

2 **SHB 1931** - CONF REPT - S3452.1  
3 By Conference Committee

4 ADOPTED 4/24/93

5 Strike everything after the enacting clause and insert the  
6 following:

7 "**Sec. 1.** RCW 47.60.120 and 1984 c 7 s 307 are each amended to read  
8 as follows:

9 (1) If the department acquires or constructs, maintains, and  
10 operates any ferry crossings upon or toll bridges over Puget Sound or  
11 any of its tributary or connecting waters, there shall not be  
12 constructed, operated, or maintained any other ferry crossing upon or  
13 bridge over any such waters within ten miles of any such crossing or  
14 bridge operated or maintained by the department excepting such bridges  
15 or ferry crossings in existence, and being operated and maintained  
16 under a lawfully issued franchise at the time of the location of the  
17 ferry crossing or construction of the toll bridge by the department.

18 (2) The ten-mile distance in subsection (1) of this section means  
19 ten statute miles measured by airline distance. The ten-mile  
20 restriction shall be applied by comparing the two end points (termini)  
21 of a state ferry crossing to those of a private ferry crossing.

22 (3) The Washington utilities and transportation commission may,  
23 upon written petition of a commercial ferry operator certificated or  
24 applying for certification under chapter 81.84 RCW, and upon notice and  
25 hearing, grant a waiver from the ten-mile restriction. The waiver must  
26 not be detrimental to the public interest. In making a decision to  
27 waive the ten-mile restriction, the commission shall consider, but is  
28 not limited to, the impact of the waiver on transportation congestion  
29 mitigation, air quality improvement, and the overall impact on the  
30 Washington state ferry system. The commission shall act upon a request  
31 for a waiver within ninety days after the conclusion of the hearing.  
32 A waiver is effective for a period of five years from the date of  
33 issuance. At the end of five years the waiver becomes permanent unless  
34 appealed within thirty days by the commission on its own motion, the  
35 department, or an interested party.

1       (4) The department shall not maintain and operate any ferry  
2 crossing or toll bridge over Puget Sound or any of its tributary or  
3 connecting waters that would infringe upon any franchise lawfully  
4 issued by the state and in existence and being exercised at the time of  
5 the location of the ferry crossing or toll bridge by the department,  
6 without first acquiring the rights granted to such franchise holder  
7 under the franchise.

8       (~~While any revenue bonds issued by the department under the~~  
9 ~~provisions of this chapter are outstanding no additional bonds may be~~  
10 ~~issued for the purposes of acquiring, constructing, operating, or~~  
11 ~~maintaining any ferries or toll bridges within the aforesaid ten mile~~  
12 ~~distance by the department unless the revenues of any such additional~~  
13 ~~ferries or toll bridges are pledged to the bonds then outstanding to~~  
14 ~~the extent provided by the resolution authorizing the issue of the~~  
15 ~~outstanding bonds. The provisions of this section are binding upon the~~  
16 ~~state, and all of its departments, agencies, and instrumentalities, as~~  
17 ~~well as any and all private, political, municipal, and public~~  
18 ~~corporations and subdivisions, including cities, towns, counties, and~~  
19 ~~other political subdivisions, and the prohibitions of this section~~  
20 ~~shall restrict and limit the powers of the legislature of the state in~~  
21 ~~respect to the matters herein mentioned so long as any of such bonds~~  
22 ~~are outstanding and unpaid and shall be deemed to constitute a contract~~  
23 ~~to that effect for the benefit of the holders of all such bonds.))~~

24       **Sec. 2.** RCW 81.84.010 and 1961 c 14 s 81.84.010 are each amended  
25 to read as follows:

26       (1) No ~~((steamboat company shall))~~ commercial ferry may hereafter  
27 operate any vessel or ferry for the public use for hire between fixed  
28 termini or over a regular route upon the waters within this state,  
29 including the rivers and lakes and Puget Sound, without first applying  
30 for and obtaining from the commission a certificate declaring that  
31 public convenience and necessity require such operation. Service  
32 authorized by certificates issued before or after the effective date of  
33 this act to a commercial ferry operator shall be exercised by the  
34 operator in a manner consistent with the conditions established in the  
35 certificate or tariffs: PROVIDED, That no certificate shall be  
36 required for a vessel primarily engaged in transporting freight other  
37 than vehicles, whose gross earnings from the transportation of  
38 passengers and/or vehicles, are not more than ten percent of the total

1 gross annual earnings of such vessel: PROVIDED, That nothing herein  
2 shall be construed to affect the right of any county public  
3 transportation benefit area or other public agency within this state to  
4 construct, condemn, purchase, operate, or maintain, itself or by  
5 contract, agreement, or lease, with any person, firm, or corporation,  
6 ferries or boats across or wharfs at or upon the waters within this  
7 state, including rivers and lakes and Puget Sound, provided such  
8 operation is not over the same route or between the same districts,  
9 being served by a certificate ((~~carrier~~)) holder without first  
10 acquiring the rights granted to the certificate holder under the  
11 certificate, nor shall this chapter be construed to affect, amend, or  
12 invalidate any contract entered into prior to January 15, 1927, for the  
13 operation of ferries or boats upon the waters within this state, which  
14 was entered into in good faith by any county with any person, firm, or  
15 corporation, except that in case of the operation or maintenance by any  
16 county, city, town, port district, or other political subdivision by  
17 contract, agreement, or lease with any person, firm, or corporation, of  
18 ferries or boats across or wharfs at or upon the waters within this  
19 state, including rivers and lakes and Puget Sound, the commission shall  
20 have power and authority to regulate rates and services of such  
21 operation or maintenance of ferries, boats, or wharfs, to make, fix,  
22 alter, or amend said rates, and to regulate service and safety of  
23 operations thereof, in the manner and to the same extent as it is  
24 empowered to regulate a ((~~steamboat company~~)) commercial ferry,  
25 notwithstanding the provisions of any act or parts of acts inconsistent  
26 herewith.

27 (2) The holder of a certificate of public convenience and necessity  
28 granted under this chapter must initiate service within five years of  
29 obtaining the certificate. The certificate holder shall report to the  
30 commission every six months after the certificate is granted on the  
31 progress of the certificated route. The reports shall include, but not  
32 be limited to, the progress of environmental impact, parking, local  
33 government land use, docking, and financing considerations. However,  
34 if service has not been initiated within five years of obtaining the  
35 certificate, the commission may extend the certificate on a twelve-  
36 month basis for up to three years if the six-month progress reports  
37 indicate there is significant advancement toward initiating service.

38 (3) The commission shall review certificates in existence as of the  
39 effective date of this act, where service is not being provided on all

1 or any portion of the route or routes certificated. Based on progress  
2 reports required under subsection (2) of this section, the commission  
3 may grant an extension beyond that provided in subsection (2) of this  
4 section. Such additional extension may not exceed a total of two  
5 years.

6 **Sec. 3.** RCW 81.84.020 and 1961 c 14 s 81.84.020 are each amended  
7 to read as follows:

8 (1) Upon the filing of an application the commission shall give  
9 reasonable notice to the department, affected cities and counties, and  
10 any common carrier which might be adversely affected, of the time and  
11 place for hearing on such application. The commission shall have power  
12 after hearing, to issue the certificate as prayed for, or to refuse to  
13 issue it, or to issue it for the partial exercise only of the privilege  
14 sought, and may attach to the exercise of the rights granted by said  
15 certificate such terms and conditions as in its judgment the public  
16 convenience and necessity may require; but the commission shall not  
17 have power to grant a certificate to operate between districts and/or  
18 into any territory prohibited by RCW 47.60.120 or already served by an  
19 existing certificate holder, unless such existing certificate holder  
20 ((shall fail and refuse)) has failed or refused to furnish reasonable  
21 and adequate service or has failed to provide the service described in  
22 its certificate or tariffs after the time period allowed to initiate  
23 service has elapsed: PROVIDED, A certificate shall be granted when it  
24 shall appear to the satisfaction of the commission that ((such  
25 steamboat company)) the commercial ferry was actually operating in good  
26 faith over the route for which such certificate shall be sought, on  
27 January 15, 1927: PROVIDED, FURTHER, That in case two or more  
28 ((steamboat companies)) commercial ferries shall upon said date have  
29 been operating vessels upon the same route, or between the same  
30 districts the commission shall determine after public hearing whether  
31 one or more certificates shall issue, and in determining to whom a  
32 certificate or certificates shall be issued, the commission shall  
33 consider all material facts and circumstances including the prior  
34 operation, schedules, and services rendered by either of ((said  
35 companies)) the ferries, and in case more than one certificate shall  
36 issue, the commission shall fix and determine the schedules and  
37 services of the ((companies to whom such)) ferries to which the

1 certificates are issued to the end that duplication of service be  
2 eliminated and public convenience be furthered.

3 (2) Before issuing a certificate, the commission shall determine  
4 that the applicant has the financial resources to operate the proposed  
5 service for at least twelve months, based upon the submission by the  
6 applicant of a pro forma financial statement of operations. Issuance  
7 of a certificate shall be determined upon, but not limited to, the  
8 following factors: Ridership and revenue forecasts; the cost of  
9 service for the proposed operation; an estimate of the cost of the  
10 assets to be used in providing the service; a statement of the total  
11 assets on hand of the applicant that will be expended on the proposed  
12 operation; and a statement of prior experience, if any, in such field  
13 by the applicant. The documentation required of the applicant under  
14 this section shall comply with the provisions of RCW 9A.72.085.

15 (3) Subsection (2) of this section does not apply to an application  
16 for a certificate that is pending as of the effective date of this act.

17 NEW SECTION. Sec. 4. A new section is added to chapter 81.84 RCW  
18 to read as follows:

19 The commission, in granting a certificate to operate as a  
20 commercial ferry, shall require the operator to first obtain liability  
21 and property damage insurance from a company licensed to write  
22 liability insurance in the state or a surety bond of a company licensed  
23 to write surety bonds in the state, on each vessel or ferry to be used,  
24 in the amount of not less than one hundred thousand dollars for any  
25 recovery for personal injury by one person, and not less than one  
26 million dollars and in such additional amount as the commission shall  
27 determine, for all persons receiving personal injury and property  
28 damage by reason of one act of negligence, and not less than fifty  
29 thousand dollars for damage to property of any person other than the  
30 insured; or combined bodily injury and property damage liability  
31 insurance of not less than one million dollars, and to maintain such  
32 liability and property damage insurance or surety bond in force on each  
33 vessel or ferry while so used. Each policy for liability or property  
34 damage insurance or surety bond required by this section must be filed  
35 with the commission and kept in full force and effect, and failure to  
36 do so is cause for revocation of the operator's certificate.

1       **Sec. 5.** RCW 81.84.030 and 1961 c 14 s 81.84.030 are each amended  
2 to read as follows:

3       No certificate or any right or privilege thereunder held, owned, or  
4 obtained under the provisions of this chapter shall be sold, assigned,  
5 leased, mortgaged, or in any manner transferred, either by the act of  
6 the parties or by operation of law, except upon authorization by the  
7 commission first obtained. ~~((The commission may at any time by its  
8 order duly entered after hearing had upon notice to the holder of any  
9 certificate hereunder and an opportunity to such holder to be heard,  
10 suspend, revoke, alter, or amend any certificate issued under the  
11 provisions of this chapter, if the holder thereof wilfully violates or  
12 fails to observe the provisions or conditions of the certificate, or  
13 the orders, rules or regulations of the commission, or the provisions  
14 of this title.))~~

15       **Sec. 6.** RCW 81.84.050 and 1961 c 14 s 81.84.050 are each amended  
16 to read as follows:

17       Every ~~((steamboat company))~~ commercial ferry and every officer,  
18 agent, or employee of any ~~((steamboat company))~~ commercial ferry who  
19 violates or who procures, aids, or abets in the violation of any  
20 provision of this title, or any order, rule, regulation, or decision of  
21 the commission shall incur a penalty of one hundred dollars for every  
22 such violation. Each and every such violation shall be a separate and  
23 distinct offense, and in case of a continuing violation every day's  
24 continuance shall be and be deemed to be a separate and distinct  
25 violation. Every act of commission or omission which procures, aids,  
26 or abets in the violation shall be considered a violation under the  
27 provisions of this section and subject to the penalty herein provided  
28 for.

29       The penalty herein provided for shall become due and payable when  
30 the person incurring the same receives a notice in writing from the  
31 commission describing such violation with reasonable particularity and  
32 advising such person that the penalty is due.

33       The commission may, upon written application therefor, received  
34 within fifteen days, remit or mitigate any penalty provided for in this  
35 section or discontinue any prosecution to recover the same upon such  
36 terms as it in its discretion shall deem proper, and shall have  
37 authority to ascertain the facts upon all such applications in such  
38 manner and under such regulations as it may deem proper.

1 If the amount of such penalty is not paid to the commission within  
2 fifteen days after receipt of notice imposing the same or, if  
3 application for remission or mitigation has not been made, within  
4 fifteen days after the violator has received notice of the disposition  
5 of such application, the attorney general shall bring an action to  
6 recover the penalty in the name of the state of Washington in the  
7 superior court of Thurston county or of some other county in which such  
8 violator may do business. In all such actions the procedure and rules  
9 of evidence shall be the same as in ordinary civil actions except as  
10 otherwise herein provided. All penalties recovered by the state under  
11 this chapter shall be paid into the state treasury and credited to the  
12 public service revolving fund.

13 NEW SECTION. **Sec. 7.** A new section is added to chapter 81.84 RCW  
14 to read as follows:

15 The commission, upon complaint by an interested party, or upon its  
16 own motion after notice and opportunity for hearing, may cancel,  
17 revoke, suspend, alter, or amend a certificate issued under this  
18 chapter on any of the following grounds:

19 (1) Failure of the certificate holder to initiate service by the  
20 conclusion of the fifth year after the certificate has been granted or  
21 by the conclusion of an extension granted under RCW 81.84.010 (2) or  
22 (3), if the commission has considered the progress report information  
23 required under RCW 81.84.010 (2) or (3);

24 (2) Failure of the certificate holder to file an annual report;

25 (3) The filing by a certificate holder of an annual report that  
26 shows no revenue in the previous twelve-month period after service has  
27 been initiated;

28 (4) The violation of any provision of this chapter;

29 (5) The violation of or failure to observe the provisions or  
30 conditions of the certificate or tariffs;

31 (6) The violation of an order, decision, rule, regulation, or  
32 requirement established by the commission under this chapter;

33 (7) Failure of a certificate holder to maintain the required  
34 insurance coverage in full force and effect; or

35 (8) Failure or refusal to furnish reasonable and adequate service  
36 after initiating service.

1       The commission shall take appropriate action within thirty days  
2 upon a complaint by an interested party or of its own finding that a  
3 provision of this section has been violated.

4       NEW SECTION.   **Sec. 8.** A new section is added to chapter 81.84 RCW  
5 to read as follows:

6       The commission may, with or without a hearing, issue temporary  
7 certificates to operate under this chapter, but only after it finds  
8 that the issuance of the temporary certificate is necessary due to an  
9 immediate and urgent need and is otherwise consistent with the public  
10 interest. The certificate may be issued for a period of up to one  
11 hundred eighty days. The commission may prescribe such special rules  
12 and impose special terms and conditions on the granting of the  
13 certificate as in its judgment are reasonable and necessary in carrying  
14 out this chapter. The commission shall collect a filing fee, not to  
15 exceed two hundred dollars, for each application for a temporary  
16 certificate. The commission shall not issue a temporary certificate to  
17 operate on a route for which a certificate has been issued or for which  
18 an application by another commercial ferry operator is pending.

19       **Sec. 9.** RCW 81.04.010 and 1991 c 272 s 3 are each amended to read  
20 as follows:

21       As used in this title, unless specially defined otherwise or unless  
22 the context indicates otherwise:

23       "Commission" means the utilities and transportation commission.

24       "Commissioner" means one of the members of such commission.

25       "Corporation" includes a corporation, company, association, or  
26 joint stock association.

27       "Low-level radioactive waste site operating company" includes every  
28 corporation, company, association, joint stock association,  
29 partnership, and person, their lessees, trustees, or receivers  
30 appointed by any court whatsoever, owning, operating, controlling, or  
31 managing a low-level radioactive waste disposal site or sites located  
32 within the state of Washington.

33       "Low-level radioactive waste" means low-level waste as defined by  
34 RCW 43.145.010.

35       "Person" includes an individual, a firm, or copartnership.

36       "Street railroad" includes every railroad by whatsoever power  
37 operated, or any extension or extensions, branch or branches thereof,



1 for public use in the conveyance of persons or property for hire, being  
2 mainly upon, along, above, or below any street, avenue, road, highway,  
3 bridge, or public place within any one city or town, and includes all  
4 equipment, switches, spurs, tracks, bridges, right of trackage,  
5 subways, tunnels, stations, terminals, and terminal facilities of every  
6 kind used, operated, controlled, or owned by or in connection with any  
7 such street railroad, within this state.

8 "Street railroad company" includes every corporation, company,  
9 association, joint stock association, partnership, and person, their  
10 lessees, trustees, or receivers appointed by any court whatsoever, and  
11 every city or town, owning, controlling, operating, or managing any  
12 street railroad or any cars or other equipment used thereon or in  
13 connection therewith within this state.

14 "Railroad" includes every railroad, other than street railroad, by  
15 whatsoever power operated for public use in the conveyance of persons  
16 or property for hire, with all bridges, ferries, tunnels, equipment,  
17 switches, spurs, tracks, stations, and terminal facilities of every  
18 kind used, operated, controlled, or owned by or in connection with any  
19 such railroad.

20 "Railroad company" includes every corporation, company,  
21 association, joint stock association, partnership, or person, their  
22 lessees, trustees, or receivers appointed by any court whatsoever,  
23 owning, operating, controlling, or managing any railroad or any cars or  
24 other equipment used thereon or in connection therewith within this  
25 state.

26 "Express company" includes every corporation, company, association,  
27 joint stock association, partnership, and person, their lessees,  
28 trustees, or receivers appointed by any court whatsoever, who shall  
29 engage in or transact the business of carrying any freight,  
30 merchandise, or property for hire on the line of any common carrier  
31 operated in this state.

32 "Common carrier" includes all railroads, railroad companies, street  
33 railroads, street railroad companies, (~~steamboat companies~~)  
34 commercial ferries, express companies, car companies, sleeping car  
35 companies, freight companies, freight line companies, and every  
36 corporation, company, association, joint stock association,  
37 partnership, and person, their lessees, trustees, or receivers  
38 appointed by any court whatsoever, and every city or town, owning,

1 operating, managing, or controlling any such agency for public use in  
2 the conveyance of persons or property for hire within this state.

3 "Vessel" includes every species of watercraft, by whatsoever power  
4 operated, for public use in the conveyance of persons or property for  
5 hire over and upon the waters within this state, excepting all  
6 towboats, tugs, scows, barges, and lighters, and excepting rowboats and  
7 sailing boats under twenty gross tons burden, open steam launches of  
8 five tons gross and under, and vessels under five tons gross propelled  
9 by gas, fluid, naphtha, or electric motors.

10 "~~((Steamboat—company))~~ Commercial ferry" includes every  
11 corporation, company, association, joint stock association,  
12 partnership, and person, their lessees, trustees, or receivers,  
13 appointed by any court whatsoever, owning, controlling, leasing,  
14 operating, or managing any vessel over and upon the waters of this  
15 state.

16 "Transportation of property" includes any service in connection  
17 with the receiving, delivery, elevation, transfer in transit,  
18 ventilation, refrigeration, icing, storage, and handling of the  
19 property transported, and the transmission of credit.

20 "Transportation of persons" includes any service in connection with  
21 the receiving, carriage, and delivery of the person transported and his  
22 baggage and all facilities used, or necessary to be used in connection  
23 with the safety, comfort, and convenience of the person transported.

24 "Public service company" includes every common carrier.

25 The term "service" is used in this title in its broadest and most  
26 inclusive sense.

27 **Sec. 10.** RCW 81.24.030 and 1981 c 13 s 5 are each amended to read  
28 as follows:

29 Every ~~((steamboat—company))~~ commercial ferry shall, on or before  
30 the first day of April of each year, file with the commission a  
31 statement on oath showing its gross operating revenue from intrastate  
32 operations for the preceding calendar year, or portion thereof, and pay  
33 to the commission a fee of two-fifths of one percent of the amount of  
34 gross operating revenue: PROVIDED, That the fee so paid shall in no  
35 case be less than five dollars. The percentage rate of gross operating  
36 revenue to be paid in any year may be decreased by the commission by  
37 general order entered before March 1st of such year."

1 **SHB 1931** - CONF REPT - S3452.1

2 By Conference Committee

3 ADOPTED 4/24/93

4 In line 1 of the title, after "operators;" strike the remainder of  
5 the title and insert "amending RCW 47.60.120, 81.84.010, 81.84.020,  
6 81.84.030, 81.84.050, 81.04.010, and 81.24.030; adding new sections to  
7 chapter 81.84 RCW; and prescribing penalties."

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