

SENATE BILL REPORT

SHB 1931

AS REPORTED BY COMMITTEE ON TRANSPORTATION, APRIL 1, 1993

Brief Description: Regulating steamboat operators.

SPONSORS: House Committee on Transportation (originally sponsored by Representatives Schmidt, Zellinsky and Wood)

HOUSE COMMITTEE ON TRANSPORTATION

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass as amended.

Signed by Senators Vognild, Chairman; Loveland, Vice Chairman; Skratek, Vice Chairman; Drew, Nelson, Oke, Prentice, M. Rasmussen, and Sheldon.

Minority Report: Do not pass as amended.

Signed by Senator Haugen.

Staff: Vicki Fabre (786-7313)

Hearing Dates: March 23, 1993; April 1, 1993

BACKGROUND:

Since 1927, for-hire or common carrier vessels and ferries operating between fixed termini or over regular routes on Washington waters have been regulated by the Washington Utilities and Transportation Commission (WUTC) as steamboat companies under Chapter 81.84 RCW. The entry standard for granting a certificate is "public convenience and necessity" (PC&N).

Two types of private ferry service exist: private passenger and freight ferries, and launch services. Launch services provide ship-to-shore transportation of freight and a ship's crew for large ships anchored in Washington waters. To date, the WUTC has granted 19 steamboat certificates.

A steamboat certificate holder normally has exclusive rights to the route granted. This means a certificate, once granted, may remain outstanding indefinitely, with or without activity, unless the certificate provides otherwise; the certificate holder fails to provide reasonable and adequate service; or the certificate holder violates the requirements of the certificate.

In addition to determining whether the applicant meets the PC&N test, the WUTC must consider whether the proposed service violates the requirements of RCW 47.60.120 which prohibits the construction and operation of commercial ferry crossings

within 10 miles of a state ferry crossing. This is commonly referred to as the "10-mile rule."

In 1989, a commercial ferry service, Puget Sound Express (PSE) applied to the WUTC for service between Port Townsend and Seattle, serving the intermediate point of Kingston. PSE later asked for expanded service from Kingston to Seattle. With the advent of this and other applications for and interest in providing commercial passenger-only service, the issue of competition with the state ferry system service and potential violation of the "10-mile rule" led the Department of Transportation (DOT) to ask for an Attorney General's Opinion (AGO) on the relationship between the "10-mile rule" and the WUTC-issued certificates for commercial ferry service. The AGO, which was issued in November 1990, found that the 10-mile distance is 10 highway miles measured in airline distance and is applied by comparing the two end points of a commercial ferry crossing to the two end points of a state crossing. If the former is within 10 miles of the latter, the crossing is prohibited.

An interim legislative subcommittee comprised of House and Senate Transportation Committee members was formed at the direction of the Legislative Transportation Committee (LTC) following the 1990 session. One of the tasks of the subcommittee was to examine the certification process for private passenger ferries. The following issues were identified during the subcommittee's review of the subject: the provision of statutory notice to interested parties, particularly the DOT and cities and counties; the financial responsibility of private companies and their ability to provide reasonable, reliable service over time; the absence in existing law of a procedure for determining and taking action on a certificate that is dormant; and the absence of a statutory definition of the "10-mile rule."

In 1991, the Joint Subcommittee on Marine Transportation developed proposed legislation addressing the aforementioned issues which was introduced and heard in the House and Senate Transportation Committees, but did not pass the Legislature.

SUMMARY:

All references to "steamboat operator" are changed to "commercial ferry operator."

The "10-mile rule" is defined as 10 statute miles measured by airline distance and is applied by comparing the two end points or termini of a state ferry crossing to those of a private ferry crossing.

The Washington Utilities and Transportation Commission (WUTC) is authorized, upon written petition of a certificated, commercial ferry operator or an applicant for certification and upon notice and hearing, to grant a waiver from the 10-mile restriction. The decision to grant a waiver must be based on consideration of the impact of the waiver on transportation congestion mitigation, air quality improvement,

and the overall impact on the state ferry system. The waiver is effective for five years and becomes permanent at the end of that period unless appealed by the WUTC, the Department of Transportation (DOT), or an interested party.

Modifications of the 10-mile restriction are conditioned on the passage of legislation authorizing the sale of bonds to retire the 1963 ferry and toll bridge bond issue, which contains covenants on the 10-mile restriction.

Upon the filing of an application for certification, in addition to any common carrier that may be adversely impacted, the WUTC is required to notify the Department of Transportation and affected cities and counties.

A standard of service is included which requires operators to exercise a certificate in a manner consistent with the conditions established in the certificate or tariffs.

The holder of a certificate is required to initiate service within five years of obtaining the certificate and to report to the WUTC every six months on the progress of the certificated route. The progress report must include, at a minimum, environmental impact, parking, docking and financing considerations. The WUTC may extend the certificate on a 12-month basis for up to three years, provided the six-month progress reports indicate there is significant advancement toward initiating service.

The WUTC must determine the financial ability of an applicant to operate the proposed service for at least 12 months, based upon the submission by the applicant of a pro forma financial statement of operations. An applicant, under penalty of perjury, must certify and declare that the financial information submitted is true. The financial responsibility provisions do not apply to a certificate pending as of the effective date of the act.

A certificate holder is required to obtain liability and property damage insurance on each vessel or ferry to be used.

Conditions under which the WUTC is required to cancel, revoke, suspend, alter or amend a certificate are established. These include, but are not limited to, failure to initiate service within five years or by the conclusion of the extension period; failure to operate and perform reasonable service after initiating service; failure of the certificate holder to file an annual report and observe the provisions or conditions of the certificate or tariffs; or failure to maintain the required insurance coverage. After notice and a hearing, the WUTC is required to act within 30 days on its motion or that of an interested party.

The WUTC is authorized to issue temporary certificates for a period of up to 180 days after a finding that issuance of such certificates is necessary due to an immediate and urgent need and is otherwise consistent with the public interest.

SUMMARY OF PROPOSED SENATE AMENDMENTS:

Carriers of freight are not required to have a certificate if the total gross income from the transportation of passengers and/or vehicles is not more than 10 percent of the total gross annual earnings of a vessel.

The Washington Utilities and Transportation Commission is required to review existing certificates and determine if additional time to initiate service is warranted. Such an additional extension may not exceed a total of two years.

Technical amendments are made to make the insurance requirements consistent with current policy writing practices.

The section conditioning waiver of the 10-mile rule (Section 1 of the bill) on the enactment of legislation (SB 5166) authorizing the issuance of bonds to refund ferry and toll bridge refunding revenue bonds is deleted. SB 5166 has been signed by the Governor.

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR:

Legislation is needed which provides direction and gives clearer guidelines to the WUTC for granting commercial ferry certificates.

It is necessary to protect the public interest through retention of the rule that prohibits private ferries from operating within 10 miles of state ferries. However, the establishment of a process that allows the WUTC to grant a waiver from the 10-mile rule in those cases where private ferry service does not impact state ferry service, and where there is a benefit to the traveling public, is appropriate.

The initiation of service requirements should not apply to existing certificates.

The private sector is not sufficiently protected from public sector intervention and operation of a route during the initiation of service period.

An applicant should not be expected to have the financial resources to operate the service for one year prior to applying for and receiving a certificate. Applicants should only be required to provide a plan for operation.

TESTIMONY AGAINST: None

TESTIFIED: Representative Schmidt, prime sponsor; Terry McCarthy, WSDOT, Marine Division (pro); Dave Wiley, Arrow Launch

Services (pro); Alan Scott, Washington Utilities and
Transportation Commission (pro); Marty Behr (with concerns)