

CERTIFICATION OF ENROLLMENT

SECOND ENGROSSED SUBSTITUTE SENATE BILL 5742

Chapter 16, Laws of 2011

(partial veto)

62nd Legislature
2011 1st Special Session

WASHINGTON STATE FERRY SYSTEM

EFFECTIVE DATE: 06/07/11 - Except sections 16-25, which become effective 07/01/11; and sections 26-28, which become effective 07/01/13.

Passed by the Senate May 23, 2011
YEAS 36 NAYS 9

BRAD OWEN

President of the Senate

Passed by the House May 22, 2011
YEAS 77 NAYS 14

FRANK CHOPP

Speaker of the House of Representatives

Approved June 7, 2011, 3:08 p.m., with the exception of Sections 11, 13, 14 and 15 which are vetoed.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND ENGROSSED SUBSTITUTE SENATE BILL 5742** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

June 8, 2011

**Secretary of State
State of Washington**

SECOND ENGROSSED SUBSTITUTE SENATE BILL 5742

AS AMENDED BY THE HOUSE

Passed Legislature - 2011 1st Special Session

State of Washington 62nd Legislature 2011 1st Special Session

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

READ FIRST TIME 02/25/11.

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

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

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

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

1 ~~destruction of the Hood Canal bridge, and))~~ is created in the motor
2 vehicle fund.

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

4 (a) All moneys directed by law;

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

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

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

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

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

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

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

30 Sec. 3. RCW 47.60.315 and 2007 c 512 s 6 are each amended to read
31 as follows:

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

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

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

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

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

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

17 (5) Fare revenues and other revenues deposited in the Puget Sound
18 ferry operations account created in RCW 47.60.530 may not be used to
19 support the Puget Sound capital construction account created in RCW
20 47.60.505, unless the support for capital is separately identified in
21 the fare.

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

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

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

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

34 (a) The fuel is purchased for the purpose of public transportation
35 and the purchaser is entitled to a refund or an exemption under RCW
36 82.36.275 or 82.38.080(3); or

1 (b) The fuel is purchased by a private, nonprofit transportation
2 provider certified under chapter 81.66 RCW and the purchaser is
3 entitled to a refund or an exemption under RCW 82.36.285 or
4 82.38.080(1)(h); or

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

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

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

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

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

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

23 The provisions of this chapter shall not apply in respect to the
24 use of:

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

27 (2) Motor vehicle and special fuel if:

28 (a) The fuel is used for the purpose of public transportation and
29 the purchaser is entitled to a refund or an exemption under RCW
30 82.36.275 or 82.38.080(3); or

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

35 (c) The fuel is purchased by a public transportation benefit area
36 created under chapter 36.57A RCW or a county-owned ferry or county

1 ferry district created under chapter 36.54 RCW for use in passenger-
2 only ferry vessels; or

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

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

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

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

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

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

34 (3) Except for the provisions of RCW 43.84.160, the treasury income
35 account may be utilized for the payment of purchased banking services
36 on behalf of treasury funds including, but not limited to, depository,
37 safekeeping, and disbursement functions for the state treasury and

1 affected state agencies. The treasury income account is subject in all
2 respects to chapter 43.88 RCW, but no appropriation is required for
3 payments to financial institutions. Payments shall occur prior to
4 distribution of earnings set forth in subsection (4) of this section.

5 (4) Monthly, the state treasurer shall distribute the earnings
6 credited to the treasury income account. The state treasurer shall
7 credit the general fund with all the earnings credited to the treasury
8 income account except:

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

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

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

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

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

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

33 (1) Except as otherwise provided in this chapter, the employer and
34 ferry system employee organizations, through their collective
35 bargaining representatives, shall meet at reasonable times to negotiate
36 in good faith with respect to wages, hours, working conditions, and
37 insurance, and other matters mutually agreed upon. Employer funded

1 retirement benefits shall be provided under the public employees
2 retirement system under chapter 41.40 RCW and shall not be included in
3 the scope of collective bargaining. Except as provided under RCW
4 47.64.270, the employer is not required to bargain over health care
5 benefits. Any retirement system or retirement benefits shall not be
6 subject to collective bargaining.

7 (2) Upon ratification of bargaining agreements, ferry employees are
8 entitled to an amount equivalent to the interest earned on retroactive
9 compensation increases. For purposes of this section, the interest
10 earned on retroactive compensation increases is the same monthly rate
11 of interest that was earned on the amount of the compensation increases
12 while held in the state treasury. The interest will be computed for
13 each employee until the date the retroactive compensation is paid, and
14 must be allocated in accordance with appropriation authority. The
15 interest earned on retroactive compensation is not considered part of
16 the ongoing compensation obligation of the state and is not
17 compensation earnable for the purposes of chapter 41.40 RCW.
18 Negotiations shall also include grievance procedures for resolving any
19 questions arising under the agreement, which shall be embodied in a
20 written agreement and signed by the parties.

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

23 (4) A collective bargaining agreement may not contain any provision
24 that extends the term of an existing collective bargaining agreement or
25 applicability of items incompatible with this section in an existing
26 collective bargaining agreement.

27 (5) Except as otherwise provided in this chapter, if a conflict
28 exists between an executive order, administrative rule, or agency
29 policy relating to wages, hours, and terms and conditions of employment
30 and a collective bargaining agreement negotiated under this chapter,
31 the collective bargaining agreement shall prevail. A provision of a
32 collective bargaining agreement that conflicts with the terms of a
33 statute is invalid and unenforceable.

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

36 (1) The captain of a Washington state ferry vessel, also known as
37 the master of a vessel or the commanding officer, is the ultimate

1 authority on, manager of, and has responsibility for the entire vessel
2 and its Washington state ferries personnel while it is in service. The
3 captain's responsibilities include, but are not limited to:

4 (a) Ensuring the safe navigation of the vessel and its crew and
5 passengers;

6 (b) Following all applicable federal, state, and agency policies
7 and regulations;

8 (c) Supervising crew in performance, operations, training,
9 security, and environmental protection;

10 (d) Overseeing all aspects of vessel operations;

11 (e) Ensuring that the vessel operations and its Washington state
12 ferries personnel satisfy performance expectations set forth by the
13 department; and

14 (f) Managing vessel arrivals and departures, as well as all other
15 vessel operations while the vessel is in service.

16 (3) Effective July 1, 2013, the public employment relations
17 commission shall sever from the masters, mates, and pilots bargaining
18 unit all captains. By August 31, 2011, if a majority of the captains
19 in the masters, mates, and pilots bargaining unit indicate by vote that
20 they desire to be included in a newly formed captains-only bargaining
21 unit, the public employment relations commission shall certify a
22 captains-only bargaining unit, to be effective July 1, 2013. For the
23 vote described in this subsection, a union seeking to represent
24 captains does not have to demonstrate a showing of interest to be
25 included on a ballot. Notwithstanding the results of a vote, captains
26 shall remain a part of the masters, mates, and pilots bargaining unit
27 through June 30, 2013.

28 (4) If a new captains-only bargaining unit is created, the employer
29 and the exclusive bargaining representative for the captains-only
30 bargaining unit must negotiate a collective bargaining agreement
31 exclusive to the captains-only bargaining unit.

32 (5) Beginning with negotiations covering the 2013-2015 biennium,
33 the employer and the exclusive bargaining representative of the
34 captains-only bargaining unit must negotiate agreements that are
35 consistent with this section.

36 (6) A collective bargaining agreement may not contain any provision
37 that extends the term of an existing collective bargaining agreement or

1 applicability of items incompatible with this section in an existing
2 collective bargaining agreement.

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

5 For the purposes of this section and sections 10 through 15 of this
6 act:

7 (1) "Management" means an employee at the Washington state ferries
8 who is part of Washington management services or is exempt.

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

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

15 (4) "Performance target" means the desired outcome of a performance
16 measure.

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

19 Performance targets must be established by an ad hoc committee with
20 members from and designated by the office of the governor, which must
21 include at least one member from labor. The committee may not consist
22 of more than eleven members. By December 31, 2011, the committee shall
23 present performance targets to the representatives of the legislative
24 transportation committees and the joint transportation committee for
25 review of the performance measures listed under this section. The
26 committee may also develop performance measures in addition to the
27 following:

28 (1) Safety performance as measured by passenger injuries per one
29 million passenger miles and by injuries per ten thousand revenue
30 service hours that are recordable by standards of the federal
31 occupational safety and health administration and related to standard
32 operating procedures;

33 (2) Service effectiveness measures including, but not limited to,
34 passenger satisfaction of interactions with ferry employees,
35 cleanliness and comfort of vessels and terminals, and satisfactory
36 response to requests for assistance. Passenger satisfaction must be

1 measured by an evaluation that is created by a contracted market
2 research company and conducted by the Washington state transportation
3 commission as part of the ferry riders' opinion group survey. The
4 Washington state transportation commission shall, to the extent
5 possible, integrate the passenger satisfaction evaluation into the
6 ferry user data survey described in RCW 47.60.286;

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

11 (4) Maintenance and capital program effectiveness measures
12 including, but not limited to: Project delivery rate as measured by
13 the number of projects completed on time and within the omnibus
14 transportation appropriations act; vessel and terminal design and
15 engineering costs as measured by a percentage of the total capital
16 program, including measurement of the ongoing operating and maintenance
17 costs; and total vessel out-of-service time.

18 The ad hoc committee described in subsection (1) of this section
19 expires December 31, 2011.

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

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

33 (2) ***The department shall, on a quarterly basis, report Washington***
34 ***state ferry system management's performance as it relates to the***
35 ***performance measure in subsection (1) of this section (a) to the***
36 ***transportation committees of the legislature, (b) on its vessels, (c)***

1 at all ferry terminals, and (d) on the department's web site. The
2 statistics must include reasons for any delays over five minutes and
3 any delays over ten minutes from the scheduled time.

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

**Sec. 11 was vetoed. See message at end of chapter.*

6 NEW SECTION. Sec. 12. A new section is added to chapter 47.64 RCW
7 to read as follows:

8 (1) The office of financial management shall complete a government
9 management and accountability performance report that provides a
10 baseline assessment of current performance on the performance measures
11 identified in sections 10 and 11 of this act using final 2009-2011
12 data. This report must be presented to the legislature by November 1,
13 2011, through the attainment report required in RCW 47.01.071(5) and
14 47.04.280.

15 (2) By December 31, 2012, and each year thereafter, the office of
16 financial management shall complete a performance report for the prior
17 fiscal year. This report must be reviewed by the joint transportation
18 committee.

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

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

23 If the Washington state ferries does not meet at least eighty
24 percent of the performance target that is set for each performance
25 measure identified in sections 10 and 11 of this act by June 30, 2013,
26 as reported in the December 31, 2013, performance report described in
27 section 12 of this act, the governor, with the consensus of the chairs
28 and ranking minorities of the transportation committees of the
29 legislature, shall appoint a governor's management representative who,
30 within sixty days, shall develop and submit a corrective action plan to
31 achieve the performance targets in sections 10 and 11 of this act
32 within the following twelve months. The plan must be submitted to the
33 governor and the transportation committees of the legislature.

**Sec. 13 was vetoed. See message at end of chapter.*

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

1 (1) *If the Washington state ferries does not meet at least eighty*
2 *percent of the performance target that is set for each performance*
3 *measure identified in sections 10 and 11 of this act by June 30, 2013,*
4 *as reported in the December 31, 2013, performance report described in*
5 *section 12 of this act, the department must:*

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

11 (b) *Present the results of the request for information or request*
12 *for qualifications to the transportation committees of the legislature*
13 *and the governor.*

14 (2) *In consultation with the governor's office, the transportation*
15 *committees of the legislature shall utilize the information provided in*
16 *subsection (1) of this section to determine whether or not to*
17 *competitively contract out the management functions of the Washington*
18 *state ferry system the following biennium.*

19 (3) *If the governor and the transportation committees of the*
20 *legislature opt to competitively contract out the management functions*
21 *of the Washington state ferry system in the following biennium, the*
22 *contract must be a fixed cost contract that requires the private*
23 *management services firm to meet or exceed the performance target for*
24 *eighty percent of the performance measures under sections 10 and 11 of*
25 *this act. Based on these performance measures, the contract must*
26 *provide for incentive or retained payment arrangements as a means of*
27 *ensuring satisfactory performance of the contract and improved*
28 *performance of the ferry system over time.*

29 (4) *The contract must include a requirement that the firm retain*
30 *existing and future collective bargaining agreements as negotiated*
31 *between the state and the employees' labor representatives. The*
32 *private management services firm may rehire Washington management*
33 *services employees or exempt employees at the Washington state ferries.*

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

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

**Sec. 14 was vetoed. See message at end of chapter.*

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

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

**Sec. 15 was vetoed. See message at end of chapter.*

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

10 (1) There is created the marine employees' commission within the
11 public employment relations commission. The governor shall appoint the
12 marine employees' commission with the consent of the senate. The
13 marine employees' commission shall consist of three members: One
14 member to be appointed from labor; one member from industry; and one
15 member from the public who has significant knowledge of maritime
16 affairs. The public member is chair of the marine employees'
17 commission. Any member of the marine employees' commission may be
18 removed by the governor, upon notice and hearing, for neglect of duty
19 or malfeasance in office, but for no other cause. Marine employees'
20 commission members are not eligible for state retirement under chapter
21 41.40 RCW by virtue of their service on the marine employees'
22 commission. Members of the marine employees' commission must be
23 compensated in accordance with RCW 43.03.250 and must receive
24 reimbursement for official travel and other expenses at the same rate
25 and on the same terms as provided for the transportation commission
26 under RCW 47.01.061.

27 (2) The rules of procedure adopted by the public employment
28 relations commission under RCW 41.58.050 apply to state ferry system
29 employees, except that the marine employees' commission shall act in
30 place of the public employment relations commission only for appeals of
31 unfair labor practice complaints, questions concerning representation,
32 and unit clarifications.

33 (3) In addition to subsection (2) of this section, the marine
34 employees' commission shall perform the duties as provided in RCW
35 47.64.280.

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

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

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

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

10 For any matter concerning the state ferry system and employee
11 relations, collective bargaining, or labor disputes or stoppages, the
12 provisions of this chapter and chapter 47.64 RCW shall govern.
13 However, if a conflict exists between this chapter and chapter 47.64
14 RCW, this chapter shall govern.

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

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

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

21 (b) To dominate or interfere with the formation or administration
22 of any employee organization or contribute financial or other support
23 to it. However, subject to rules made by the public employment
24 relations commission pursuant to RCW ((47.64.280)) 41.58.050, an
25 employer shall not be prohibited from permitting employees to confer
26 with it or its representatives or agents during working hours without
27 loss of time or pay;

28 (c) To encourage or discourage membership in any employee
29 organization by discrimination in regard to hiring, tenure of
30 employment, or any term or condition of employment, but nothing
31 contained in this subsection prevents an employer from requiring, as a
32 condition of continued employment, payment of periodic dues and fees
33 uniformly required to an exclusive bargaining representative pursuant
34 to RCW 47.64.160. However, nothing prohibits the employer from
35 agreeing to obtain employees by referral from a lawful hiring hall
36 operated by or participated in by a labor organization;

1 (d) To discharge or otherwise discriminate against an employee
2 because he or she has filed charges or given testimony under this
3 chapter;

4 (e) To refuse to bargain collectively with the representatives of
5 its employees.

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

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

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

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

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

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

24 ~~(1) ((There is created the marine employees' commission. The~~
25 ~~governor shall appoint the commission with the consent of the senate.~~
26 ~~The commission shall consist of three members: One member to be~~
27 ~~appointed from labor, one member from industry, and one member from the~~
28 ~~public who has significant knowledge of maritime affairs. The public~~
29 ~~member shall be chair of the commission. One of the original members~~
30 ~~shall be appointed for a term of three years, one for a term of four~~
31 ~~years, and one for a term of five years. Their successors shall be~~
32 ~~appointed for terms of five years each, except that any person chosen~~
33 ~~to fill a vacancy shall be appointed only for the unexpired term of the~~
34 ~~member whom he or she succeeds. Commission members are eligible for~~
35 ~~reappointment. Any member of the commission may be removed by the~~
36 ~~governor, upon notice and hearing, for neglect of duty or malfeasance~~
37 ~~in office, but for no other cause. Commission members are not eligible~~

1 for state retirement under chapter 41.40 RCW by virtue of their service
2 on the commission. Members of the commission shall be compensated in
3 accordance with RCW 43.03.250 and shall receive reimbursement for
4 official travel and other expenses at the same rate and on the same
5 terms as provided for the transportation commission by RCW 47.01.061.
6 The payments shall be made from the Puget Sound ferry operations
7 account.

8 (2)) The marine employees' commission, created in section 16 of
9 this act, shall ~~((:—(a)))~~ adjust all complaints, grievances, and
10 disputes between labor and management arising out of the operation of
11 the ferry system as provided in RCW 47.64.150 ~~((:—(b) provide for~~
12 ~~impasse mediation as required in RCW 47.64.210; and (c) perform those~~
13 ~~duties required in RCW 47.64.300.~~

14 (3)(a) ~~In adjudicating all complaints, grievances, and disputes,~~
15 ~~the party claiming labor disputes shall, in writing, notify the~~
16 ~~commission, which shall make careful inquiry into the cause thereof and~~
17 ~~issue an order advising the ferry employee, or the ferry employee~~
18 ~~organization representing him or her, and the department of~~
19 ~~transportation, as to the decision of the commission.~~

20 (b) ~~The parties are entitled to offer evidence relating to disputes~~
21 ~~at all hearings conducted by the commission. The orders and awards of~~
22 ~~the commission are final and binding upon any ferry employee or~~
23 ~~employees or their representative affected thereby and upon the~~
24 ~~department.~~

25 (c) ~~The commission shall adopt rules of procedure under chapter~~
26 ~~34.05 RCW.~~

27 (d) ~~The commission has the authority to subpoena any ferry employee~~
28 ~~or employees, or their representatives, and any member or~~
29 ~~representative of the department, and any witnesses. The commission~~
30 ~~may require attendance of witnesses and the production of all pertinent~~
31 ~~records at any hearings held by the commission. The subpoenas of the~~
32 ~~commission are enforceable by order of any superior court in the state~~
33 ~~of Washington for the county within which the proceeding may be~~
34 ~~pending. The commission may hire staff as necessary, appoint~~
35 ~~consultants, enter into contracts, and conduct studies as reasonably~~
36 ~~necessary to carry out this chapter).~~

37 (2) All unfair labor practice complaints, questions concerning
38 representation, and unit clarifications must be filed with the public

1 employment relations commission and processed in accordance with the
2 commission's rules adopted under RCW 41.58.050, except that the marine
3 employees' commission shall act in place of the public employment
4 relations commission only for appeals.

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

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

8 (1) If an agreement has not been reached following a reasonable
9 period of negotiations and, when applicable, mediation, upon the
10 recommendation of the assigned mediator that the parties remain at
11 impasse or, with respect to biennial bargaining, in compliance with the
12 interest arbitration agreement under RCW 47.64.170(6)(a), all impasse
13 items shall be submitted to arbitration under this section. The issues
14 for arbitration shall be limited to the issues certified by the
15 ((~~commission~~)) executive director.

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

23 (3) Within seven days following the issuance of the determination
24 of the ((~~commission~~)) executive director, each party shall, absent an
25 agreement to the contrary, name one person to serve as its arbitrator
26 on the arbitration panel. Except with respect to biennial bargaining
27 described under RCW 47.64.170(6), the two members so appointed shall
28 meet within seven days following the appointment of the later appointed
29 member to attempt to choose a third member to act as the neutral chair
30 of the arbitration panel. Upon the failure of the arbitrators to
31 select a neutral chair within seven days, either party may apply to the
32 federal mediation and conciliation service, or, with the consent of the
33 parties, the American arbitration association to provide a list of five
34 qualified arbitrators from which the neutral chair shall be chosen.
35 Each party shall pay the fees and expenses of its arbitrator, and the
36 fees and expenses of the neutral chair shall be shared equally between
37 the parties.

1 (4) In consultation with the parties, the arbitrator or arbitration
2 panel shall promptly establish a date, time, and place for a hearing
3 and shall provide reasonable notice thereof to the parties to the
4 dispute. The parties shall exchange final positions in writing, with
5 copies to the arbitrator or arbitration panel, with respect to every
6 issue to be arbitrated, on a date mutually agreed upon, but in no event
7 later than ten working days before the date set for hearing. A
8 hearing, which shall be informal, shall be held, and each party shall
9 have the opportunity to present evidence and make argument. No member
10 of the arbitration panel may present the case for a party to the
11 proceedings. The rules of evidence prevailing in judicial proceedings
12 may be considered, but are not binding, and any oral testimony or
13 documentary evidence or other data deemed relevant by the chair of the
14 arbitration panel may be received in evidence. A recording of the
15 proceedings shall be taken. The arbitration panel has the power to
16 administer oaths, require the attendance of witnesses, and require the
17 production of such books, papers, contracts, agreements, and documents
18 as may be deemed by the panel to be material to a just determination of
19 the issues in dispute. If any person refuses to obey a subpoena issued
20 by the arbitration panel, or refuses to be sworn or to make an
21 affirmation to testify, or any witness, party, or attorney for a party
22 is guilty of any contempt while in attendance at any hearing held
23 hereunder, the arbitration panel may invoke the jurisdiction of the
24 superior court in the county where the labor dispute exists, and the
25 court has jurisdiction to issue an appropriate order. Any failure to
26 obey the order may be punished by the court as a contempt thereof.

27 (5) The neutral chair shall consult with the other members of the
28 arbitration panel, if a panel has been created. Within thirty days
29 following the conclusion of the hearing, or sooner as the October 1st
30 deadline set forth in RCW 47.64.170 (6)(c) and (7) necessitates, the
31 neutral chair shall make written findings of fact and a written
32 determination of the issues in dispute, based on the evidence
33 presented. A copy thereof shall be served on each of the other members
34 of the arbitration panel, and on each of the parties to the dispute.
35 That determination is final and binding upon both parties, subject to
36 review by the superior court upon the application of either party
37 solely upon the question of whether the decision of the panel was
38 arbitrary or capricious.

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

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

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

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

13 (c) Officers, academic personnel, and employees of technical
14 colleges;

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

16 (e) Elective officers of the state;

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

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

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

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

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

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

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

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

6 (j) Assistant attorneys general;

7 (k) Commissioned and enlisted personnel in the military service of
8 the state;

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

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

14 (n) Officers and employees of the Washington state fruit
15 commission;

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

17 (p) Officers and employees of the Washington state dairy products
18 commission;

19 (q) Officers and employees of the Washington tree fruit research
20 commission;

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

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

23 (t) Officers and employees of any commission formed under chapter
24 15.66 RCW;

25 (u) Officers and employees of agricultural commissions formed under
26 chapter 15.65 RCW;

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

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

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

1 (y) (~~(All employees of the marine employees' commission;~~
2 ~~(z))~~) Staff employed by the department of commerce to administer
3 energy policy functions;

4 (~~(aa))~~) (z) The manager of the energy facility site evaluation
5 council;

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

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

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

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

34 (b) The governing board of each institution, and related boards,
35 may also exempt from this chapter classifications involving research
36 activities, counseling of students, extension or continuing education
37 activities, graphic arts or publications activities requiring
38 prescribed academic preparation or special training as determined by

1 the board: PROVIDED, That no nonacademic employee engaged in office,
2 clerical, maintenance, or food and trade services may be exempted by
3 the board under this provision;

4 (c) Printing craft employees in the department of printing at the
5 University of Washington.

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

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

37 From February 18, 2009, through June 30, 2011, a salary or wage
38 increase shall not be granted to any position exempt from

1 classification under this chapter, except that a salary or wage
2 increase may be granted to employees pursuant to collective bargaining
3 agreements negotiated under chapter 28B.52, 41.56, 47.64, or 41.76 RCW,
4 or negotiated by the nonprofit corporation formed under chapter 67.40
5 RCW, and except that increases may be granted for positions for which
6 the employer has demonstrated difficulty retaining qualified employees
7 if the following conditions are met:

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

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

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

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

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

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

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

36 NEW SECTION. **Sec. 23.** (1) Consistent with section 16 of this act,

1 the marine employees' commission's powers, duties, and functions are
2 transferred to the public employment relations commission.

3 (2)(a) All reports, documents, surveys, books, records, files,
4 papers, or written material in the possession of the marine employees'
5 commission shall be delivered to the custody of the public employment
6 relations commission. All cabinets, furniture, office equipment, motor
7 vehicles, and other tangible property employed by the marine employees'
8 commission shall be made available to the public employment relations
9 commission. All funds, credits, or other assets held by the marine
10 employees' commission shall be assigned to the public employment
11 relations commission.

12 (b) Any appropriations made to the marine employees' commission
13 shall, on the effective date of this section, be transferred and
14 credited to the public employment relations commission.

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

21 (3) All pending business before the marine employees' commission
22 shall be continued and acted upon by the public employment relations
23 commission. All existing contracts and obligations shall remain in
24 full force and shall be performed by the public employment relations
25 commission.

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

29 (5) If apportionments of budgeted funds are required because of the
30 transfers directed by this section, the director of financial
31 management shall certify the apportionments to the agencies affected,
32 the state auditor, and the state treasurer. Each of these shall make
33 the appropriate transfer and adjustments in funds and appropriation
34 accounts and equipment records in accordance with the certification.

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

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

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

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

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

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

11 (5) "Executive director" means the executive director of the
12 commission.

13 (6) "Ferry employee" means any employee of the marine
14 transportation division of the department of transportation who is a
15 member of a collective bargaining unit represented by a ferry employee
16 organization and does not include an exempt employee pursuant to RCW
17 41.06.079.

18 (~~(+6)~~) (7) "Ferry employee organization" means any labor
19 organization recognized to represent a collective bargaining unit of
20 ferry employees.

21 (~~(+7)~~) (8) "Lockout" means the refusal of the employer to furnish
22 work to ferry employees in an effort to get ferry employee
23 organizations to make concessions during collective bargaining,
24 grievance, or other labor relation negotiations. Curtailment of
25 employment of ferry employees due to lack of work resulting from a
26 strike or work stoppage shall not be considered a lockout.

27 (~~(+8)~~) (9) "Office of financial management" means the office as
28 created in RCW 43.41.050.

29 (~~(+9)~~) (10) "Strike or work stoppage" means a ferry employee's
30 refusal, in concerted action with others, to report to duty, or his or
31 her willful absence from his or her position, or his or her stoppage or
32 slowdown of work, or his or her abstinence in whole or in part from the
33 full, faithful, and proper performance of the duties of employment, for
34 the purpose of inducing, influencing, or coercing a change in
35 conditions, compensation, rights, privileges, or obligations of his,
36 her, or any other ferry employee's employment. A refusal, in good
37 faith, to work under conditions which pose an endangerment to the

1 health and safety of ferry employees or the public, as determined by
2 the master of the vessel, shall not be considered a strike for the
3 purposes of this chapter.

4 **Sec. 25.** 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 NEW SECTION. **Sec. 26.** A new section is added to chapter 47.64 RCW
7 to read as follows:

8 (1) The commission is empowered and directed to prevent any unfair
9 labor practice and to issue appropriate remedial orders; however, a
10 complaint shall not be processed for any unfair labor practice
11 occurring more than six months before the filing of the complaint with
12 the commission. This power shall not be affected or impaired by any
13 means of adjustment, mediation, or conciliation in labor disputes that
14 have been or may hereafter be established by law.

15 (2) If the commission determines that any person has engaged in or
16 is engaging in an unfair labor practice, the commission shall issue and
17 cause to be served upon the person an order requiring the person to
18 cease and desist from such unfair labor practice, and to take such
19 affirmative action as will effectuate the purposes and policy of this
20 chapter, such as the payment of damages and the reinstatement of
21 employees.

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

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

29 (1) The commission shall determine all questions pertaining to
30 representation and shall administer all elections and be responsible
31 for the processing and adjudication of all disputes that arise as a
32 consequence of elections. The commission shall adopt rules that
33 provide for at least the following:

- 34 (a) Secret balloting;
- 35 (b) Consulting with employee organizations;

1 (c) Access to lists of employees, job classification, work
2 locations, and home mailing addresses;

3 (d) Absentee voting;

4 (e) Procedures for the greatest possible participation in voting;

5 (f) Campaigning on the employer's property during working hours;
6 and

7 (g) Election observers.

8 (2) If an employee organization has been certified as the exclusive
9 bargaining representative of the employees of a bargaining unit, the
10 employee organization may act for and negotiate master collective
11 bargaining agreements that will include within the coverage of the
12 agreement all employees in the bargaining unit.

13 (3) The certified exclusive bargaining representative is
14 responsible for representing the interests of all the employees in the
15 bargaining unit. This section shall not be construed to limit an
16 exclusive representative's right to exercise its discretion to refuse
17 to process grievances of employees that are unmeritorious.

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

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

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

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

27 (1) RCW 47.64.080 (Employee seniority rights) and 1984 c 7 s 341 &
28 1961 c 13 s 47.64.080; and

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

30 NEW SECTION. **Sec. 29.** If any provision of this act or its
31 application to any person or circumstance is held invalid, the
32 remainder of the act or the application of the provision to other
33 persons or circumstances is not affected.

34 NEW SECTION. **Sec. 30.** Sections 1 through 15 of this act are

1 necessary for the immediate preservation of the public peace, health,
2 or safety, or support of the state government and its existing public
3 institutions, and take effect immediately.

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

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

Passed by the Senate May 23, 2011.

Passed by the House May 22, 2011.

Approved by the Governor June 7, 2011, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State June 8, 2011.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Sections 11, 13,
14, and 15, Second Engrossed Substitute Senate Bill 5742 entitled:

"AN ACT Relating to the Washington state ferry system."

Section 11 requires the Washington State Department of Transportation (WSDOT) to provide quarterly on-time performance reports to the Legislature and to post the data on vessels, at terminals, and on the WSDOT's website. I am vetoing this section because Washington State Ferries already reports on-time performance through the Government Management Accountability and Performance program (GMAP), and quarterly reports are posted on the GMAP website.

Sections 13 and 14 contain conflicting requirements for actions that must be taken if Washington State Ferries does not meet at least eighty percent of performance measure targets. Section 13 requires that the governor appoint a management representative and Section 14 requires WSDOT to solicit requests for qualifications to privatize Washington State Ferries management. In addition, I do not believe either of these requirements is necessary or practicable.

Section 15 requires the Office of Financial Management's (OFM) Attainment Report to include the performance measures in Sections 10 and 11. Once the ad hoc committee in Section 10 completes its work, a determination will be made regarding the high-level performance indicators that should be included in the Attainment Report. Accordingly, I am vetoing this section so the ad hoc committee's recommendations can be considered.

For these reasons, I have vetoed Sections 11, 13, 14, and 15 of Second Engrossed Substitute Senate Bill 5742.

With the exception of Sections 11, 13, 14, and 15, Second Engrossed Substitute Senate Bill 5742 is approved."