
ENGROSSED SUBSTITUTE SENATE BILL 5742

State of Washington

62nd Legislature

2011 Regular Session

By Senate Transportation (originally sponsored by Senators Haugen, Ranker, and Shin)

READ FIRST TIME 02/25/11.

1 AN ACT Relating to providing funding and cost saving measures for
2 the Washington state ferry system; amending RCW 47.60.530, 47.60.315,
3 82.08.0255, 82.12.0256, 47.64.011, 47.64.210, 47.64.150, 41.58.060, and
4 39.04.320; reenacting and amending RCW 43.84.092, 47.64.090, and
5 41.06.070; adding a new section to chapter 47.60 RCW; creating a new
6 section; and repealing RCW 47.64.280.

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

8 **Sec. 1.** RCW 47.60.530 and 1979 c 27 s 4 are each amended to read
9 as follows:

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

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

1 (a) All moneys directed by law;

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

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

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

6 (4) Expenditures from the account may be used only for the
7 maintenance and operation of the Washington state ferries (~~(including~~
8 ~~the Hood Canal bridge, supplementing as required the revenues available~~
9 ~~from the Washington state ferry system)~~)).

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

12 (1) The capital vessel replacement account is created in the motor
13 vehicle fund. All revenues generated from the vessel replacement
14 surcharge under RCW 47.60.315(7) must be deposited into the account.
15 Moneys in the account may be spent only after appropriation.
16 Expenditures from the account may be used only for the construction or
17 purchase of ferry vessels and to pay the principal and interest on
18 bonds authorized for the construction or purchase of ferry vessels.
19 However, expenditures from the account must first be used to support
20 the construction or purchase, including any applicable financing costs,
21 of a ferry vessel with a carrying capacity of at least one hundred
22 forty-four cars.

23 (2) The state treasurer shall not transfer any moneys from the
24 capital vessel replacement account.

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

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

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

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

35 (2) The commission may adopt by rule fares that are effective for

1 more or less than one year for the purposes of transitioning to the
2 fare schedule in subsection (1) of this section.

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

6 (4) The chief executive officer of the ferry system may authorize
7 the use of promotional, discounted, and special event fares to the
8 general public and commercial enterprises for the purpose of maximizing
9 capacity use and the revenues collected by the ferry system. The
10 department shall report to the commission a summary of the promotional,
11 discounted, and special event fares offered during each fiscal year and
12 the financial results from these activities.

13 (5) Fare revenues and other revenues deposited in the Puget Sound
14 ferry operations account created in RCW 47.60.530 may not be used to
15 support the Puget Sound capital construction account created in RCW
16 47.60.505, unless the support for capital is separately identified in
17 the fare.

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

21 (7) The commission shall impose a vessel replacement surcharge of
22 twenty-five cents on every ferry fare sold, including multiride and
23 monthly pass fares. In the event that fares are collected in one
24 direction only, the surcharge is fifty cents on every ferry fare sold.
25 This surcharge must be clearly indicated to ferry passengers and
26 drivers and, if possible, on the fare media itself.

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

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

31 (a) The fuel is purchased for the purpose of public transportation
32 and the purchaser is entitled to a refund or an exemption under RCW
33 82.36.275 or 82.38.080(3); or

34 (b) The fuel is purchased by a private, nonprofit transportation
35 provider certified under chapter 81.66 RCW and the purchaser is
36 entitled to a refund or an exemption under RCW 82.36.285 or
37 82.38.080(1)(h); or

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

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

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

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

10 (2) Any person who has paid the tax imposed by RCW 82.08.020 on the
11 sale of special fuel delivered in this state shall be entitled to a
12 credit or refund of such tax with respect to fuel subsequently
13 established to have been actually transported and used outside this
14 state by persons engaged in interstate commerce. The tax shall be
15 claimed as a credit or refunded through the tax reports required under
16 RCW 82.38.150.

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

19 The provisions of this chapter shall not apply in respect to the
20 use of:

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

23 (2) Motor vehicle and special fuel if:

24 (a) The fuel is used for the purpose of public transportation and
25 the purchaser is entitled to a refund or an exemption under RCW
26 82.36.275 or 82.38.080(3); or

27 (b) The fuel is purchased by a private, nonprofit transportation
28 provider certified under chapter 81.66 RCW and the purchaser is
29 entitled to a refund or an exemption under RCW 82.36.285 or
30 82.38.080(1)(h); or

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

35 (d) The fuel is taxable under chapter 82.36 or 82.38 RCW:
36 PROVIDED, That the use of motor vehicle and special fuel upon which a
37 refund of the applicable fuel tax is obtained shall not be exempt under

1 this subsection (2)(d), and the director of licensing shall deduct from
2 the amount of such tax to be refunded the amount of tax due under this
3 chapter and remit the same each month to the department of revenue; or

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

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

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

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

14 (2) The treasury income account shall be utilized to pay or receive
15 funds associated with federal programs as required by the federal cash
16 management improvement act of 1990. The treasury income account is
17 subject in all respects to chapter 43.88 RCW, but no appropriation is
18 required for refunds or allocations of interest earnings required by
19 the cash management improvement act. Refunds of interest to the
20 federal treasury required under the cash management improvement act
21 fall under RCW 43.88.180 and shall not require appropriation. The
22 office of financial management shall determine the amounts due to or
23 from the federal government pursuant to the cash management improvement
24 act. The office of financial management may direct transfers of funds
25 between accounts as deemed necessary to implement the provisions of the
26 cash management improvement act, and this subsection. Refunds or
27 allocations shall occur prior to the distributions of earnings set
28 forth in subsection (4) of this section.

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

1 (4) Monthly, the state treasurer shall distribute the earnings
2 credited to the treasury income account. The state treasurer shall
3 credit the general fund with all the earnings credited to the treasury
4 income account except:

5 (a) The following accounts and funds shall receive their
6 proportionate share of earnings based upon each account's and fund's
7 average daily balance for the period: The aeronautics account, the
8 aircraft search and rescue account, the budget stabilization account,
9 the capital vessel replacement account, the capitol building
10 construction account, the Cedar River channel construction and
11 operation account, the Central Washington University capital projects
12 account, the charitable, educational, penal and reformatory
13 institutions account, the cleanup settlement account, the Columbia
14 river basin water supply development account, the common school
15 construction fund, the county arterial preservation account, the county
16 criminal justice assistance account, the county sales and use tax
17 equalization account, the deferred compensation administrative account,
18 the deferred compensation principal account, the department of
19 licensing services account, the department of retirement systems
20 expense account, the developmental disabilities community trust
21 account, the drinking water assistance account, the drinking water
22 assistance administrative account, the drinking water assistance
23 repayment account, the Eastern Washington University capital projects
24 account, the education construction fund, the education legacy trust
25 account, the election account, the energy freedom account, the energy
26 recovery act account, the essential rail assistance account, The
27 Evergreen State College capital projects account, the federal forest
28 revolving account, the ferry bond retirement fund, the freight
29 congestion relief account, the freight mobility investment account, the
30 freight mobility multimodal account, the grade crossing protective
31 fund, the public health services account, the health system capacity
32 account, the high capacity transportation account, the state higher
33 education construction account, the higher education construction
34 account, the highway bond retirement fund, the highway infrastructure
35 account, the highway safety account, the high occupancy toll lanes
36 operations account, the hospital safety net assessment fund, the
37 industrial insurance premium refund account, the judges' retirement
38 account, the judicial retirement administrative account, the judicial

1 retirement principal account, the local leasehold excise tax account,
2 the local real estate excise tax account, the local sales and use tax
3 account, the marine resources stewardship trust account, the medical
4 aid account, the mobile home park relocation fund, the motor vehicle
5 fund, the motorcycle safety education account, the multiagency
6 permitting team account, the multimodal transportation account, the
7 municipal criminal justice assistance account, the municipal sales and
8 use tax equalization account, the natural resources deposit account,
9 the oyster reserve land account, the pension funding stabilization
10 account, the perpetual surveillance and maintenance account, the public
11 employees' retirement system plan 1 account, the public employees'
12 retirement system combined plan 2 and plan 3 account, the public
13 facilities construction loan revolving account beginning July 1, 2004,
14 the public health supplemental account, the public transportation
15 systems account, the public works assistance account, the Puget Sound
16 capital construction account, the Puget Sound ferry operations account,
17 the Puyallup tribal settlement account, the real estate appraiser
18 commission account, the recreational vehicle account, the regional
19 mobility grant program account, the resource management cost account,
20 the rural arterial trust account, the rural Washington loan fund, the
21 site closure account, the small city pavement and sidewalk account, the
22 special category C account, the special wildlife account, the state
23 employees' insurance account, the state employees' insurance reserve
24 account, the state investment board expense account, the state
25 investment board commingled trust fund accounts, the state patrol
26 highway account, the state route number 520 civil penalties account,
27 the state route number 520 corridor account, the supplemental pension
28 account, the Tacoma Narrows toll bridge account, the teachers'
29 retirement system plan 1 account, the teachers' retirement system
30 combined plan 2 and plan 3 account, the tobacco prevention and control
31 account, the tobacco settlement account, the transportation 2003
32 account (nickel account), the transportation equipment fund, the
33 transportation fund, the transportation improvement account, the
34 transportation improvement board bond retirement account, the
35 transportation infrastructure account, the transportation partnership
36 account, the traumatic brain injury account, the tuition recovery trust
37 fund, the University of Washington bond retirement fund, the University
38 of Washington building account, the urban arterial trust account, the

1 volunteer firefighters' and reserve officers' relief and pension
2 principal fund, the volunteer firefighters' and reserve officers'
3 administrative fund, the Washington judicial retirement system account,
4 the Washington law enforcement officers' and firefighters' system plan
5 1 retirement account, the Washington law enforcement officers' and
6 firefighters' system plan 2 retirement account, the Washington public
7 safety employees' plan 2 retirement account, the Washington school
8 employees' retirement system combined plan 2 and 3 account, the
9 Washington state health insurance pool account, the Washington state
10 patrol retirement account, the Washington State University building
11 account, the Washington State University bond retirement fund, the
12 water pollution control revolving fund, and the Western Washington
13 University capital projects account. Earnings derived from investing
14 balances of the agricultural permanent fund, the normal school
15 permanent fund, the permanent common school fund, the scientific
16 permanent fund, and the state university permanent fund shall be
17 allocated to their respective beneficiary accounts.

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

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

27 **Sec. 7.** RCW 47.64.011 and 2006 c 164 s 1 are each amended to read
28 as follows:

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

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

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

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

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

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

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

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

16 (8) "Office of financial management" means the office as created in
17 RCW 43.41.050.

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

30 **Sec. 8.** RCW 47.64.210 and 2007 c 160 s 2 are each amended to read
31 as follows:

32 In the (~~absence of an impasse~~) event there is no agreement
33 between the parties (~~or the failure of either party to utilize its~~
34 ~~procedures~~) by August 1st in the even-numbered year preceding the
35 biennium, either party may request the commission to appoint an
36 impartial and disinterested person to act as mediator. It is the

1 function of the mediator to bring the parties together to effectuate a
2 settlement of the dispute, but the mediator shall not compel the
3 parties to agree.

4 **Sec. 9.** RCW 47.64.090 and 2003 c 373 s 3 and 2003 c 91 s 1 are
5 each reenacted and amended to read as follows:

6 (1) Except as provided in RCW 47.60.656 and subsections (2) and (4)
7 of this section, or as provided in RCW 36.54.130 and subsection (3) of
8 this section, if any party assumes the operation and maintenance of any
9 ferry or ferry system by rent, lease, or charter from the department of
10 transportation, such party shall assume and be bound by all the
11 provisions herein and any agreement or contract for such operation of
12 any ferry or ferry system entered into by the department shall provide
13 that the wages to be paid, hours of employment, working conditions, and
14 seniority rights of employees will be established by the (~~marine~~
15 ~~employees~~) commission in accordance with the terms and provisions of
16 this chapter and it shall further provide that all labor disputes shall
17 be adjudicated in accordance with chapter 47.64 RCW.

18 (2) If a public transportation benefit area meeting the
19 requirements of RCW 36.57A.200 has voter approval to operate passenger-
20 only ferry service, it may enter into an agreement with Washington
21 State Ferries to rent, lease, or purchase passenger-only vessels,
22 related equipment, or terminal space for purposes of loading and
23 unloading the passenger-only ferry. Charges for the vessels,
24 equipment, and space must be fair market value taking into account the
25 public benefit derived from the ferry service. A benefit area or
26 subcontractor of that benefit area that qualifies under this subsection
27 is not subject to the restrictions of subsection (1) of this section,
28 but is subject to:

29 (a) The terms of those collective bargaining agreements that it or
30 its subcontractors negotiate with the exclusive bargaining
31 representatives of its or its subcontractors' employees under chapter
32 41.56 RCW or the National Labor Relations Act, as applicable;

33 (b) Unless otherwise prohibited by federal or state law, a
34 requirement that the benefit area and any contract with its
35 subcontractors, give preferential hiring to former employees of the
36 department of transportation who separated from employment with the

1 department because of termination of the ferry service by the state of
2 Washington; and

3 (c) Unless otherwise prohibited by federal or state law, a
4 requirement that the benefit area and any contract with its
5 subcontractors, on any questions concerning representation of employees
6 for collective bargaining purposes, may be determined by conducting a
7 cross-check comparing an employee organization's membership records or
8 bargaining authorization cards against the employment records of the
9 employer.

10 (3) If a ferry district is formed under RCW 36.54.110 to operate
11 passenger-only ferry service, it may enter into an agreement with
12 Washington State Ferries to rent, lease, or purchase vessels, related
13 equipment, or terminal space for purposes of loading and unloading the
14 ferry. Charges for the vessels, equipment, and space must be fair
15 market value taking into account the public benefit derived from the
16 ferry service. A ferry district or subcontractor of that district that
17 qualifies under this subsection is not subject to the restrictions of
18 subsection (1) of this section, but is subject to:

19 (a) The terms of those collective bargaining agreements that it or
20 its subcontractors negotiate with the exclusive bargaining
21 representatives of its or its subcontractors' employees under chapter
22 41.56 RCW or the National Labor Relations Act, as applicable;

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

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

36 (4) The department of transportation shall make its terminal, dock,
37 and pier space available to private operators of passenger-only ferries
38 if the space can be made available without limiting the operation of

1 car ferries operated by the department. These private operators are
2 not bound by the provisions of subsection (1) of this section. Charges
3 for the equipment and space must be fair market value taking into
4 account the public benefit derived from the passenger-only ferry
5 service.

6 **Sec. 10.** RCW 47.64.150 and 1983 c 15 s 6 are each amended to read
7 as follows:

8 An agreement with a ferry employee organization that is the
9 exclusive representative of ferry employees in an appropriate unit may
10 provide procedures for the consideration of ferry employee grievances
11 and of disputes over the interpretation and application of agreements.
12 Negotiated procedures may provide for binding arbitration of ferry
13 employee grievances and of disputes over the interpretation and
14 application of existing agreements. An arbitrator's decision on a
15 grievance shall not change or amend the terms, conditions, or
16 applications of the collective bargaining agreement. The procedures
17 shall provide for the invoking of arbitration only ~~((with the~~
18 ~~approval))~~ by mutual agreement of the employee organization and
19 management. The costs of arbitrators shall be shared equally by the
20 parties.

21 Ferry system employees shall follow ~~((either))~~ the grievance
22 procedures provided in a collective bargaining agreement ~~((, or if no~~
23 ~~such procedures are so provided, shall submit the grievances to the~~
24 ~~marine employees' commission as provided in RCW 47.64.280))~~.

25 **Sec. 11.** RCW 41.58.060 and 1983 c 15 s 22 are each amended to read
26 as follows:

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

32 **Sec. 12.** RCW 41.06.070 and 2010 c 271 s 801, 2010 c 2 s 2, and
33 2010 c 1 s 1 are each reenacted and amended to read as follows:

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

1 (a) The members of the legislature or to any employee of, or
2 position in, the legislative branch of the state government including
3 members, officers, and employees of the legislative council, joint
4 legislative audit and review committee, statute law committee, and any
5 interim committee of the legislature;

6 (b) The justices of the supreme court, judges of the court of
7 appeals, judges of the superior courts or of the inferior courts, or to
8 any employee of, or position in the judicial branch of state
9 government;

10 (c) Officers, academic personnel, and employees of technical
11 colleges;

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

13 (e) Elective officers of the state;

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

15 (g) In the departments of employment security and social and health
16 services, the director and the director's confidential secretary; in
17 all other departments, the executive head of which is an individual
18 appointed by the governor, the director, his or her confidential
19 secretary, and his or her statutory assistant directors;

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

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

24 (ii) If the members of the board, commission, or committee serve on
25 a part-time basis and there is a statutory executive officer: The
26 secretary of the board, commission, or committee; the chief executive
27 officer of the board, commission, or committee; and the confidential
28 secretary of the chief executive officer of the board, commission, or
29 committee;

30 (iii) If the members of the board, commission, or committee serve
31 on a full-time basis: The chief executive officer or administrative
32 officer as designated by the board, commission, or committee; and a
33 confidential secretary to the chair of the board, commission, or
34 committee;

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

1 (i) The confidential secretaries and administrative assistants in
2 the immediate offices of the elective officers of the state;
3 (j) Assistant attorneys general;
4 (k) Commissioned and enlisted personnel in the military service of
5 the state;
6 (l) Inmate, student, part-time, or temporary employees, and part-
7 time professional consultants, as defined by the Washington personnel
8 resources board;
9 (m) The public printer or to any employees of or positions in the
10 state printing plant;
11 (n) Officers and employees of the Washington state fruit
12 commission;
13 (o) Officers and employees of the Washington apple commission;
14 (p) Officers and employees of the Washington state dairy products
15 commission;
16 (q) Officers and employees of the Washington tree fruit research
17 commission;
18 (r) Officers and employees of the Washington state beef commission;
19 (s) Officers and employees of the Washington grain commission;
20 (t) Officers and employees of any commission formed under chapter
21 15.66 RCW;
22 (u) Officers and employees of agricultural commissions formed under
23 chapter 15.65 RCW;
24 (v) Officers and employees of the nonprofit corporation formed
25 under chapter 67.40 RCW;
26 (w) Executive assistants for personnel administration and labor
27 relations in all state agencies employing such executive assistants
28 including but not limited to all departments, offices, commissions,
29 committees, boards, or other bodies subject to the provisions of this
30 chapter and this subsection shall prevail over any provision of law
31 inconsistent herewith unless specific exception is made in such law;
32 (x) In each agency with fifty or more employees: Deputy agency
33 heads, assistant directors or division directors, and not more than
34 three principal policy assistants who report directly to the agency
35 head or deputy agency heads;
36 (y) ~~((All employees of the marine employees' commission;~~
37 ~~(z))~~ Staff employed by the department of commerce to administer
38 energy policy functions;

1 (~~(aa)~~) (z) The manager of the energy facility site evaluation
2 council;

3 (~~(bb)~~) (aa) A maximum of ten staff employed by the department of
4 commerce to administer innovation and policy functions, including the
5 three principal policy assistants exempted under (x) of this
6 subsection;

7 (~~(cc)~~) (bb) Staff employed by Washington State University to
8 administer energy education, applied research, and technology transfer
9 programs under RCW 43.21F.045 as provided in RCW 28B.30.900(5).

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

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

31 (b) The governing board of each institution, and related boards,
32 may also exempt from this chapter classifications involving research
33 activities, counseling of students, extension or continuing education
34 activities, graphic arts or publications activities requiring
35 prescribed academic preparation or special training as determined by
36 the board: PROVIDED, That no nonacademic employee engaged in office,
37 clerical, maintenance, or food and trade services may be exempted by
38 the board under this provision;

1 (c) Printing craft employees in the department of printing at the
2 University of Washington.

3 (3) In addition to the exemptions specifically provided by this
4 chapter, the director of personnel may provide for further exemptions
5 pursuant to the following procedures. The governor or other
6 appropriate elected official may submit requests for exemption to the
7 director of personnel stating the reasons for requesting such
8 exemptions. The director of personnel shall hold a public hearing,
9 after proper notice, on requests submitted pursuant to this subsection.
10 If the director determines that the position for which exemption is
11 requested is one involving substantial responsibility for the
12 formulation of basic agency or executive policy or one involving
13 directing and controlling program operations of an agency or a major
14 administrative division thereof, the director of personnel shall grant
15 the request and such determination shall be final as to any decision
16 made before July 1, 1993. The total number of additional exemptions
17 permitted under this subsection shall not exceed one percent of the
18 number of employees in the classified service not including employees
19 of institutions of higher education and related boards for those
20 agencies not directly under the authority of any elected public
21 official other than the governor, and shall not exceed a total of
22 twenty-five for all agencies under the authority of elected public
23 officials other than the governor.

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

34 From February 18, 2009, through June 30, 2011, a salary or wage
35 increase shall not be granted to any position exempt from
36 classification under this chapter, except that a salary or wage
37 increase may be granted to employees pursuant to collective bargaining
38 agreements negotiated under chapter 28B.52, 41.56, 47.64, or 41.76 RCW,

1 or negotiated by the nonprofit corporation formed under chapter 67.40
2 RCW, and except that increases may be granted for positions for which
3 the employer has demonstrated difficulty retaining qualified employees
4 if the following conditions are met:

5 (a) The salary increase can be paid within existing resources; and

6 (b) The salary increase will not adversely impact the provision of
7 client services.

8 Any agency granting a salary increase from February 15, 2010,
9 through June 30, 2011, to a position exempt from classification under
10 this chapter shall submit a report to the fiscal committees of the
11 legislature no later than July 31, 2011, detailing the positions for
12 which salary increases were granted, the size of the increases, and the
13 reasons for giving the increases.

14 Any person holding a classified position subject to the provisions
15 of this chapter shall, when and if such position is subsequently
16 exempted from the application of this chapter, be afforded the
17 following rights: If such person previously held permanent status in
18 another classified position, such person shall have a right of
19 reversion to the highest class of position previously held, or to a
20 position of similar nature and salary.

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

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

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

33 NEW SECTION. **Sec. 13.** (1) The marine employees' commission is
34 hereby abolished and its powers, duties, and functions are hereby
35 transferred to the public employment relations commission.

36 (2)(a) All reports, documents, surveys, books, records, files,
37 papers, or written material in the possession of the marine employees'

1 commission shall be delivered to the custody of the public employment
2 relations commission. All cabinets, furniture, office equipment, motor
3 vehicles, and other tangible property employed by the marine employees'
4 commission shall be made available to the public employment relations
5 commission. All funds, credits, or other assets held by the marine
6 employees' commission shall be assigned to the public employment
7 relations commission.

8 (b) If any question arises as to the transfer of any funds, books,
9 documents, records, papers, files, equipment, or other tangible
10 property used or held in the exercise of the powers and the performance
11 of the duties and functions transferred, the director of financial
12 management shall make a determination as to the proper allocation and
13 certify the same to the state agencies concerned.

14 (3) All rules and all pending business before the marine employees'
15 commission shall be continued and acted upon by the public employment
16 relations commission. All existing contracts and obligations shall
17 remain in full force and shall be performed by the public employment
18 relations commission.

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

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

28 NEW SECTION. **Sec. 14.** RCW 47.64.280 (Marine employees'
29 commission) and 2010 c 283 s 14, 2006 c 164 s 18, 1984 c 287 s 95, &
30 1983 c 15 s 19 are each repealed.

31 **Sec. 15.** RCW 39.04.320 and 2009 c 197 s 1 are each amended to read
32 as follows:

33 (1)(a) Except as provided in (b) through (d) of this subsection,
34 from January 1, 2005, and thereafter, for all public works estimated to
35 cost one million dollars or more, all specifications shall require that

1 no less than fifteen percent of the labor hours be performed by
2 apprentices.

3 (b)(i) This section does not apply to contracts advertised for bid
4 before July 1, 2007, for any public works by the department of
5 transportation.

6 (ii) For contracts advertised for bid on or after July 1, 2007, and
7 before July 1, 2008, for all public works by the department of
8 transportation estimated to cost five million dollars or more, all
9 specifications shall require that no less than ten percent of the labor
10 hours be performed by apprentices.

11 (iii) For contracts advertised for bid on or after July 1, 2008,
12 and before July 1, 2009, for all public works by the department of
13 transportation estimated to cost three million dollars or more, all
14 specifications shall require that no less than twelve percent of the
15 labor hours be performed by apprentices.

16 (iv) For contracts advertised for bid on or after July 1, 2009, for
17 all public works by the department of transportation estimated to cost
18 two million dollars or more and for all public works by the Washington
19 state ferries estimated to cost five million dollars or more, all
20 specifications shall require that no less than fifteen percent of the
21 labor hours be performed by apprentices.

22 (c)(i) This section does not apply to contracts advertised for bid
23 before January 1, 2008, for any public works by a school district, or
24 to any project funded in whole or in part by bond issues approved
25 before July 1, 2007.

26 (ii) For contracts advertised for bid on or after January 1, 2008,
27 for all public works by a school district estimated to cost three
28 million dollars or more, all specifications shall require that no less
29 than ten percent of the labor hours be performed by apprentices.

30 (iii) For contracts advertised for bid on or after January 1, 2009,
31 for all public works by a school district estimated to cost two million
32 dollars or more, all specifications shall require that no less than
33 twelve percent of the labor hours be performed by apprentices.

34 (iv) For contracts advertised for bid on or after January 1, 2010,
35 for all public works by a school district estimated to cost one million
36 dollars or more, all specifications shall require that no less than
37 fifteen percent of the labor hours be performed by apprentices.

1 (d)(i) For contracts advertised for bid on or after January 1,
2 2010, for all public works by a four-year institution of higher
3 education estimated to cost three million dollars or more, all
4 specifications must require that no less than ten percent of the labor
5 hours be performed by apprentices.

6 (ii) For contracts advertised for bid on or after January 1, 2011,
7 for all public works by a four-year institution of higher education
8 estimated to cost two million dollars or more, all specifications must
9 require that no less than twelve percent of the labor hours be
10 performed by apprentices.

11 (iii) For contracts advertised for bid on or after January 1, 2012,
12 for all public works by a four-year institution of higher education
13 estimated to cost one million dollars or more, all specifications must
14 require that no less than fifteen percent of the labor hours be
15 performed by apprentices.

16 (2) Awarding entities may adjust the requirements of this section
17 for a specific project for the following reasons:

18 (a) The demonstrated lack of availability of apprentices in
19 specific geographic areas;

20 (b) A disproportionately high ratio of material costs to labor
21 hours, which does not make feasible the required minimum levels of
22 apprentice participation;

23 (c) Participating contractors have demonstrated a good faith effort
24 to comply with the requirements of RCW 39.04.300 and 39.04.310 and this
25 section; or

26 (d) Other criteria the awarding entity deems appropriate, which are
27 subject to review by the office of the governor.

28 (3) The secretary of the department of transportation shall adjust
29 the requirements of this section for a specific project for the
30 following reasons:

31 (a) The demonstrated lack of availability of apprentices in
32 specific geographic areas; or

33 (b) A disproportionately high ratio of material costs to labor
34 hours, which does not make feasible the required minimum levels of
35 apprentice participation.

36 (4) This section applies to public works contracts awarded by the
37 state, to public works contracts awarded by school districts, and to
38 public works contracts awarded by state four-year institutions of

1 higher education. However, this section does not apply to contracts
2 awarded by state agencies headed by a separately elected public
3 official.

4 (5)(a) The department of general administration must provide
5 information and technical assistance to affected agencies and collect
6 the following data from affected agencies for each project covered by
7 this section:

- 8 (i) The name of each apprentice and apprentice registration number;
- 9 (ii) The name of each project;
- 10 (iii) The dollar value of each project;
- 11 (iv) The date of the contractor's notice to proceed;
- 12 (v) The number of apprentices and labor hours worked by them,
13 categorized by trade or craft;
- 14 (vi) The number of journey level workers and labor hours worked by
15 them, categorized by trade or craft; and
- 16 (vii) The number, type, and rationale for the exceptions granted
17 under subsection (2) of this section.

18 (b) The department of labor and industries shall assist the
19 department of general administration in providing information and
20 technical assistance.

21 (6) The secretary of transportation shall establish an
22 apprenticeship utilization advisory committee, which shall include
23 statewide geographic representation and consist of equal numbers of
24 representatives of contractors and labor. The committee must include
25 at least one member representing contractor businesses with less than
26 thirty-five employees. The advisory committee shall meet regularly
27 with the secretary of transportation to discuss implementation of this
28 section by the department of transportation, including development of
29 the process to be used to adjust the requirements of this section for
30 a specific project. The committee shall provide a report to the
31 legislature by January 1, 2008, on the effects of the apprentice labor
32 requirement on transportation projects and on the availability of
33 apprentice labor and programs statewide.

34 (7) At the request of the senate labor, commerce, research and
35 development committee, the house of representatives commerce and labor
36 committee, or their successor committees, and the governor, the
37 department of general administration and the department of labor and
38 industries shall compile and summarize the agency data and provide a

1 joint report to both committees. The report shall include
2 recommendations on modifications or improvements to the apprentice
3 utilization program and information on skill shortages in each trade or
4 craft.

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