
HOUSE BILL 2937

State of Washington

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By Representatives Rockefeller, Fisher, Haigh, Linville, Huff, Anderson, Barlean, Lovick, Ericksen, Mitchell, Woods, Sullivan, Eickmeyer, Lantz, Kessler and O'Brien

Read first time 01/24/2000. Referred to Committee on Transportation.

1 AN ACT Relating to establishing a public/private partnership to
2 manage and operate a passenger-only vessel system; amending RCW
3 81.84.005, 81.84.010, 81.84.020, 81.84.030, 81.84.060, 81.104.050, and
4 81.104.070; adding a new section to chapter 81.104 RCW; and repealing
5 1995 c 361 s 4 (uncodified).

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

7 **Sec. 1.** RCW 81.84.005 and 1995 c 361 s 1 are each amended to read
8 as follows:

9 As used in this chapter:

10 (1) "Excursion service" means the carriage or conveyance of persons
11 for compensation over the waters of this state from a point of origin
12 and returning to the point of origin with an intermediate stop or stops
13 at which passengers leave the vessel and reboard before the vessel
14 returns to its point of origin.

15 (2) "Charter service" means the hiring of a vessel, with captain
16 and crew, by a person or group for carriage or conveyance of persons or
17 property.

18 (3) "Public subsidy" means the provision of money, equipment, or
19 materials, or the provision of equipment, materials, services, or

1 facilities at below-market value by a public entity to an applicant for
2 a certificate or certificate holder that is included in the applicant's
3 or certificate holder's revenue projections or that materially support
4 or affect the fares charged by the applicant or certificate holder.

5 **Sec. 2.** RCW 81.84.010 and 1993 c 427 s 2 are each amended to read
6 as follows:

7 (1) No commercial ferry may hereafter operate any vessel or ferry
8 for the public use for hire between fixed termini or over a regular
9 route upon the waters within this state, including the rivers and lakes
10 and Puget Sound, without first applying for and obtaining from the
11 commission a certificate declaring that public convenience and
12 necessity require such operation. Service authorized by certificates
13 issued before or after July 25, 1993, to a commercial ferry operator
14 shall be exercised by the operator in a manner consistent with the
15 conditions established in the certificate or tariffs: PROVIDED, That
16 no certificate shall be required for a vessel primarily engaged in
17 transporting freight other than vehicles, whose gross earnings from the
18 transportation of passengers and/or vehicles, are not more than ten
19 percent of the total gross annual earnings of such vessel: PROVIDED,
20 That nothing herein shall be construed to affect the right of any
21 county public transportation benefit area or other public agency within
22 this state to construct, condemn, purchase, operate, or maintain,
23 itself or by contract, agreement, or lease, with any person, firm, or
24 corporation, ferries or boats across or wharfs at or upon the waters
25 within this state, including rivers and lakes and Puget Sound, provided
26 such operation is not over the same route or between the same
27 districts, being served by a certificate holder without first acquiring
28 the rights granted to the certificate holder under the certificate, nor
29 shall this chapter be construed to affect, amend, or invalidate any
30 contract entered into prior to January 15, 1927, for the operation of
31 ferries or boats upon the waters within this state, which was entered
32 into in good faith by any county with any person, firm, or corporation,
33 except that in case of the operation or maintenance by any county,
34 city, town, port district, or other political subdivision by contract,
35 agreement, or lease with any person, firm, or corporation, of ferries
36 or boats across or wharfs at or upon the waters within this state,
37 including rivers and lakes and Puget Sound, the commission shall have
38 power and authority to regulate rates and services of such operation or

1 maintenance of ferries, boats, or wharfs, to make, fix, alter, or amend
2 said rates, and to regulate service and safety of operations thereof,
3 in the manner and to the same extent as it is empowered to regulate a
4 commercial ferry, notwithstanding the provisions of any act or parts of
5 acts inconsistent herewith.

6 (2) The holder of a certificate of public convenience and necessity
7 granted under this chapter must initiate service within five years of
8 obtaining the certificate. The certificate holder shall report to the
9 commission every six months after the certificate is granted on the
10 progress of the certificated route. The reports shall include, but not
11 be limited to, the progress of environmental impact, parking, local
12 government land use, docking, and financing considerations. However,
13 if service has not been initiated within five years of obtaining the
14 certificate, the commission may extend the certificate on a twelve-
15 month basis for up to three years if the six-month progress reports
16 indicate there is significant advancement toward initiating service.

17 (3) The commission shall review certificates in existence as of
18 July 25, 1993, where service is not being provided on all or any
19 portion of the route or routes certificated. Based on progress reports
20 required under subsection (2) of this section, the commission may grant
21 an extension beyond that provided in subsection (2) of this section.
22 Such additional extension may not exceed a total of two years.

23 (4) Certificates issued to holders whose rates include or otherwise
24 rely upon public subsidies must be conditioned upon the continuation of
25 the subsidies. If the public entity subsidizing the certificate
26 holder, in its sole legislative discretion or by exercise of
27 contractual right, eliminates the subsidy, the certificate will lapse
28 upon notification of the commission by the public entity. If the
29 subsidy is reduced the commission shall review the certificate.

30 **Sec. 3.** RCW 81.84.020 and 1993 c 427 s 3 are each amended to read
31 as follows:

32 (1) Upon the filing of an application the commission shall give
33 reasonable notice to the department, affected cities and counties, and
34 any common carrier which might be adversely affected, of the time and
35 place for hearing on such application. The commission shall have power
36 after hearing, to issue the certificate as prayed for, or to refuse to
37 issue it, or to issue it for the partial exercise only of the privilege
38 sought, and may attach to the exercise of the rights granted by said

1 certificate such terms and conditions as in its judgment the public
2 convenience and necessity may require; but the commission shall not
3 have power to grant a certificate to operate between districts and/or
4 into any territory prohibited by RCW 47.60.120 or already served by an
5 existing certificate holder, unless such existing certificate holder
6 has failed or refused to furnish reasonable and adequate service or has
7 failed to provide the service described in its certificate or tariffs
8 after the time period allowed to initiate service has elapsed:
9 PROVIDED, A certificate shall be granted when it shall appear to the
10 satisfaction of the commission that the commercial ferry was actually
11 operating in good faith over the route for which such certificate shall
12 be sought, on January 15, 1927: PROVIDED, FURTHER, That in case two or
13 more commercial ferries shall upon said date have been operating
14 vessels upon the same route, or between the same districts the
15 commission shall determine after public hearing whether one or more
16 certificates shall issue, and in determining to whom a certificate or
17 certificates shall be issued, the commission shall consider all
18 material facts and circumstances including the prior operation,
19 schedules, and services rendered by either of the ferries, and in case
20 more than one certificate shall issue, the commission shall fix and
21 determine the schedules and services of the ferries to which the
22 certificates are issued to the end that duplication of service be
23 eliminated and public convenience be furthered.

24 (2) Before issuing a certificate, the commission shall determine
25 that the applicant has the financial resources to operate the proposed
26 service for at least twelve months, based upon the submission by the
27 applicant of a pro forma financial statement of operations. Issuance
28 of a certificate shall be determined upon, but not limited to, the
29 following factors: Ridership and revenue forecasts; the cost of
30 service for the proposed operation; an estimate of the cost of the
31 assets to be used in providing the service; public subsidies; a
32 statement of the total assets on hand of the applicant that will be
33 expended on the proposed operation; and a statement of prior
34 experience, if any, in such field by the applicant. The documentation
35 required of the applicant under this section shall comply with the
36 provisions of RCW 9A.72.085.

37 ~~((Subsection (2) of this section does not apply to an
38 application for a certificate that is pending as of July 25, 1993.))~~
39 Any subsidizing public entity must be named as a party in interest to

1 a certificate whose issuance is based in whole or in part upon revenue
2 forecasts that include such public subsidies. As a party in interest,
3 the subsidizing public entity is a necessary party to a proceeding
4 regarding the certificate holder, its rates, or the certificate.

5 **Sec. 4.** RCW 81.84.030 and 1993 c 427 s 5 are each amended to read
6 as follows:

7 No certificate or any right or privilege thereunder held, owned, or
8 obtained under the provisions of this chapter shall be sold, assigned,
9 leased, mortgaged, or in any manner transferred, either by the act of
10 the parties or by operation of law, except upon authorization by the
11 commission first obtained. A certificate in which a subsidizing public
12 entity is a party in interest or holds, owns, or maintains a right or
13 privilege under it may not be transferred in any manner, and the
14 commission may not authorize the transfer without the express written
15 consent of the party in interest.

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

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

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

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

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

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

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

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

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

1 (8) Failure or refusal to furnish reasonable and adequate service
2 after initiating service; or

3 (9) Cessation or reduction of a public subsidy.

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

7 **Sec. 6.** RCW 81.104.050 and 1992 c 101 s 22 are each amended to
8 read as follows:

9 Regional high_capacity transportation service may be expanded
10 beyond the established district boundaries through interlocal
11 agreements among the transit agencies and any regional transit
12 authorities in existence.

13 The interlocal agreements may authorize participation in
14 acquisition of equipment or facilities through the federally approved
15 alternative purchasing procedures, and methods authorized by RCW
16 81.104.070.

17 **Sec. 7.** RCW 81.104.070 and 1990 c 43 s 28 are each amended to read
18 as follows:

19 (1) The state shall not become an operating agent for regional high
20 capacity transportation systems.

21 (2) Agencies providing high capacity transportation service are
22 responsible for planning, construction, operations, and funding
23 including station area design and development, and parking facilities.
24 Agencies may implement necessary contracts, joint development
25 agreements, and interlocal government agreements. Contracts and
26 agreements may include public/private partnerships, design-build,
27 turnkey, and super-turnkey purchasing methods authorized under federal
28 law applicable to joint development projects, such as Public Law 105-
29 178 and 62 Fed. Reg. 12266. Agencies providing service shall consult
30 with affected local jurisdictions and cooperate with comprehensive
31 planning processes.

32 NEW SECTION. **Sec. 8.** A new section is added to chapter 81.104 RCW
33 to read as follows:

34 RCW 81.104.100 and 81.104.110 do not apply to an assumption of a
35 high-capacity responsibility, route, or plan element by one agency from
36 another, such as the assumption by a local transit agency of the

1 responsibility, route, or plan element of a state transportation agency
2 if the assuming agency undertakes all the obligations of the planning
3 process and the assumption is approved by the appropriate regional
4 planning agency.

5 NEW SECTION. **Sec. 9.** 1995 c 361 s 4 (uncodified) is repealed.

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