

# HOUSE BILL REPORT

## 2ESSB 5742

**As Passed House - Amended:**  
May 13, 2011

**Title:** An act relating to the Washington state ferry system.

**Brief Description:** Concerning the Washington state ferry system.

**Sponsors:** Senate Committee on Transportation (originally sponsored by Senators Haugen, Ranker and Shin).

**Brief History:**

**Committee Activity:**

Transportation: 4/13/11, 4/14/11 [DPA];  
Ways & Means: 4/21/11 [DPA(TR/WAYS)].

**First Special Session**

**Floor Activity:**

Passed House - Amended: 5/13/11, 72-16.

**Brief Summary of Second Engrossed Substitute Bill  
(As Amended by House)**

- Exempts fuel purchased by the Washington State Ferries and county-owned ferries from state sales and use tax.
- Creates the Capital Vessel Replacement Account (Replacement Account) in the Transportation Budget.
- Requires the Washington State Transportation Commission to impose a vessel replacement surcharge of 25 cents on each ferry fare.
- Directs revenues collected from the surcharge to be deposited into the Replacement Account to be used for the purchase or construction of ferry vessels and to pay principal and interest on bonds authorized for construction or purchase of ferry vessels.
- Prohibits certain management rights from collective bargaining.
- Defines Captains of Washington State Ferry vessels and outlines Captain responsibilities and duties.
- Requires Captains to form a captains-only bargaining unit within their current bargaining unit.

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- Requires the current collective bargaining agreement for those in the Masters, Mates, and Pilots bargaining unit to be the bases for future negotiations.
- Outlines performance measures, targets, and a process for the Washington State Ferry system.
- Moves the Marine Employees' Commission (MEC) to the Public Employment Relations Committee in 2011-13 and eliminates the MEC in 2013-15.

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## HOUSE COMMITTEE ON TRANSPORTATION

**Majority Report:** Do pass as amended. Signed by 25 members: Representatives Clibborn, Chair; Liias, Vice Chair; Armstrong, Ranking Minority Member; Angel, Asay, Eddy, Finn, Fitzgibbon, Jinkins, Johnson, Klippert, Kristiansen, Ladenburg, McCune, Moeller, Morris, Moscoso, Reykdal, Rivers, Rodne, Rolfes, Ryu, Takko, Upthegrove and Zeiger.

**Minority Report:** Without recommendation. Signed by 4 members: Representatives Billig, Vice Chair; Hargrove, Assistant Ranking Minority Member; Overstreet and Shea.

**Staff:** Debbie Driver (786-7143).

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## HOUSE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass as amended by Committee on Transportation as such amendment is amended by Committee on Ways & Means. Signed by 19 members: Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Bailey, Assistant Ranking Minority Member; Carlyle, Cody, Dickerson, Haigh, Hinkle, Hudgins, Hunt, Kagi, Kenney, Ormsby, Pettigrew, Ross, Seaquist, Springer and Sullivan.

**Minority Report:** Do not pass. Signed by 8 members: Representatives Alexander, Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Chandler, Haler, Parker, Schmick and Wilcox.

**Staff:** Jeffrey Mitchell (786-7139).

### **Background:**

The Washington State Department of Transportation Ferries Division (WSF) operates and maintains ferry vessels and terminals, constructs terminals, and acquires vessels. The system serves eight Washington counties and one Canadian province through 22 vessels and 20 terminals.

### Pricing Policies.

The Washington State Transportation Commission (Transportation Commission) adopts the WSF fares and pricing policies by rule.

### Sales and Use Tax and Fuel.

In general, fuel used for purposes other than for the propulsion of a motor vehicle on public highways is not subject to the state motor vehicle fuel tax or special fuel tax. However, such fuel is subject to the state retail sales and use tax. Fuel used for urban passenger transportation systems, and fuel used for passenger-only ferry services are exempt from the state retail sales and use tax. Fuel used for the WSF system and for county-owned ferry systems is not exempt from the state retail sales and use tax.

In 2009-11 the WSF purchased over 34 million gallons of fuel and paid just under \$8 million in sales and use tax.

#### Marine Employees' Commission.

The state bargains with ferry employee organizations under the Marine Employees' Collective Bargaining Act (MECBA) over wages, hours, working conditions, and insurance. The MECBA is administered by the Marine Employees' Commission (MEC). The MEC adjudicates complaints, grievances, and disputes between labor and management arising from ferry system operations, provides impasse mediation, determines bargaining units, certifies fair representation organizations, and certifies issues for arbitration when parties remain at impasse.

The Public Employment Relations Commission (PERC) administers and enforces other public sector collective bargaining laws in Washington. The PERC was created in 1975 and originally had the MECBA under its jurisdiction. Prior to 1975 the MEC had administered ferry employee collective bargaining, but it was disbanded in 1975. In 1983 the MEC was re-established, and ferry employee collective bargaining was removed from the PERC's jurisdiction and transferred to the MEC.

#### Grievance Arbitration Procedures.

Under the MECBA, a collective bargaining agreement may provide procedures for the consideration of ferry employee grievances and of disputes over the interpretation and application of existing agreements. The procedures must provide for the invoking of arbitration only with the approval of the ferry employee organization.

#### Joint Transportation Commission Budget Proviso Study.

A budget proviso in the 2010 Supplemental Transportation Budget directed the Joint Transportation Committee to conduct a comparison of the processing time of labor-related grievances and hearings at the PERC and the MEC, and investigate whether the necessary expertise exists at the PERC to administer the grievances and hearings currently administered by the MEC. The report concluded that:

- the PERC processes unfair labor practice and grievance arbitration decisions faster than the MEC; and
- the PERC has the necessary expertise to administer the grievances and hearings currently administered by the MEC.

#### Puget Sound Ferries Operations Account.

Operating expenditures for the WSF are paid from the Puget Sound Ferries Operations Account (Operations Account). Funds deposited into the Operations Account include ferry fare revenues.

### Management Rights.

Per current collective bargaining statutes for general government, employers are not allowed to bargain over some rights of management including, but not limited to, the right to direct and supervise employees, retirement plans, and benefits. The MECBA does not include a similar management rights bargaining provision.

### **Summary of Bill:**

#### Vessel Replacement Account.

The Capital Vessel Replacement Account (Replacement Account) is created. The Transportation Commission must impose a 25-cent surcharge on every ferry fare sold; the proceeds are deposited into the Replacement Account. Expenditures from the Replacement Account must be by appropriation and may only be used for the construction or purchase of ferry vessels and to pay the principal and interest on bonds authorized for the construction or purchase of ferry vessels. Expenditures from the Replacement Account must first be used to support the construction or purchase, including any financing costs, of a ferry vessel capable of carrying at least 144 vehicles.

#### Sales and Use Tax Exemption.

Effective July 1, 2013, fuel purchased for the WSF vessels and by county-owned ferry systems for use in ferry vessels is exempt from the state retail sales and use tax.

#### Management, Bargaining Rights, and Captains.

The bill defines ferries management as WSF employees who are either exempt or a part of Washington Management Services. Management rights similar to those that exist for other general government bargaining purposes are added to the MECBA statutes. Captains are defined as the master of the a vessel or the commanding officer. Captain responsibilities and duties are outlined including conforming with and ensuring that vessels also conform with the performance expectations set forth by the Washington State Department of Transportation (WSDOT). Effective July 1, 2013, the Office of Financial Management (OFM), the MEC and the bargaining representative for the Captains are to determine a methodology for separating the Captains from other licensed deck officers currently in the Masters, Mates, and Pilots bargaining unit. The terms and conditions of the current bargaining agreements for both units are to be carry forwarded and serve as the bases for future negotiations. A new Captains-only bargaining agreement must include a negotiated provision that outlines the objectives and measurable performance expectations of the Captains.

#### Performance Measures.

The bill defines performance measures, report, and targets, and requires the WSF to meet a variety of measurable performance criteria including: safety; on-time performance; customer satisfaction; fuel consumption; and terminal and vessel operating costs. The bill creates an ad hoc committee with members from and designated by the Office of the Governor which must include one labor representative. By October 1, 2013, the ad hoc committee is to establish performance targets with input from the Joint Transportation Committee. By October 1 of each year, the WSDOT is to complete a report to assess whether performance targets were met the prior fiscal year. The report is to be reviewed by the OFM and integrated into the Attainment Report. If the WSDOT does not meet performance targets, it must develop an action plan and submit the plan to the OFM. Additionally, if the WSDOT

does not meet at least 80 percent of the targets, two things occur: (1) a Governor's management representative is to be appointed to develop a 12-month corrective action plan; and (2) the WSDOT is to solicit requests for qualifications regarding the skills and costs associated with privatizing the management functions of the WSF. The Governor's office and the Legislative Transportation Committees are to consult and determine whether or not to competitively contract out the management functions of the WSF system. If they opt to contract out the management functions, the bill outlines a timeline and contractual requirements.

#### Marine Employees' Commission.

During the 2011-13 biennium, the MEC is moved to the PERC. Where applicable, MEC rules and process are changed to reflect PERC rules and processes. Effective 2013-15, the MEC is eliminated and marine employee issues are moved to the PERC.

#### Other.

Outdated language regarding usages of the Operations Account is removed, and ferry fares are added as a fund deposited into the Operations Account.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill** (as amended by the House): The bill contains an emergency clause and takes effect immediately, except for sections 15 through 24, relating to the MEC moving to the PERC, which contain an emergency clause and take effect on July 1, 2011, and sections 25 through 27, relating to the elimination of the MEC, which take effect on July 1, 2013.

#### **Staff Summary of Public Testimony** (Transportation):

(In support) This bill includes a ferry fare surcharge which would be used to support the construction or procurement of new ferry vessels. Riders have noted they are comfortable with a surcharge as long as the revenues are earmarked for a specific purpose. The WSF is in need of a new funding source as previous funding sources are no longer available to the WSF. Costs to run the ferry system, the aging ferry fleet, and the need to build new vessels have put a strain on the entire Transportation Budget. Using the revenue from the surcharge to fund the first 144-car class vessel will result in improvements to the ferry system as well as local Washington jobs. Furthermore, the construction of the 144-car class takes advantage of the learning curve and expertise shipyard employees gained in recently building the three 64-car class vessels.

The bill also eliminates the MEC and moves the functions of the MEC to the PERC. A study during the interim found that the PERC has the expertise to handle the MEC issues. Eliminating the MEC will assist in reducing strains on the Operations Account. Finally, the bill includes a recommendation from the Passenger Vessel Association study regarding increasing the threshold for apprenticeship utilization to \$5 million. This provides more flexibility to the WSDOT and increases competition for ferry jobs. The exemption of sales

tax applied to fuel purchased by county-owned ferry systems is an important item in the bill. This bill passed the Senate with bipartisan support.

(With concerns) The 25-cent surcharge, Replacement Account, and sales tax exemption on fuel are a few of the good things in the bill. The change regarding apprenticeship utilization requirements is not necessary given that the Secretary of the WSDOT has the ability to change utilization requirements. Please consider removing this provision of the bill.

(Opposed) The MEC is part of an agreement dating back to the 1980s. The organization provides the best resolution system the state could ask for. The specialized maritime experience of the individuals on the MEC has resulted in fewer cases going to court. The MEC has impacted labor relations and their existence has helped to achieve labor peace for the last 30 years. Retain the MEC or possibly move the MEC to the PERC as a division within the PERC. The apprenticeship utilization requirements are important aspects of having a skilled workforce and should not be changed.

**Staff Summary of Public Testimony (Ways & Means):**

(In support) The bill exempts ferry fuel for county-owned ferries from sales tax. This exemption puts the four county ferry systems on the same level as passenger-only ferries and transit systems with regards to fuel sales tax exemption. Todd Shipyards has the contract to build the 144-car ferries. Passage of this bill along with the Transportation Budget will provide the state with the most cost-effective way to acquire the ferry at the most affordable cost. In addition, building the 144-car vessels provides jobs and economic development for Washington. The bill is a good bill for working families and for the state.

(Opposed) None.

**Persons Testifying (Transportation):** (In support) Senator Haugen, prime sponsor; Scott Merriman, Washington State Association of Counties; Lovel Pratt, San Juan County Council; Linda Hull, Todd Shipyards; and Michael Shaw, Pierce County.

(With concerns) Terry Tilton, Washington State Building and Construction Trades Council.

(Opposed) Marty Yellam, Puget Sound Metal Trades Council and Plumbers and Pipefitters Union; Alan Cote, Inlandboatmen's Union; and Tim Saffle, Masters, Mates and Pilots.

**Persons Testifying (Ways & Means):** Scott Merriman, Association of Washington Counties; Linda Hull, Todd Shipyards; and Gordon Baxter, Inland Boatmens' Union, Masters, Mates and Pilots, Marine Engineers Beneficial Association, Puget Sound Metal Trades Council, and Office and Professional Employees International Union Local 8.

**Persons Signed In To Testify But Not Testifying (Transportation):** None.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** None.