

**ESSB 5742 - S AMD 437**

By Senators Haugen, King

ADOPTED 05/12/2011

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 47.60.530 and 1979 c 27 s 4 are each amended to read  
4 as follows:

5 ~~((There is hereby created in the motor vehicle fund))~~ (1) The Puget  
6 Sound ferry operations account ((to the credit of which shall be  
7 deposited all moneys directed by law to be deposited therein. All  
8 moneys deposited in this account shall be expended pursuant to  
9 appropriations only for reimbursement of the motor vehicle fund for any  
10 state moneys, other than insurance proceeds, expended therefrom for  
11 alternate transportation services instituted as a result of the  
12 destruction of the Hood Canal bridge, and)) is created in the motor  
13 vehicle fund.

14 (2) The following funds must be deposited into the account:

15 (a) All moneys directed by law;

16 (b) All revenues generated from ferry fares; and

17 (c) All revenues generated from commercial advertising,  
18 concessions, parking, and leases as allowed under RCW 47.60.140.

19 (3) Moneys in the account may be spent only after appropriation.

20 (4) Expenditures from the account may be used only for the  
21 maintenance, administration, and operation of the ((Washington state  
22 ferries including the Hood Canal bridge, supplementing as required the  
23 revenues available from the)) Washington state ferry system.

24 NEW SECTION. Sec. 2. A new section is added to chapter 47.60 RCW  
25 to read as follows:

26 (1) The capital vessel replacement account is created in the motor  
27 vehicle fund. All revenues generated from the vessel replacement  
28 surcharge under RCW 47.60.315(7) must be deposited into the account.  
29 Moneys in the account may be spent only after appropriation.

1 Expenditures from the account may be used only for the construction or  
2 purchase of ferry vessels and to pay the principal and interest on  
3 bonds authorized for the construction or purchase of ferry vessels.  
4 However, expenditures from the account must first be used to support  
5 the construction or purchase, including any applicable financing costs,  
6 of a ferry vessel with a carrying capacity of at least one hundred  
7 forty-four cars.

8 (2) The state treasurer may not transfer any moneys from the  
9 capital vessel replacement account except to the transportation 2003  
10 account (nickel account) for debt service on bonds issued for the  
11 construction of a 144-car class ferry vessel.

12 **Sec. 3.** RCW 47.60.315 and 2007 c 512 s 6 are each amended to read  
13 as follows:

14 (1) The commission shall adopt fares and pricing policies by rule,  
15 under chapter 34.05 RCW, according to the following schedule:

16 (a) Each year the department shall provide the commission a report  
17 of its review of fares and pricing policies, with recommendations for  
18 the revision of fares and pricing policies for the ensuing year;

19 (b) By September 1st of each year, beginning in 2008, the  
20 commission shall adopt by rule fares and pricing policies for the  
21 ensuing year.

22 (2) The commission may adopt by rule fares that are effective for  
23 more or less than one year for the purposes of transitioning to the  
24 fare schedule in subsection (1) of this section.

25 (3) The commission may increase ferry fares included in the  
26 schedule of charges adopted under this section by a percentage that  
27 exceeds the fiscal growth factor.

28 (4) The chief executive officer of the ferry system may authorize  
29 the use of promotional, discounted, and special event fares to the  
30 general public and commercial enterprises for the purpose of maximizing  
31 capacity use and the revenues collected by the ferry system. The  
32 department shall report to the commission a summary of the promotional,  
33 discounted, and special event fares offered during each fiscal year and  
34 the financial results from these activities.

35 (5) Fare revenues and other revenues deposited in the Puget Sound  
36 ferry operations account created in RCW 47.60.530 may not be used to

1 support the Puget Sound capital construction account created in RCW  
2 47.60.505, unless the support for capital is separately identified in  
3 the fare.

4 (6) The commission may not raise fares until the fare rules contain  
5 pricing policies developed under RCW 47.60.290, or September 1, 2009,  
6 whichever is later.

7 (7) The commission shall impose a vessel replacement surcharge of  
8 twenty-five cents on every one-way and round-trip ferry fare sold,  
9 including multiride and monthly pass fares. This surcharge must be  
10 clearly indicated to ferry passengers and drivers and, if possible, on  
11 the fare media itself.

12 **Sec. 4.** RCW 82.08.0255 and 2007 c 223 s 9 are each amended to read  
13 as follows:

14 (1) The tax levied by RCW 82.08.020 shall not apply to sales of  
15 motor vehicle and special fuel if:

16 (a) The fuel is purchased for the purpose of public transportation  
17 and the purchaser is entitled to a refund or an exemption under RCW  
18 82.36.275 or 82.38.080(3); or

19 (b) The fuel is purchased by a private, nonprofit transportation  
20 provider certified under chapter 81.66 RCW and the purchaser is  
21 entitled to a refund or an exemption under RCW 82.36.285 or  
22 82.38.080(1)(h); or

23 (c) The fuel is purchased by a public transportation benefit area  
24 created under chapter 36.57A RCW or a county-owned ferry or county  
25 ferry district created under chapter 36.54 RCW for use in passenger-  
26 only ferry vessels; or

27 (d) The fuel is purchased by the Washington state ferry system for  
28 use in a state-owned ferry after June 30, 2013; or

29 (e) The fuel is purchased by a county-owned ferry for use in ferry  
30 vessels after June 30, 2013; or

31 (f) The fuel is taxable under chapter 82.36 or 82.38 RCW.

32 (2) Any person who has paid the tax imposed by RCW 82.08.020 on the  
33 sale of special fuel delivered in this state shall be entitled to a  
34 credit or refund of such tax with respect to fuel subsequently  
35 established to have been actually transported and used outside this  
36 state by persons engaged in interstate commerce. The tax shall be

1 claimed as a credit or refunded through the tax reports required under  
2 RCW 82.38.150.

3 **Sec. 5.** RCW 82.12.0256 and 2007 c 223 s 10 are each amended to  
4 read as follows:

5 The provisions of this chapter shall not apply in respect to the  
6 use of:

7 (1) Special fuel purchased in this state upon which a refund is  
8 obtained as provided in RCW 82.38.180(2); and

9 (2) Motor vehicle and special fuel if:

10 (a) The fuel is used for the purpose of public transportation and  
11 the purchaser is entitled to a refund or an exemption under RCW  
12 82.36.275 or 82.38.080(3); or

13 (b) The fuel is purchased by a private, nonprofit transportation  
14 provider certified under chapter 81.66 RCW and the purchaser is  
15 entitled to a refund or an exemption under RCW 82.36.285 or  
16 82.38.080(1)(h); or

17 (c) The fuel is purchased by a public transportation benefit area  
18 created under chapter 36.57A RCW or a county-owned ferry or county  
19 ferry district created under chapter 36.54 RCW for use in passenger-  
20 only ferry vessels; or

21 (d) The fuel is taxable under chapter 82.36 or 82.38 RCW:  
22 PROVIDED, That the use of motor vehicle and special fuel upon which a  
23 refund of the applicable fuel tax is obtained shall not be exempt under  
24 this subsection (2)(d), and the director of licensing shall deduct from  
25 the amount of such tax to be refunded the amount of tax due under this  
26 chapter and remit the same each month to the department of revenue; or

27 (e) The fuel is purchased by a county-owned ferry for use in ferry  
28 vessels after June 30, 2013; or

29 (f) The fuel is purchased by the Washington state ferry system for  
30 use in a state-owned ferry after June 30, 2013.

31 **Sec. 6.** RCW 43.84.092 and 2010 1st sp.s. c 30 s 20, 2010 1st sp.s.  
32 c 9 s 7, 2010 c 248 s 6, 2010 c 222 s 5, 2010 c 162 s 6, and 2010 c 145  
33 s 11 are each reenacted and amended to read as follows:

34 (1) All earnings of investments of surplus balances in the state  
35 treasury shall be deposited to the treasury income account, which  
36 account is hereby established in the state treasury.

1 (2) The treasury income account shall be utilized to pay or receive  
2 funds associated with federal programs as required by the federal cash  
3 management improvement act of 1990. The treasury income account is  
4 subject in all respects to chapter 43.88 RCW, but no appropriation is  
5 required for refunds or allocations of interest earnings required by  
6 the cash management improvement act. Refunds of interest to the  
7 federal treasury required under the cash management improvement act  
8 fall under RCW 43.88.180 and shall not require appropriation. The  
9 office of financial management shall determine the amounts due to or  
10 from the federal government pursuant to the cash management improvement  
11 act. The office of financial management may direct transfers of funds  
12 between accounts as deemed necessary to implement the provisions of the  
13 cash management improvement act, and this subsection. Refunds or  
14 allocations shall occur prior to the distributions of earnings set  
15 forth in subsection (4) of this section.

16 (3) Except for the provisions of RCW 43.84.160, the treasury income  
17 account may be utilized for the payment of purchased banking services  
18 on behalf of treasury funds including, but not limited to, depository,  
19 safekeeping, and disbursement functions for the state treasury and  
20 affected state agencies. The treasury income account is subject in all  
21 respects to chapter 43.88 RCW, but no appropriation is required for  
22 payments to financial institutions. Payments shall occur prior to  
23 distribution of earnings set forth in subsection (4) of this section.

24 (4) Monthly, the state treasurer shall distribute the earnings  
25 credited to the treasury income account. The state treasurer shall  
26 credit the general fund with all the earnings credited to the treasury  
27 income account except:

28 (a) The following accounts and funds shall receive their  
29 proportionate share of earnings based upon each account's and fund's  
30 average daily balance for the period: The aeronautics account, the  
31 aircraft search and rescue account, the budget stabilization account,  
32 the capital vessel replacement account, the capitol building  
33 construction account, the Cedar River channel construction and  
34 operation account, the Central Washington University capital projects  
35 account, the charitable, educational, penal and reformatory  
36 institutions account, the cleanup settlement account, the Columbia  
37 river basin water supply development account, the common school  
38 construction fund, the county arterial preservation account, the county

1 criminal justice assistance account, the county sales and use tax  
2 equalization account, the deferred compensation administrative account,  
3 the deferred compensation principal account, the department of  
4 licensing services account, the department of retirement systems  
5 expense account, the developmental disabilities community trust  
6 account, the drinking water assistance account, the drinking water  
7 assistance administrative account, the drinking water assistance  
8 repayment account, the Eastern Washington University capital projects  
9 account, the education construction fund, the education legacy trust  
10 account, the election account, the energy freedom account, the energy  
11 recovery act account, the essential rail assistance account, The  
12 Evergreen State College capital projects account, the federal forest  
13 revolving account, the ferry bond retirement fund, the freight  
14 congestion relief account, the freight mobility investment account, the  
15 freight mobility multimodal account, the grade crossing protective  
16 fund, the public health services account, the health system capacity  
17 account, the high capacity transportation account, the state higher  
18 education construction account, the higher education construction  
19 account, the highway bond retirement fund, the highway infrastructure  
20 account, the highway safety account, the high occupancy toll lanes  
21 operations account, the hospital safety net assessment fund, the  
22 industrial insurance premium refund account, the judges' retirement  
23 account, the judicial retirement administrative account, the judicial  
24 retirement principal account, the local leasehold excise tax account,  
25 the local real estate excise tax account, the local sales and use tax  
26 account, the marine resources stewardship trust account, the medical  
27 aid account, the mobile home park relocation fund, the motor vehicle  
28 fund, the motorcycle safety education account, the multiagency  
29 permitting team account, the multimodal transportation account, the  
30 municipal criminal justice assistance account, the municipal sales and  
31 use tax equalization account, the natural resources deposit account,  
32 the oyster reserve land account, the pension funding stabilization  
33 account, the perpetual surveillance and maintenance account, the public  
34 employees' retirement system plan 1 account, the public employees'  
35 retirement system combined plan 2 and plan 3 account, the public  
36 facilities construction loan revolving account beginning July 1, 2004,  
37 the public health supplemental account, the public transportation  
38 systems account, the public works assistance account, the Puget Sound

1 capital construction account, the Puget Sound ferry operations account,  
2 the Puyallup tribal settlement account, the real estate appraiser  
3 commission account, the recreational vehicle account, the regional  
4 mobility grant program account, the resource management cost account,  
5 the rural arterial trust account, the rural Washington loan fund, the  
6 site closure account, the small city pavement and sidewalk account, the  
7 special category C account, the special wildlife account, the state  
8 employees' insurance account, the state employees' insurance reserve  
9 account, the state investment board expense account, the state  
10 investment board commingled trust fund accounts, the state patrol  
11 highway account, the state route number 520 civil penalties account,  
12 the state route number 520 corridor account, the supplemental pension  
13 account, the Tacoma Narrows toll bridge account, the teachers'  
14 retirement system plan 1 account, the teachers' retirement system  
15 combined plan 2 and plan 3 account, the tobacco prevention and control  
16 account, the tobacco settlement account, the transportation 2003  
17 account (nickel account), the transportation equipment fund, the  
18 transportation fund, the transportation improvement account, the  
19 transportation improvement board bond retirement account, the  
20 transportation infrastructure account, the transportation partnership  
21 account, the traumatic brain injury account, the tuition recovery trust  
22 fund, the University of Washington bond retirement fund, the University  
23 of Washington building account, the urban arterial trust account, the  
24 volunteer firefighters' and reserve officers' relief and pension  
25 principal fund, the volunteer firefighters' and reserve officers'  
26 administrative fund, the Washington judicial retirement system account,  
27 the Washington law enforcement officers' and firefighters' system plan  
28 1 retirement account, the Washington law enforcement officers' and  
29 firefighters' system plan 2 retirement account, the Washington public  
30 safety employees' plan 2 retirement account, the Washington school  
31 employees' retirement system combined plan 2 and 3 account, the  
32 Washington state health insurance pool account, the Washington state  
33 patrol retirement account, the Washington State University building  
34 account, the Washington State University bond retirement fund, the  
35 water pollution control revolving fund, and the Western Washington  
36 University capital projects account. Earnings derived from investing  
37 balances of the agricultural permanent fund, the normal school

1 permanent fund, the permanent common school fund, the scientific  
2 permanent fund, and the state university permanent fund shall be  
3 allocated to their respective beneficiary accounts.

4 (b) Any state agency that has independent authority over accounts  
5 or funds not statutorily required to be held in the state treasury that  
6 deposits funds into a fund or account in the state treasury pursuant to  
7 an agreement with the office of the state treasurer shall receive its  
8 proportionate share of earnings based upon each account's or fund's  
9 average daily balance for the period.

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

13 **Sec. 7.** RCW 47.64.120 and 2010 c 283 s 10 are each amended to read  
14 as follows:

15 (1) Except as otherwise provided in this chapter, the employer and  
16 ferry system employee organizations, through their collective  
17 bargaining representatives, shall meet at reasonable times to negotiate  
18 in good faith with respect to wages, hours, working conditions, and  
19 insurance, and other matters mutually agreed upon. Employer funded  
20 retirement benefits shall be provided under the public employees  
21 retirement system under chapter 41.40 RCW and shall not be included in  
22 the scope of collective bargaining. Except as provided under RCW  
23 47.64.270, the employer is not required to bargain over health care  
24 benefits. Any retirement system or retirement benefits shall not be  
25 subject to collective bargaining.

26 (2) Upon ratification of bargaining agreements, ferry employees are  
27 entitled to an amount equivalent to the interest earned on retroactive  
28 compensation increases. For purposes of this section, the interest  
29 earned on retroactive compensation increases is the same monthly rate  
30 of interest that was earned on the amount of the compensation increases  
31 while held in the state treasury. The interest will be computed for  
32 each employee until the date the retroactive compensation is paid, and  
33 must be allocated in accordance with appropriation authority. The  
34 interest earned on retroactive compensation is not considered part of  
35 the ongoing compensation obligation of the state and is not  
36 compensation earnable for the purposes of chapter 41.40 RCW.



1 Negotiations shall also include grievance procedures for resolving any  
2 questions arising under the agreement, which shall be embodied in a  
3 written agreement and signed by the parties.

4 (3) The employer shall not bargain over the rights of management as  
5 identified in RCW 41.80.040.

6 (4) A collective bargaining agreement may not contain any provision  
7 that extends the term of an existing collective bargaining agreement or  
8 applicability of items incompatible with this section in an existing  
9 collective bargaining agreement.

10 (5) Except as otherwise provided in this chapter, if a conflict  
11 exists between an executive order, administrative rule, or agency  
12 policy relating to wages, hours, and terms and conditions of employment  
13 and a collective bargaining agreement negotiated under this chapter,  
14 the collective bargaining agreement shall prevail. A provision of a  
15 collective bargaining agreement that conflicts with the terms of a  
16 statute is invalid and unenforceable.

17 NEW SECTION. Sec. 8. A new section is added to chapter 47.64 RCW  
18 to read as follows:

19 (1) Effective July 1, 2013, all captains of Washington state ferry  
20 vessels are part of Washington state ferries management.

21 (2) The captain, also known as the master of a vessel or the  
22 commanding officer, is the ultimate authority on and has responsibility  
23 for the entire vessel. The captain's responsibilities include, but are  
24 not limited to:

25 (a) Ensuring the safe navigation of the vessel and its crew and  
26 passengers;

27 (b) Following all applicable federal, state, and agency policies  
28 and regulations;

29 (c) Supervising crew in performance, operations, training,  
30 security, and environmental protection; and

31 (d) Overseeing all aspects of vessel operations.

32 (3) Effective July 1, 2013, the public employment relations  
33 commission shall sever from the masters, mates, and pilots bargaining  
34 unit all captains. In anticipation of the captains' severance from the  
35 masters, mates, and pilots bargaining unit, the public employment  
36 relations commission shall conduct an election by August 31, 2011, to  
37 determine representation of the captains. A union seeking to represent

1 captains does not have to demonstrate a showing of interest to be  
2 included on the ballot. If a majority of the captains in the masters,  
3 mates, and pilots bargaining unit indicate by vote that they desire to  
4 be included in a newly formed captains-only bargaining unit, the public  
5 employment relations commission shall certify a captains-only  
6 bargaining unit, to be effective July 1, 2013. Notwithstanding the  
7 results of the election, captains shall remain a part of the masters,  
8 mates, and pilots bargaining unit through June 30, 2013.

9 (4) If a new captains-only bargaining unit is created, the employer  
10 and the exclusive bargaining representative for the captains-only  
11 bargaining unit must negotiate a collective bargaining agreement  
12 exclusive to the captains-only bargaining unit.

13 (5) For negotiations covering the 2013-2015 biennium, the employer  
14 and the exclusive bargaining representative of the captains-only  
15 bargaining unit must negotiate agreements that are consistent with this  
16 section.

17 (6) A collective bargaining agreement may not contain any provision  
18 that extends the term of an existing collective bargaining agreement or  
19 applicability of items incompatible with this section in an existing  
20 collective bargaining agreement.

21 NEW SECTION. **Sec. 9.** A new section is added to chapter 47.64 RCW  
22 to read as follows:

23 For the purposes of this section and sections 10 through 15 of this  
24 act:

25 (1) "Management" means an employee at the Washington state ferries  
26 who is part of Washington management services, is exempt, or is a  
27 captain.

28 (2) "Performance measure" means measurable standards to be used by  
29 the department to evaluate the sufficiency of the services being  
30 provided to ferry riders.

31 (3) "Performance report" means a report that summarizes ferry  
32 system performance using the performance measures identified in  
33 sections 10 and 11 of this act.

34 (4) "Performance target" means the desired outcome of a performance  
35 measure.

1        NEW SECTION.    **Sec. 10.**    A new section is added to chapter 47.64 RCW  
2 to read as follows:

3        Performance targets must be established by an ad hoc committee with  
4 members from and designated by the office of the governor, which must  
5 include at least one member from labor. The committee may not consist  
6 of more than eleven members. By July 1, 2011, the committee shall  
7 present performance targets to the representatives of the legislative  
8 transportation committees and the joint transportation committee for  
9 review of the performance measures listed under this section. The  
10 committee may also develop performance measures in addition to the  
11 following:

12        (1) Safety performance as measured by passenger injuries per one  
13 million passenger miles and by injuries per ten thousand revenue  
14 service hours that are recordable by standards of the federal  
15 occupational safety and health administration and related to standard  
16 operating procedures;

17        (2) Service effectiveness measures including, but not limited to,  
18 passenger satisfaction of interactions with ferry employees,  
19 cleanliness and comfort of vessels and terminals, and satisfactory  
20 response to requests for assistance. Passenger satisfaction must be  
21 measured by an evaluation that is created by a contracted market  
22 research company and conducted by the Washington state transportation  
23 commission as part of the ferry riders' opinion group survey. The  
24 Washington state transportation commission shall, to the extent  
25 possible, integrate the passenger satisfaction evaluation into the  
26 ferry user data survey described in RCW 47.60.286;

27        (3) Cost-containment measures including, but not limited to,  
28 operating cost per passenger mile, operating cost per revenue service  
29 mile, discretionary overtime as a percentage of straight time, and  
30 gallons of fuel consumed per revenue service mile; and

31        (4) Maintenance and capital program effectiveness measures  
32 including, but not limited to: Project delivery rate as measured by  
33 the number of projects completed on time and within the omnibus  
34 transportation appropriations act; vessel and terminal design and  
35 engineering costs as measured by a percentage of the total capital  
36 program, including measurement of the ongoing operating and maintenance  
37 costs; and total vessel out-of-service time.

1        NEW SECTION.    **Sec. 11.**    A new section is added to chapter 47.64 RCW  
2 to read as follows:

3        (1) Beginning on October 1, 2011, the department shall report on  
4 peak-direction, peak-time, on-time performance by route for all runs  
5 except those delayed or canceled due to tidal conditions. On-time is  
6 defined as within ten minutes of the scheduled time. Peak-time for the  
7 Mukilteo/Clinton,                    Edmonds/Kingston,                    Seattle/Bainbridge,  
8 Seattle/Bremerton,                    Fauntleroy/Vashon/Southworth,                    and                    Point  
9 Defiance/Tahlequah ferry routes means weekdays from 5:00 a.m. to 9:00  
10 a.m. and 3:00 p.m. to 7:00 p.m. Peak-time for the Coupeville  
11 (Keystone)/Port Townsend and Anacortes/San Juan Island ferry routes  
12 means Fridays from 3:00 p.m. to closing, Saturdays all day, Sundays  
13 all day, holidays all day, and Mondays from opening to 12:00 p.m.

14        (2) The department shall, on a quarterly basis, report Washington  
15 state ferry system management's performance as it relates to the  
16 performance measure in subsection (1) of this section (a) to the  
17 transportation committees of the legislature, (b) on its vessels, (c)  
18 at all ferry terminals, and (d) on the department's web site. The  
19 statistics must include reasons for any delays over five minutes and  
20 any delays over ten minutes from the scheduled time.

21        (3) The department may not eliminate any ferry route without prior  
22 legislative approval.

23        NEW SECTION.    **Sec. 12.**    A new section is added to chapter 47.64 RCW  
24 to read as follows:

25        (1) The office of financial management shall complete a government  
26 management and accountability performance report that provides a  
27 baseline assessment of current performance on the performance measures  
28 identified in sections 10 and 11 of this act using final 2009-2011  
29 data. This report must be presented to the legislature by November 1,  
30 2011, through the attainment report required in RCW 47.01.071(5) and  
31 47.04.280.

32        (2) By October 1, 2012, and each year thereafter, the office of  
33 financial management shall complete a performance report for the prior  
34 fiscal year. This report must be reviewed by the joint transportation  
35 committee, and the findings of the report must be incorporated into the  
36 governor's proposed biennial transportation budget. The office of

1 financial management shall transmit a copy of the accepted performance  
2 report to the legislature with the governor's biennial transportation  
3 budget.

4 (3) Management shall lead implementation of the performance  
5 measures in sections 10 and 11 of this act.

6 NEW SECTION. **Sec. 13.** A new section is added to chapter 47.64 RCW  
7 to read as follows:

8 If the Washington state ferries does not meet at least eighty  
9 percent of the performance target that is set for each performance  
10 measure identified in sections 10 and 11 of this act by June 30, 2013,  
11 the governor, with the consensus of the chairs and ranking minorities  
12 of the transportation committees of the legislature, shall appoint a  
13 governor's management representative who, within sixty days, shall  
14 develop and submit a corrective action plan to achieve the performance  
15 targets in sections 10 and 11 of this act within the following twelve  
16 months. The plan must be submitted to the governor and the  
17 transportation committees of the legislature.

18 NEW SECTION. **Sec. 14.** A new section is added to chapter 47.64 RCW  
19 to read as follows:

20 (1) If the Washington state ferries does not meet at least eighty  
21 percent of the performance target that is set for each performance  
22 measure identified in sections 10 and 11 of this act by June 30, 2013,  
23 the department must:

24 (a) Solicit a fixed cost bid for meeting the performance measures  
25 in sections 10 and 11 of this act, which must include a request for  
26 information or a request for qualifications to identify qualifications  
27 necessary and costs associated with privatizing the management  
28 functions of the Washington state ferries; and

29 (b) Present the results of the request for information or request  
30 for qualifications to the transportation committees of the legislature  
31 and the governor.

32 (2) In consultation with the governor's office, the transportation  
33 committees of the legislature shall utilize the information provided in  
34 subsection (1) of this section to determine whether or not to  
35 competitively contract out the management functions of the Washington  
36 state ferry system the following biennium.

1 (3) If the governor and the transportation committees of the  
2 legislature opt to competitively contract out the management functions  
3 of the Washington state ferry system in the following biennium, the  
4 contract must be a fixed cost contract that requires the private  
5 management services firm to meet or exceed the performance target for  
6 eighty percent of the performance measures under sections 10 and 11 of  
7 this act. Based on these performance measures, the contract must  
8 provide for incentive or retained payment arrangements as a means of  
9 ensuring satisfactory performance of the contract and improved  
10 performance of the ferry system over time.

11 (4) The contract must include a requirement that the firm retain  
12 existing and future collective bargaining agreements as negotiated  
13 between the state and the employees' labor representatives. The  
14 private management services firm may rehire Washington management  
15 services employees or exempt employees at the Washington state ferries.

16 (5) The contract must be for a two-year period. If the private  
17 management services firm meets or exceeds the performance measures  
18 under sections 10 and 11 of this act, the contract is renewable for an  
19 additional two years for a maximum of ten years. After ten years, the  
20 department shall implement an invitation for bid process.

21 (6) Consistent with RCW 41.06.142(3), the contract is not subject  
22 to requirements for agencies purchasing services that have been  
23 customarily and historically provided by state employees.

24 NEW SECTION. **Sec. 15.** A new section is added to chapter 47.64 RCW  
25 to read as follows:

26 The report required in RCW 47.01.071(5) and 47.04.280 must include  
27 the performance measures in sections 10 and 11 of this act.

28 NEW SECTION. **Sec. 16.** A new section is added to chapter 41.58 RCW  
29 to read as follows:

30 (1) There is created the marine employees' commission within the  
31 public employment relations commission. The governor shall appoint the  
32 marine employees' commission with the consent of the senate. The  
33 marine employees' commission shall consist of three members: One  
34 member to be appointed from labor; one member from industry; and one  
35 member from the public who has significant knowledge of maritime  
36 affairs. The public member is chair of the marine employees'

1 commission. Any member of the marine employees' commission may be  
2 removed by the governor, upon notice and hearing, for neglect of duty  
3 or malfeasance in office, but for no other cause. Marine employees'  
4 commission members are not eligible for state retirement under chapter  
5 41.40 RCW by virtue of their service on the marine employees'  
6 commission. Members of the marine employees' commission must be  
7 compensated in accordance with RCW 43.03.250 and must receive  
8 reimbursement for official travel and other expenses at the same rate  
9 and on the same terms as provided for the transportation commission  
10 under RCW 47.01.061.

11 (2) The rules of procedure adopted by the public employment  
12 relations commission under chapter 34.05 RCW apply to state ferry  
13 system employees, except that the marine employees' commission shall  
14 act in place of the public employment relations commission for appeals  
15 of unfair labor practice complaints, questions concerning  
16 representation, and unit clarifications.

17 (3) In addition to subsection (2) of this section, the marine  
18 employees' commission shall perform the duties as provided in RCW  
19 47.64.280.

20 (4) This section expires June 30, 2013.

21 **Sec. 17.** RCW 41.58.050 and 1975 1st ex.s. c 296 s 7 are each  
22 amended to read as follows:

23 The ((board)) commission shall have authority from time to time to  
24 make, amend, and rescind, in the manner prescribed by the  
25 administrative procedure act, chapter 34.05 RCW, such rules and  
26 regulations as may be necessary to carry out the provisions of this  
27 chapter.

28 **Sec. 18.** RCW 41.58.060 and 1983 c 15 s 22 are each amended to read  
29 as follows:

30 For any matter concerning the state ferry system and employee  
31 relations, collective bargaining, or labor disputes or stoppages, the  
32 provisions of this chapter and chapter 47.64 RCW shall govern.  
33 However, if a conflict exists between this chapter and chapter 47.64  
34 RCW, this chapter shall govern.

1       **Sec. 19.** RCW 47.64.130 and 2010 c 8 s 10021 are each amended to  
2 read as follows:

3       (1) It is an unfair labor practice for the employer or its  
4 representatives:

5       (a) To interfere with, restrain, or coerce employees in the  
6 exercise of the rights guaranteed by this chapter;

7       (b) To dominate or interfere with the formation or administration  
8 of any employee organization or contribute financial or other support  
9 to it. However, subject to rules made by the public employment  
10 relations commission pursuant to RCW (~~47.64.280~~) 41.58.050, an  
11 employer shall not be prohibited from permitting employees to confer  
12 with it or its representatives or agents during working hours without  
13 loss of time or pay;

14       (c) To encourage or discourage membership in any employee  
15 organization by discrimination in regard to hiring, tenure of  
16 employment, or any term or condition of employment, but nothing  
17 contained in this subsection prevents an employer from requiring, as a  
18 condition of continued employment, payment of periodic dues and fees  
19 uniformly required to an exclusive bargaining representative pursuant  
20 to RCW 47.64.160. However, nothing prohibits the employer from  
21 agreeing to obtain employees by referral from a lawful hiring hall  
22 operated by or participated in by a labor organization;

23       (d) To discharge or otherwise discriminate against an employee  
24 because he or she has filed charges or given testimony under this  
25 chapter;

26       (e) To refuse to bargain collectively with the representatives of  
27 its employees.

28       (2) It is an unfair labor practice for an employee organization:

29       (a) To restrain or coerce (i) employees in the exercise of the  
30 rights guaranteed by this chapter. However, this subsection does not  
31 impair the right of an employee organization to prescribe its own rules  
32 with respect to the acquisition or retention of membership therein, or  
33 (ii) an employer in the selection of his or her representatives for the  
34 purposes of collective bargaining or the adjustment of grievances;

35       (b) To cause or attempt to cause an employer to discriminate  
36 against an employee in violation of subsection (1)(c) of this section;

37       (c) To refuse to bargain collectively with an employer.



1 (3) The expression of any view, argument, or opinion, or the  
2 dissemination thereof to the public, whether in written, printed,  
3 graphic, or visual form, shall not constitute or be evidence of an  
4 unfair labor practice under any of the provisions of this chapter, if  
5 the expression contains no threat of reprisal or force or promise of  
6 benefit.

7 **Sec. 20.** RCW 47.64.280 and 2010 c 283 s 14 are each amended to  
8 read as follows:

9 ~~(1) ((There is created the marine employees' commission. The  
10 governor shall appoint the commission with the consent of the senate.  
11 The commission shall consist of three members: One member to be  
12 appointed from labor, one member from industry, and one member from the  
13 public who has significant knowledge of maritime affairs. The public  
14 member shall be chair of the commission. One of the original members  
15 shall be appointed for a term of three years, one for a term of four  
16 years, and one for a term of five years. Their successors shall be  
17 appointed for terms of five years each, except that any person chosen  
18 to fill a vacancy shall be appointed only for the unexpired term of the  
19 member whom he or she succeeds. Commission members are eligible for  
20 reappointment. Any member of the commission may be removed by the  
21 governor, upon notice and hearing, for neglect of duty or malfeasance  
22 in office, but for no other cause. Commission members are not eligible  
23 for state retirement under chapter 41.40 RCW by virtue of their service  
24 on the commission. Members of the commission shall be compensated in  
25 accordance with RCW 43.03.250 and shall receive reimbursement for  
26 official travel and other expenses at the same rate and on the same  
27 terms as provided for the transportation commission by RCW 47.01.061.  
28 The payments shall be made from the Puget Sound ferry operations  
29 account.~~

30 ~~(2)) The marine employees' commission, created in section 16 of  
31 this act, shall(((:~~—(a))~~)) adjust all complaints, grievances, and  
32 disputes between labor and management arising out of the operation of  
33 the ferry system as provided in RCW 47.64.150(((:~~—(b)~~ provide for  
34 impassé mediation as required in RCW 47.64.210; and (c) perform those  
35 duties required in RCW 47.64.300.~~

36 ~~(3)(a) In adjudicating all complaints, grievances, and disputes,~~  
37 ~~the party claiming labor disputes shall, in writing, notify the~~

1 ~~commission, which shall make careful inquiry into the cause thereof and~~  
2 ~~issue an order advising the ferry employee, or the ferry employee~~  
3 ~~organization representing him or her, and the department of~~  
4 ~~transportation, as to the decision of the commission.~~

5 ~~(b) The parties are entitled to offer evidence relating to disputes~~  
6 ~~at all hearings conducted by the commission. The orders and awards of~~  
7 ~~the commission are final and binding upon any ferry employee or~~  
8 ~~employees or their representative affected thereby and upon the~~  
9 ~~department.~~

10 ~~(c) The commission shall adopt rules of procedure under chapter~~  
11 ~~34.05 RCW.~~

12 ~~(d) The commission has the authority to subpoena any ferry employee~~  
13 ~~or employees, or their representatives, and any member or~~  
14 ~~representative of the department, and any witnesses. The commission~~  
15 ~~may require attendance of witnesses and the production of all pertinent~~  
16 ~~records at any hearings held by the commission. The subpoenas of the~~  
17 ~~commission are enforceable by order of any superior court in the state~~  
18 ~~of Washington for the county within which the proceeding may be~~  
19 ~~pending. The commission may hire staff as necessary, appoint~~  
20 ~~consultants, enter into contracts, and conduct studies as reasonably~~  
21 ~~necessary to carry out this chapter)).~~

22 (2) All unfair labor practice complaints, questions concerning  
23 representation, and unit clarifications must be filed with the public  
24 employment relations commission and processed in accordance with the  
25 commission's rules adopted under chapter 34.05 RCW, except that the  
26 marine employees' commission shall act in place of the public  
27 employment relations commission for appeals.

28 (3) This section expires June 30, 2013.

29 **Sec. 21.** RCW 47.64.300 and 2007 c 160 s 4 are each amended to read  
30 as follows:

31 (1) If an agreement has not been reached following a reasonable  
32 period of negotiations and, when applicable, mediation, upon the  
33 recommendation of the assigned mediator that the parties remain at  
34 impasse or, with respect to biennial bargaining, in compliance with the  
35 interest arbitration agreement under RCW 47.64.170(6)(a), all impasse  
36 items shall be submitted to arbitration under this section. The issues

1 for arbitration shall be limited to the issues certified by the  
2 ((~~commission~~)) executive director.

3 (2) The parties may agree to submit the dispute to a single  
4 arbitrator, whose authority and duties shall be the same as those of an  
5 arbitration panel. If the parties cannot agree on the arbitrator  
6 within five working days, the selection shall be made under subsection  
7 (3) of this section, except with respect to biennial bargaining  
8 described under RCW 47.64.170(6). The full costs of arbitration under  
9 this section shall be shared equally by the parties to the dispute.

10 (3) Within seven days following the issuance of the determination  
11 of the ((~~commission~~)) executive director, each party shall, absent an  
12 agreement to the contrary, name one person to serve as its arbitrator  
13 on the arbitration panel. Except with respect to biennial bargaining  
14 described under RCW 47.64.170(6), the two members so appointed shall  
15 meet within seven days following the appointment of the later appointed  
16 member to attempt to choose a third member to act as the neutral chair  
17 of the arbitration panel. Upon the failure of the arbitrators to  
18 select a neutral chair within seven days, either party may apply to the  
19 federal mediation and conciliation service, or, with the consent of the  
20 parties, the American arbitration association to provide a list of five  
21 qualified arbitrators from which the neutral chair shall be chosen.  
22 Each party shall pay the fees and expenses of its arbitrator, and the  
23 fees and expenses of the neutral chair shall be shared equally between  
24 the parties.

25 (4) In consultation with the parties, the arbitrator or arbitration  
26 panel shall promptly establish a date, time, and place for a hearing  
27 and shall provide reasonable notice thereof to the parties to the  
28 dispute. The parties shall exchange final positions in writing, with  
29 copies to the arbitrator or arbitration panel, with respect to every  
30 issue to be arbitrated, on a date mutually agreed upon, but in no event  
31 later than ten working days before the date set for hearing. A  
32 hearing, which shall be informal, shall be held, and each party shall  
33 have the opportunity to present evidence and make argument. No member  
34 of the arbitration panel may present the case for a party to the  
35 proceedings. The rules of evidence prevailing in judicial proceedings  
36 may be considered, but are not binding, and any oral testimony or  
37 documentary evidence or other data deemed relevant by the chair of the  
38 arbitration panel may be received in evidence. A recording of the

1 proceedings shall be taken. The arbitration panel has the power to  
2 administer oaths, require the attendance of witnesses, and require the  
3 production of such books, papers, contracts, agreements, and documents  
4 as may be deemed by the panel to be material to a just determination of  
5 the issues in dispute. If any person refuses to obey a subpoena issued  
6 by the arbitration panel, or refuses to be sworn or to make an  
7 affirmation to testify, or any witness, party, or attorney for a party  
8 is guilty of any contempt while in attendance at any hearing held  
9 hereunder, the arbitration panel may invoke the jurisdiction of the  
10 superior court in the county where the labor dispute exists, and the  
11 court has jurisdiction to issue an appropriate order. Any failure to  
12 obey the order may be punished by the court as a contempt thereof.

13 (5) The neutral chair shall consult with the other members of the  
14 arbitration panel, if a panel has been created. Within thirty days  
15 following the conclusion of the hearing, or sooner as the October 1st  
16 deadline set forth in RCW 47.64.170 (6)(c) and (7) necessitates, the  
17 neutral chair shall make written findings of fact and a written  
18 determination of the issues in dispute, based on the evidence  
19 presented. A copy thereof shall be served on each of the other members  
20 of the arbitration panel, and on each of the parties to the dispute.  
21 That determination is final and binding upon both parties, subject to  
22 review by the superior court upon the application of either party  
23 solely upon the question of whether the decision of the panel was  
24 arbitrary or capricious.

25 **Sec. 22.** RCW 41.06.070 and 2010 c 271 s 801, 2010 c 2 s 2, and  
26 2010 c 1 s 1 are each reenacted and amended to read as follows:

27 (1) The provisions of this chapter do not apply to:

28 (a) The members of the legislature or to any employee of, or  
29 position in, the legislative branch of the state government including  
30 members, officers, and employees of the legislative council, joint  
31 legislative audit and review committee, statute law committee, and any  
32 interim committee of the legislature;

33 (b) The justices of the supreme court, judges of the court of  
34 appeals, judges of the superior courts or of the inferior courts, or to  
35 any employee of, or position in the judicial branch of state  
36 government;

1 (c) Officers, academic personnel, and employees of technical  
2 colleges;

3 (d) The officers of the Washington state patrol;

4 (e) Elective officers of the state;

5 (f) The chief executive officer of each agency;

6 (g) In the departments of employment security and social and health  
7 services, the director and the director's confidential secretary; in  
8 all other departments, the executive head of which is an individual  
9 appointed by the governor, the director, his or her confidential  
10 secretary, and his or her statutory assistant directors;

11 (h) In the case of a multimember board, commission, or committee,  
12 whether the members thereof are elected, appointed by the governor or  
13 other authority, serve ex officio, or are otherwise chosen:

14 (i) All members of such boards, commissions, or committees;

15 (ii) If the members of the board, commission, or committee serve on  
16 a part-time basis and there is a statutory executive officer: The  
17 secretary of the board, commission, or committee; the chief executive  
18 officer of the board, commission, or committee; and the confidential  
19 secretary of the chief executive officer of the board, commission, or  
20 committee;

21 (iii) If the members of the board, commission, or committee serve  
22 on a full-time basis: The chief executive officer or administrative  
23 officer as designated by the board, commission, or committee; and a  
24 confidential secretary to the chair of the board, commission, or  
25 committee;

26 (iv) If all members of the board, commission, or committee serve ex  
27 officio: The chief executive officer; and the confidential secretary  
28 of such chief executive officer;

29 (i) The confidential secretaries and administrative assistants in  
30 the immediate offices of the elective officers of the state;

31 (j) Assistant attorneys general;

32 (k) Commissioned and enlisted personnel in the military service of  
33 the state;

34 (l) Inmate, student, part-time, or temporary employees, and part-  
35 time professional consultants, as defined by the Washington personnel  
36 resources board;

37 (m) The public printer or to any employees of or positions in the  
38 state printing plant;

1 (n) Officers and employees of the Washington state fruit  
2 commission;

3 (o) Officers and employees of the Washington apple commission;

4 (p) Officers and employees of the Washington state dairy products  
5 commission;

6 (q) Officers and employees of the Washington tree fruit research  
7 commission;

8 (r) Officers and employees of the Washington state beef commission;

9 (s) Officers and employees of the Washington grain commission;

10 (t) Officers and employees of any commission formed under chapter  
11 15.66 RCW;

12 (u) Officers and employees of agricultural commissions formed under  
13 chapter 15.65 RCW;

14 (v) Officers and employees of the nonprofit corporation formed  
15 under chapter 67.40 RCW;

16 (w) Executive assistants for personnel administration and labor  
17 relations in all state agencies employing such executive assistants  
18 including but not limited to all departments, offices, commissions,  
19 committees, boards, or other bodies subject to the provisions of this  
20 chapter and this subsection shall prevail over any provision of law  
21 inconsistent herewith unless specific exception is made in such law;

22 (x) In each agency with fifty or more employees: Deputy agency  
23 heads, assistant directors or division directors, and not more than  
24 three principal policy assistants who report directly to the agency  
25 head or deputy agency heads;

26 (y) ~~((All employees of the marine employees' commission;~~  
27 ~~(z))~~) Staff employed by the department of commerce to administer  
28 energy policy functions;

29 ~~((+aa))~~ (z) The manager of the energy facility site evaluation  
30 council;

31 ~~((+bb))~~ (aa) A maximum of ten staff employed by the department of  
32 commerce to administer innovation and policy functions, including the  
33 three principal policy assistants exempted under (x) of this  
34 subsection;

35 ~~((+ee))~~ (bb) Staff employed by Washington State University to  
36 administer energy education, applied research, and technology transfer  
37 programs under RCW 43.21F.045 as provided in RCW 28B.30.900(5).

1 (2) The following classifications, positions, and employees of  
2 institutions of higher education and related boards are hereby exempted  
3 from coverage of this chapter:

4 (a) Members of the governing board of each institution of higher  
5 education and related boards, all presidents, vice presidents, and  
6 their confidential secretaries, administrative, and personal  
7 assistants; deans, directors, and chairs; academic personnel; and  
8 executive heads of major administrative or academic divisions employed  
9 by institutions of higher education; principal assistants to executive  
10 heads of major administrative or academic divisions; other managerial  
11 or professional employees in an institution or related board having  
12 substantial responsibility for directing or controlling program  
13 operations and accountable for allocation of resources and program  
14 results, or for the formulation of institutional policy, or for  
15 carrying out personnel administration or labor relations functions,  
16 legislative relations, public information, development, senior computer  
17 systems and network programming, or internal audits and investigations;  
18 and any employee of a community college district whose place of work is  
19 one which is physically located outside the state of Washington and who  
20 is employed pursuant to RCW 28B.50.092 and assigned to an educational  
21 program operating outside of the state of Washington;

22 (b) The governing board of each institution, and related boards,  
23 may also exempt from this chapter classifications involving research  
24 activities, counseling of students, extension or continuing education  
25 activities, graphic arts or publications activities requiring  
26 prescribed academic preparation or special training as determined by  
27 the board: PROVIDED, That no nonacademic employee engaged in office,  
28 clerical, maintenance, or food and trade services may be exempted by  
29 the board under this provision;

30 (c) Printing craft employees in the department of printing at the  
31 University of Washington.

32 (3) In addition to the exemptions specifically provided by this  
33 chapter, the director of personnel may provide for further exemptions  
34 pursuant to the following procedures. The governor or other  
35 appropriate elected official may submit requests for exemption to the  
36 director of personnel stating the reasons for requesting such  
37 exemptions. The director of personnel shall hold a public hearing,  
38 after proper notice, on requests submitted pursuant to this subsection.

1 If the director determines that the position for which exemption is  
2 requested is one involving substantial responsibility for the  
3 formulation of basic agency or executive policy or one involving  
4 directing and controlling program operations of an agency or a major  
5 administrative division thereof, the director of personnel shall grant  
6 the request and such determination shall be final as to any decision  
7 made before July 1, 1993. The total number of additional exemptions  
8 permitted under this subsection shall not exceed one percent of the  
9 number of employees in the classified service not including employees  
10 of institutions of higher education and related boards for those  
11 agencies not directly under the authority of any elected public  
12 official other than the governor, and shall not exceed a total of  
13 twenty-five for all agencies under the authority of elected public  
14 officials other than the governor.

15 The salary and fringe benefits of all positions presently or  
16 hereafter exempted except for the chief executive officer of each  
17 agency, full-time members of boards and commissions, administrative  
18 assistants and confidential secretaries in the immediate office of an  
19 elected state official, and the personnel listed in subsections (1)(j)  
20 through (v) (~~and (y)~~) and (2) of this section, shall be determined by  
21 the director of personnel. Changes to the classification plan  
22 affecting exempt salaries must meet the same provisions for classified  
23 salary increases resulting from adjustments to the classification plan  
24 as outlined in RCW 41.06.152.

25 From February 18, 2009, through June 30, 2011, a salary or wage  
26 increase shall not be granted to any position exempt from  
27 classification under this chapter, except that a salary or wage  
28 increase may be granted to employees pursuant to collective bargaining  
29 agreements negotiated under chapter 28B.52, 41.56, 47.64, or 41.76 RCW,  
30 or negotiated by the nonprofit corporation formed under chapter 67.40  
31 RCW, and except that increases may be granted for positions for which  
32 the employer has demonstrated difficulty retaining qualified employees  
33 if the following conditions are met:

- 34 (a) The salary increase can be paid within existing resources; and  
35 (b) The salary increase will not adversely impact the provision of  
36 client services.

37 Any agency granting a salary increase from February 15, 2010,  
38 through June 30, 2011, to a position exempt from classification under



1 this chapter shall submit a report to the fiscal committees of the  
2 legislature no later than July 31, 2011, detailing the positions for  
3 which salary increases were granted, the size of the increases, and the  
4 reasons for giving the increases.

5 Any person holding a classified position subject to the provisions  
6 of this chapter shall, when and if such position is subsequently  
7 exempted from the application of this chapter, be afforded the  
8 following rights: If such person previously held permanent status in  
9 another classified position, such person shall have a right of  
10 reversion to the highest class of position previously held, or to a  
11 position of similar nature and salary.

12 Any classified employee having civil service status in a classified  
13 position who accepts an appointment in an exempt position shall have  
14 the right of reversion to the highest class of position previously  
15 held, or to a position of similar nature and salary.

16 A person occupying an exempt position who is terminated from the  
17 position for gross misconduct or malfeasance does not have the right of  
18 reversion to a classified position as provided for in this section.

19 From February 15, 2010, until June 30, 2011, no monetary  
20 performance-based awards or incentives may be granted by the director  
21 or employers to employees covered by rules adopted under this section.  
22 This subsection does not prohibit the payment of awards provided for in  
23 chapter 41.60 RCW.

24 NEW SECTION. **Sec. 23.** (1) Consistent with section 16 of this act,  
25 the marine employees' commission's powers, duties, and functions are  
26 transferred to the public employment relations commission.

27 (2)(a) All reports, documents, surveys, books, records, files,  
28 papers, or written material in the possession of the marine employees'  
29 commission shall be delivered to the custody of the public employment  
30 relations commission. All cabinets, furniture, office equipment, motor  
31 vehicles, and other tangible property employed by the marine employees'  
32 commission shall be made available to the public employment relations  
33 commission. All funds, credits, or other assets held by the marine  
34 employees' commission shall be assigned to the public employment  
35 relations commission.

36 (b) Any appropriations made to the marine employees' commission

1 shall, on the effective date of this section, be transferred and  
2 credited to the public employment relations commission.

3 (c) If any question arises as to the transfer of any personnel,  
4 funds, books, documents, records, papers, files, equipment, or other  
5 tangible property used or held in the exercise of the powers and the  
6 performance of the duties and functions transferred, the director of  
7 financial management shall make a determination as to the proper  
8 allocation and certify the same to the state agencies concerned.

9 (3) All pending business before the marine employees' commission  
10 shall be continued and acted upon by the public employment relations  
11 commission. All existing contracts and obligations shall remain in  
12 full force and shall be performed by the public employment relations  
13 commission.

14 (4) The transfer of the powers, duties, and functions of the marine  
15 employees' commission shall not affect the validity of any act  
16 performed before the effective date of this section.

17 (5) If apportionments of budgeted funds are required because of the  
18 transfers directed by this section, the director of financial  
19 management shall certify the apportionments to the agencies affected,  
20 the state auditor, and the state treasurer. Each of these shall make  
21 the appropriate transfer and adjustments in funds and appropriation  
22 accounts and equipment records in accordance with the certification.

23 **Sec. 24.** RCW 47.64.011 and 2006 c 164 s 1 are each amended to read  
24 as follows:

25 As used in this chapter, unless the context otherwise requires, the  
26 definitions in this section shall apply.

27 (1) "Collective bargaining representative" means the persons  
28 designated by the governor and employee organizations to be the  
29 exclusive representatives during collective bargaining negotiations.

30 (2) "Commission" means the (~~(marine employees')~~) public employment  
31 relations commission created in RCW (~~(47.64.280)~~) 41.58.010.

32 (3) "Department of transportation" means the department as defined  
33 in RCW 47.01.021.

34 (4) "Employer" means the state of Washington.

35 (5) "Executive director" means the executive director of the  
36 commission.

1        (6) "Ferry employee" means any employee of the marine  
2 transportation division of the department of transportation who is a  
3 member of a collective bargaining unit represented by a ferry employee  
4 organization and does not include an exempt employee pursuant to RCW  
5 41.06.079.

6        ~~((+6))~~ (7) "Ferry employee organization" means any labor  
7 organization recognized to represent a collective bargaining unit of  
8 ferry employees.

9        ~~((+7))~~ (8) "Lockout" means the refusal of the employer to furnish  
10 work to ferry employees in an effort to get ferry employee  
11 organizations to make concessions during collective bargaining,  
12 grievance, or other labor relation negotiations. Curtailment of  
13 employment of ferry employees due to lack of work resulting from a  
14 strike or work stoppage shall not be considered a lockout.

15        ~~((+8))~~ (9) "Office of financial management" means the office as  
16 created in RCW 43.41.050.

17        ~~((+9))~~ (10) "Strike or work stoppage" means a ferry employee's  
18 refusal, in concerted action with others, to report to duty, or his or  
19 her willful absence from his or her position, or his or her stoppage or  
20 slowdown of work, or his or her abstinence in whole or in part from the  
21 full, faithful, and proper performance of the duties of employment, for  
22 the purpose of inducing, influencing, or coercing a change in  
23 conditions, compensation, rights, privileges, or obligations of his,  
24 her, or any other ferry employee's employment. A refusal, in good  
25 faith, to work under conditions which pose an endangerment to the  
26 health and safety of ferry employees or the public, as determined by  
27 the master of the vessel, shall not be considered a strike for the  
28 purposes of this chapter.

29        **Sec. 25.** RCW 47.64.090 and 2003 c 373 s 3 and 2003 c 91 s 1 are  
30 each reenacted and amended to read as follows:

31        (1) Except as provided in RCW 47.60.656 and subsections (2) and (4)  
32 of this section, or as provided in RCW 36.54.130 and subsection (3) of  
33 this section, if any party assumes the operation and maintenance of any  
34 ferry or ferry system by rent, lease, or charter from the department of  
35 transportation, such party shall assume and be bound by all the  
36 provisions herein and any agreement or contract for such operation of  
37 any ferry or ferry system entered into by the department shall provide

1 that the wages to be paid, hours of employment, working conditions, and  
2 seniority rights of employees will be established by the ((~~marine~~  
3 ~~employees~~)) commission in accordance with the terms and provisions of  
4 this chapter and it shall further provide that all labor disputes shall  
5 be adjudicated in accordance with chapter 47.64 RCW.

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

17 (a) The terms of those collective bargaining agreements that it or  
18 its subcontractors negotiate with the exclusive bargaining  
19 representatives of its or its subcontractors' employees under chapter  
20 41.56 RCW or the National Labor Relations Act, as applicable;

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

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

34 (3) If a ferry district is formed under RCW 36.54.110 to operate  
35 passenger-only ferry service, it may enter into an agreement with  
36 Washington State Ferries to rent, lease, or purchase vessels, related  
37 equipment, or terminal space for purposes of loading and unloading the  
38 ferry. Charges for the vessels, equipment, and space must be fair

1 market value taking into account the public benefit derived from the  
2 ferry service. A ferry district or subcontractor of that district that  
3 qualifies under this subsection is not subject to the restrictions of  
4 subsection (1) of this section, but is subject to:

5 (a) The terms of those collective bargaining agreements that it or  
6 its subcontractors negotiate with the exclusive bargaining  
7 representatives of its or its subcontractors' employees under chapter  
8 41.56 RCW or the National Labor Relations Act, as applicable;

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

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

22 (4) The department of transportation shall make its terminal, dock,  
23 and pier space available to private operators of passenger-only ferries  
24 if the space can be made available without limiting the operation of  
25 car ferries operated by the department. These private operators are  
26 not bound by the provisions of subsection (1) of this section. Charges  
27 for the equipment and space must be fair market value taking into  
28 account the public benefit derived from the passenger-only ferry  
29 service.

30 NEW SECTION. **Sec. 26.** A new section is added to chapter 47.64 RCW  
31 to read as follows:

32 (1) The commission is empowered and directed to prevent any unfair  
33 labor practice and to issue appropriate remedial orders; however, a  
34 complaint shall not be processed for any unfair labor practice  
35 occurring more than six months before the filing of the complaint with  
36 the commission. This power shall not be affected or impaired by any

1 means of adjustment, mediation, or conciliation in labor disputes that  
2 have been or may hereafter be established by law.

3 (2) If the commission determines that any person has engaged in or  
4 is engaging in an unfair labor practice, the commission shall issue and  
5 cause to be served upon the person an order requiring the person to  
6 cease and desist from such unfair labor practice, and to take such  
7 affirmative action as will effectuate the purposes and policy of this  
8 chapter, such as the payment of damages and the reinstatement of  
9 employees.

10 (3) The commission may petition the superior court for the county  
11 in which the main office of the employer is located or in which the  
12 person who has engaged or is engaging in such unfair labor practice  
13 resides or transacts business, for the enforcement of its order and for  
14 appropriate temporary relief.

15 NEW SECTION. **Sec. 27.** A new section is added to chapter 47.64 RCW  
16 to read as follows:

17 (1) The commission shall determine all questions pertaining to  
18 representation and shall administer all elections and be responsible  
19 for the processing and adjudication of all disputes that arise as a  
20 consequence of elections. The commission shall adopt rules that  
21 provide for at least the following:

- 22 (a) Secret balloting;
- 23 (b) Consulting with employee organizations;
- 24 (c) Access to lists of employees, job classification, work  
25 locations, and home mailing addresses;
- 26 (d) Absentee voting;
- 27 (e) Procedures for the greatest possible participation in voting;
- 28 (f) Campaigning on the employer's property during working hours;
- 29 and
- 30 (g) Election observers.

31 (2) If an employee organization has been certified as the exclusive  
32 bargaining representative of the employees of a bargaining unit, the  
33 employee organization may act for and negotiate master collective  
34 bargaining agreements that will include within the coverage of the  
35 agreement all employees in the bargaining unit.

36 (3) The certified exclusive bargaining representative is  
37 responsible for representing the interests of all the employees in the

1 bargaining unit. This section shall not be construed to limit an  
2 exclusive representative's right to exercise its discretion to refuse  
3 to process grievances of employees that are unmeritorious.

4 (4) No question concerning representation may be raised if:

5 (a) Fewer than twelve months have elapsed since the last  
6 certification or election; or

7 (b) A valid collective bargaining agreement exists covering the  
8 unit, except for that period of no more than one hundred twenty  
9 calendar days and no less than ninety calendar days before the  
10 expiration of the contract.

11 NEW SECTION. **Sec. 28.** The following acts or parts of acts are  
12 each repealed:

13 (1) RCW 47.64.080 (Employee seniority rights) and 1984 c 7 s 341 &  
14 1961 c 13 s 47.64.080; and

15 (2) RCW 47.64.150 (Grievance procedures) and 1983 c 15 s 6.

16 NEW SECTION. **Sec. 29.** If any provision of this act or its  
17 application to any person or circumstance is held invalid, the  
18 remainder of the act or the application of the provision to other  
19 persons or circumstances is not affected.

20 NEW SECTION. **Sec. 30.** Sections 1 through 15 of this act are  
21 necessary for the immediate preservation of the public peace, health,  
22 or safety, or support of the state government and its existing public  
23 institutions, and take effect immediately.

24 NEW SECTION. **Sec. 31.** Sections 16 through 25 of this act are  
25 necessary for the immediate preservation of the public peace, health,  
26 or safety, or support of the state government and its existing public  
27 institutions, and take effect July 1, 2011.

28 NEW SECTION. **Sec. 32.** Sections 26 through 28 of this act take  
29 effect July 1, 2013."

**ADOPTED 05/12/2011**

1        On page 1, line 1 of the title, after "Relating to" strike the  
2 remainder of the title and insert "the Washington state ferry system;  
3 amending RCW 47.60.530, 47.60.315, 82.08.0255, 82.12.0256, 47.64.120,  
4 41.58.050, 41.58.060, 47.64.130, 47.64.280, 47.64.300, and 47.64.011;  
5 reenacting and amending RCW 43.84.092, 41.06.070, and 47.64.090; adding  
6 a new section to chapter 47.60 RCW; adding new sections to chapter  
7 47.64 RCW; adding a new section to chapter 41.58 RCW; creating a new  
8 section; repealing RCW 47.64.080 and 47.64.150; providing effective  
9 dates; providing expiration dates; and declaring an emergency."

EFFECT:        The entire bill is stricken and replaced with the following:

(1) The Capital Vessel Replacement Account (CVRA) is created which may only be used for acquisitions of ferry vessels.

(2) A 25 cent surcharge must be assessed on all ferry fares sold, with the proceeds going into the CVRA.

(3) Effective July 1, 2013, fuel purchased for Washington State or county ferries is exempt from sales/use tax.

(4) Employer rights of management are defined.

(5) Effective July 1, 2013, Washington State Ferries (WSF) captains are part of management and may be in their own union. Captains duties are defined.

(6) Performance measures are defined. An ad hoc committee is established and directed to establish performance targets.

(7) OFM will report to the legislature whether targets are met.

(8) If at least 80% of each target is not met by June 30, 2013, a governor's management representative is to be appointed to develop a 12-month corrective action plan, and the department is to solicit requests for qualifications regarding the skills and costs associated with privatizing the management functions of the WSF.

(9) If the Governor and Transportation Committees opt to competitively contract out the management functions, a selection process and contractual requirements for a private management services firm are outlined.

(10) Defined performance measures must be included in the department's attainment report.

(11) Effective July 1, 2011, the Marine Employees' Commission (MEC) is created within the Public Employment Relations Commission (PERC).



For the 2011-2013 biennium, all processes and procedures will be handled according to PERC processes in place and appeals will be handled by MEC. Effective July 1, 2013, MEC is dissolved.

(12) Includes an emergency clause.

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