meet from time

1 to time with ferry system management to discuss means of improving
2 ferry system productivity.

3 (3) Before increasing ferry tolls the department of transportation
4 shall consider all possible cost reductions with full public
5 participation as provided in subsection (1) of this section and,
6 consistent with public policy, shall consider adapting service levels
7 equitably on a route-by-route basis to reflect trends in and forecasts
8 of traffic usage. Forecasts of traffic levels shall be developed by
9 the bond covenant traffic engineering firm appointed under the
10 provisions of RCW 47.60.450. Provisions of this section shall not
11 alter obligations under RCW 47.60.450. Before including any toll
12 increase in a budget proposal by the commission, the department of
13 transportation shall consult with affected ferry users in the manner
14 prescribed in (1)(b) of this section plus the procedure of either (1)
15 (a) or (c) of this section.

Passed by the Senate April 25, 2003.
Passed by the House April 16, 2003.
Approved by the Governor May 20, 2003.
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