

2 SSB 6212 - S AMD - 164

3 By Senators T. Sheldon, Oke and Haugen

4 ADOPTED 2/15/00

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

7 NEW SECTION. **Sec. 1.** The operation of passenger-only ferries
8 within the state is a matter of public interest. If the department of
9 transportation discontinues its operations on passenger-only ferry
10 crossings, or decides not to pursue passenger-only ferry crossings that
11 have been previously budgeted and approved by the transportation
12 commission, the public interest requires that persons and entities
13 other than the department be allowed the opportunity to operate
14 passenger-only ferry service on those crossings. The lease of
15 passenger-only ferries and facilities from the department, or provision
16 of money, equipment, or materials, or the provision of equipment,
17 materials, services, or facilities at below-market value by a public
18 entity, to allow an entity to operate passenger-only ferry service is
19 for the benefit of the public to ensure adequate passenger-only ferry
20 service along passenger-only ferry crossings.

21 NEW SECTION. **Sec. 2.** As used in this chapter:

22 (1) "Commission" means the Washington utilities and transportation
23 commission.

24 (2) "Department" means the Washington department of transportation.

25 (3) "Passenger-only ferry" means any vessel operating for the
26 public use for hire over a regular route between fixed termini,
27 excluding:

28 (a) Auto ferries;

29 (b) Charter service, as defined in RCW 81.84.005;

30 (c) Excursion service, as defined in RCW 81.84.005;

31 (d) Common carrier ferries, defined as vessels primarily engaged in
32 transporting freight other than vehicles, whose gross earnings from the
33 transportation of passengers are not more than ten percent of the total
34 gross earnings of the vessel;

1 (e) Launch service, defined as the transportation of either
2 passengers, or freight, or both, to or from a vessel underway, at
3 anchor, or at a dock; and

4 (f) All vessels or services described in RCW 81.84.007.

5 (4) "Passenger-only ferry operator" includes, but is not limited
6 to, a nonprofit corporation, public-private partnership, transit
7 agency, municipality, private entity, person, or any combination of
8 them.

9 (5) "Public participation" includes the provision of money,
10 equipment, or materials, or the provision of equipment, materials,
11 services, or facilities at below-market value by a public entity.

12 NEW SECTION. **Sec. 3.** (1) All applications to operate passenger-
13 only ferry service upon the waters of this state, including rivers,
14 lakes, and Puget Sound are subject to the provisions of this chapter.
15 Any nonprofit corporation, public-private partnership, transit agency,
16 municipality, private entity, person, or any combination of them, may
17 apply to the commission for a permit to operate passenger-only ferry
18 service.

19 (2) Applicants who filed an application under chapter 81.84 RCW
20 before February 1, 2000, will have the first option for a passenger-
21 only ferry permit under this chapter for the ferry crossing applied for
22 in chapter 81.84 RCW.

23 (3) The commission may, upon written application, and upon notice
24 and hearing, grant a passenger-only ferry permit to operate service at
25 a passenger-only ferry crossing that was discontinued by the
26 department, or at any other ferry crossing upon the waters of this
27 state, including rivers, lakes, and Puget Sound. The commission shall
28 act on an application for a passenger-only ferry permit within ninety
29 days after the conclusion of the hearing. A passenger-only ferry
30 permit is effective for an initial period of five years. The
31 commission may revoke or cancel the permit on its own motion if the
32 passenger-only ferry permit holder has not initiated service within one
33 year after the commission grants the permit. The commission may renew
34 passenger-only ferry permits for periods of three years, subject to
35 compliance with all rules, and provision of adequate service.

36 (4)(a) In deciding whether to grant a passenger-only ferry permit
37 the commission shall consider, at a minimum:

38 (i) The applicant's ability to initiate service within one year;

1 (ii) The adequacy of service to the community;
2 (iii) The effect of the applicant's proposed service on operation
3 of auto ferry service by the department; and
4 (iv) The effect of the applicant's proposed service on
5 transportation congestion mitigation.

6 (b) When determining whether an applicant can initiate service, the
7 commission shall consider, at a minimum, whether the applicant:

8 (i) Has sufficient financial resources, which may include public
9 participation;

10 (ii) Has sufficient experience and knowledge of ferry operations;

11 (iii) Has made or is making arrangements for parking, docking,
12 vessels, and coordination of ground transportation; and

13 (iv) Has identified or met any local government land use or
14 environmental requirements.

15 (c) When determining whether an applicant will provide adequate
16 service to the community, the commission shall consider, at a minimum:

17 (i) How the proposed service compares to that previously provided
18 by the department along the crossing, if applicable;

19 (ii) Whether the applicant has coordinated its service with ground
20 transportation; and

21 (iii) The number of runs the applicant proposes to operate.

22 (5) The commission may grant only one passenger-only ferry permit
23 for operation at a particular ferry crossing for a given time period.

24 (6) The department shall designate an employee with knowledge of
25 ferry operations as a technical advisor to assist the commission in
26 implementing this chapter.

27 NEW SECTION. **Sec. 4.** (1) The department shall immediately notify
28 the commission when it becomes apparent that the department will
29 discontinue one or more passenger-only ferry crossings or that it has
30 decided not to pursue one or more passenger-only ferry crossings that
31 had been previously budgeted and approved by the transportation
32 commission. The commission shall compile a mailing list of interested
33 persons that includes, at a minimum: All certificated commercial ferry
34 operators; all common carrier vessel operators; all affected counties,
35 municipalities, public transportation benefit areas, metropolitan
36 municipal corporations, and regional transit authorities; and all other
37 persons who have notified the commission in writing that they desire to
38 be on the mailing list.

1 (2) The commission shall notify all persons on the mailing list
2 that one or more passenger-only ferry crossing routes are eligible
3 under this chapter for issuance of a passenger-only ferry permit. The
4 commission shall accept written petitions from qualified applicants for
5 a period of one hundred twenty days from the date of the notice unless
6 the commission makes a finding that the public interest requires a
7 shorter notice period, in which case the minimum notice period is
8 thirty days from the date of the notice.

9 (3) To the extent that the department, before the effective date of
10 this section, has made the decision to discontinue one or more
11 passenger-only ferry crossings or has decided not to pursue one or more
12 passenger-only ferry crossings that had been previously budgeted and
13 approved by the transportation commission, the commission shall compile
14 the mailing list and make notification to interested persons as soon as
15 practicable after that date.

16 NEW SECTION. **Sec. 5.** The commission, in issuing a permit to a
17 passenger-only ferry operator, shall require that liability and
18 property damage insurance be acquired and maintained on each vessel or
19 ferry to be used to provide service, in the amount of not less than one
20 hundred thousand dollars for any recovery for personal injury by one
21 person, and not less than one million dollars and in an additional
22 amount that the commission determines, for all persons receiving
23 personal injury and property damage by reason of one act of negligence,
24 and not less than fifty thousand dollars for damage to property of any
25 person other than the insured; or combined bodily injury and property
26 damage liability insurance of not less than one million dollars. Proof
27 of liability or property damage insurance or surety bond required by
28 this section must be filed with the commission and kept in full force
29 and effect, and failure to do so is cause for cancellation of the
30 operator's permit.

31 NEW SECTION. **Sec. 6.** A passenger-only ferry permit holder may
32 lease passenger-only ferries and facilities from the department as long
33 as the lease of the ferries or facilities does not conflict with the
34 operation of the Washington state ferry system.

35 NEW SECTION. **Sec. 7.** No passenger-only ferry permit granted under
36 this chapter may be sold, assigned, leased, mortgaged, or in any manner

1 transferred, either by the act of the permit holder, or by operation of
2 law, without first obtaining the commission's approval.

3 NEW SECTION. **Sec. 8.** For the purposes of this section only,
4 passenger-only ferry operators are considered to be commercial ferries
5 as defined in chapter 81.84 RCW and shall comply with RCW 81.24.030
6 requiring annual report filing and payment of regulatory fees and RCW
7 81.84.040 requiring the payment of application filing fees.

8 NEW SECTION. **Sec. 9.** The commission may adopt rules for operation
9 of passenger-only ferry service, to include rules concerning the
10 process for issuing a passenger-only ferry permit, determining adequacy
11 of service, and establishing fares. The degree and level of regulation
12 may vary with the degree and level of public participation.

13 NEW SECTION. **Sec. 10.** If the department decides to resume service
14 on a passenger-only ferry crossing, the commission shall not renew any
15 existing passenger-only ferry permit for that crossing previously
16 granted by it. During the remainder of the term of the permit, the
17 Washington state ferry system shall not extend similar or competing
18 passenger-only ferry services along that crossing, except upon a proper
19 showing that the passenger-only ferry operator is not providing
20 adequate service. Nothing in this section precludes the Washington
21 state ferry system from entering into an agreement with the passenger-
22 only ferry permit holder, or purchasing or condemning the permit
23 authority or equipment.

24 NEW SECTION. **Sec. 11.** The commission, upon complaint by an
25 interested party, or on its own motion after notice and opportunity for
26 hearing, may cancel, revoke, suspend, alter, or amend a permit issued
27 under this chapter on any of the following grounds:

28 (1) Failure of the permit holder to initiate the proposed service
29 within one year after the permit has been granted;

30 (2) Violation of any provision of this chapter;

31 (3) Violation of or failure to observe the provisions or conditions
32 of the permit or tariff;

33 (4) Violation of an order, decision, rule, regulation, or
34 requirement established by the commission under this chapter;

1 (5) Failure of a permit holder to maintain the required insurance
2 coverage in full force and effect; or

3 (6) Failure or refusal to furnish reasonable and adequate service
4 after initiating service.

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

8 NEW SECTION. **Sec. 12.** All applicable provisions of this title
9 relating to procedure, powers of the commission, and penalties apply to
10 the operation and regulation of passenger-only ferry operators under
11 this chapter, except as those provisions may conflict with this chapter
12 and rules adopted under it by the commission.

13 NEW SECTION. **Sec. 13.** If any provision of this chapter or its
14 application to any person or circumstance is held invalid, the
15 remainder of the chapter or application of the provision to other
16 persons or circumstances is not affected.

17 **Sec. 14.** RCW 81.84.010 and 1993 c 427 s 2 are each amended to read
18 as follows:

19 (1) Except for certificates to provide commercial ferry service
20 issued before February 1, 2000, all applications for passenger-only
21 ferry service must be filed under section 3 of this act. Except for
22 ferries granted permits under that section, no commercial ferry may
23 hereafter operate any vessel or ferry for the public use for hire
24 between fixed termini or over a regular route upon the waters within
25 this state, including the rivers and lakes and Puget Sound, without
26 first applying for and obtaining from the commission a certificate
27 declaring that public convenience and necessity require such operation.
28 Service authorized by certificates issued before or after July 25,
29 1993, to a commercial ferry operator shall be exercised by the operator
30 in a manner consistent with the conditions established in the
31 certificate or tariffs: PROVIDED, That no certificate shall be
32 required for a vessel primarily engaged in transporting freight other
33 than vehicles, whose gross earnings from the transportation of
34 passengers and/or vehicles, are not more than ten percent of the total
35 gross annual earnings of such vessel(~~(:—PROVIDED, That)~~).

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

26 ~~((+2))~~ (3) The holder of a certificate of public convenience and
27 necessity granted under this chapter must initiate service within five
28 years of obtaining the certificate. The certificate holder shall
29 report to the commission every six months after the certificate is
30 granted on the progress of the certificated route. The reports shall
31 include, but not be limited to, the progress of environmental impact,
32 parking, local government land use, docking, and financing
33 considerations. However, if service has not been initiated within five
34 years of obtaining the certificate, the commission may extend the
35 certificate on a twelve-month basis for up to three years if the six-
36 month progress reports indicate there is significant advancement toward
37 initiating service.

38 ~~((3) The commission shall review certificates in existence as of~~
39 ~~July 25, 1993, where service is not being provided on all or any~~

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

5 **Sec. 15.** RCW 81.84.060 and 1993 c 427 s 7 are each amended to read
6 as follows:

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

11 (1) Failure of the certificate holder to initiate service by the
12 conclusion of the fifth year after the certificate has been granted or
13 by the conclusion of an extension granted under RCW 81.84.010 (~~((2) or~~
14 ~~(3))~~), if the commission has considered the progress report information
15 required under RCW 81.84.010 (~~((2) or (3))~~);

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

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

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

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

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

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

27 (8) Failure or refusal to furnish reasonable and adequate service
28 after initiating service.

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

32 **Sec. 16.** RCW 47.60.120 and 1993 c 427 s 1 are each amended to read
33 as follows:

34 (1) If the department acquires or constructs, maintains, and
35 operates any ferry crossings upon or toll bridges over Puget Sound or
36 any of its tributary or connecting waters, there shall not be
37 constructed, operated, or maintained any other ferry crossing upon or

1 bridge over any such waters within ten miles of any such crossing or
2 bridge operated or maintained by the department excepting such bridges
3 or ferry crossings in existence, and being operated and maintained
4 under a lawfully issued franchise at the time of the location of the
5 ferry crossing or construction of the toll bridge by the department.

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

10 (3) The Washington utilities and transportation commission may,
11 upon written petition of a commercial ferry operator certificated or
12 applying for certification under chapter 81.84 RCW, or upon written
13 petition from a passenger-only ferry operator as provided for under
14 section 3 of this act, and upon notice and hearing, grant a waiver from
15 the ten-mile restriction. The waiver must not be detrimental to the
16 public interest. In making a decision to waive the ten-mile
17 restriction, the commission shall consider, but is not limited to, the
18 impact of the waiver on transportation congestion mitigation, air
19 quality improvement, and the overall impact on the Washington state
20 ferry system. The commission shall act upon a request for a waiver
21 within ninety days after the conclusion of the hearing. A waiver is
22 effective for a period of five years from the date of issuance. At the
23 end of five years the waiver becomes permanent unless appealed within
24 thirty days by the commission on its own motion, the department, or an
25 interested party.

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

33 NEW SECTION. **Sec. 17.** A new section is added to chapter 81.104
34 RCW to read as follows:

35 High-capacity transportation systems may operate passenger-only
36 ferry service. This includes responsibility for system implementation.
37 Contracts and agreements to operate passenger-only ferry service may
38 include public-private partnerships, design-build, turnkey, and super

1 turnkey purchasing methods authorized under federal law applicable to
2 joint development projects, such as P.L. 105-178 and 62 Fed. Reg.
3 12266.

4 NEW SECTION. **Sec. 18.** A new section is added to chapter 81.104
5 RCW to read as follows:

6 RCW 81.104.100 and 81.104.110 do not apply to an assumption of a
7 high-capacity responsibility, route, or plan element by one agency from
8 another, such as the assumption by a local transit agency of the
9 responsibility, route, or plan element of a state transportation agency
10 if the assuming agency undertakes all the obligations of the planning
11 process and the assumption is approved by the appropriate regional
12 planning process.

13 NEW SECTION. **Sec. 19.** (1) The joint task force on ferries is
14 created, to be composed of:

15 (a) Eight members of the legislature selected as follows:

16 (i) Four members of the senate, two from each of the major
17 caucuses, to be appointed by the chair of the senate transportation
18 committee;

19 (ii) Four members of the house of representatives, two from each of
20 the major caucuses, to be appointed by the cochairs of the house of
21 representatives transportation committee; and

22 (b) At least one person designated by the cochairs representing
23 each of the following:

24 (i) Ferry advisory committees;

25 (ii) Persons who do not use ferries;

26 (iii) Labor organizations representing ferry workers;

27 (iv) Washington State Ferries;

28 (v) Transit operators;

29 (vi) The office of financial management; and

30 (vii) Other groups as deemed appropriate by the cochairs of the
31 task force.

32 (2) The transportation committees shall provide staff support as
33 mutually agreed by the cochairs of the joint select committee. The
34 chair of the senate transportation committee and the cochairs of the
35 house of representatives transportation committee shall designate the
36 cochairs.

1 NEW SECTION. **Sec. 20.** The joint task force on ferries shall meet
2 during the interim and report back to the transportation committees of
3 the senate and house of representatives by December 15, 2000. The task
4 force is charged with development of an orderly process to examine all
5 possible solutions that are presented to the task force, including, but
6 not limited to, continued operation of passenger-only ferry service by
7 Washington State Ferries, state and local partnerships, local
8 partnerships, government and nonprofit partnerships, and private
9 operations. The task force shall consider public options first,
10 nonprofit options second, and private operations third.

11 The report to the senate and house of representatives
12 transportation committees must include, but is not limited to, analysis
13 and recommendations on the following:

14 (1) Continued operation of all current passenger-only ferry routes
15 and levels of service by Washington State Ferries;

16 (2) Continued operation of selected passenger-only ferry routes or
17 reduced levels of service on selected routes;

18 (3) Operation of selected routes by any public entity or
19 combination of public entities;

20 (4) Operation of selected routes by any nonprofit entity or
21 combination of nonprofit entities;

22 (5) Operation of selected routes by any private entity or
23 combination of private entities;

24 (6) Ferry fare equity between ferry routes of different lengths;

25 (7) Establishment of a target for recovery of operating costs from
26 fare revenue when operations include participation by a public entity;
27 and

28 (8) In consultation with Washington State Ferries, the feasibility
29 of transferring an auto ferry to cover a route between
30 Vashon/Southworth and downtown Seattle if passenger-only service is
31 discontinued.

32 NEW SECTION. **Sec. 21.** Sections 1 through 13 of this act
33 constitute a new chapter in Title 81 RCW.

34 NEW SECTION. **Sec. 22.** Sections 19 and 20 of this act are
35 necessary for the immediate preservation of the public peace, health,
36 or safety, or support of the state government and its existing public
37 institutions, and take effect immediately."

1 **SSB 6212** - S AMD - 164
2 By Senators T. Sheldon, Oke and Haugen

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4 On page 1, line 1 of the title, after "ferries;" strike the
5 remainder of the title and insert "amending RCW 81.84.010, 81.84.060,
6 and 47.60.120; adding new sections to chapter 81.104 RCW; adding a new
7 chapter to Title 81 RCW; creating new sections; and declaring an
8 emergency."

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