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SENATE BILL 5409

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State of Washington                      62nd Legislature                      2011 Regular Session

By Senators King and Haugen

Read first time 01/24/11. Referred to Committee on Transportation.

1            AN ACT Relating to removing commercial ferries operating in Puget  
2 Sound from the jurisdiction of the utilities and transportation  
3 commission; amending RCW 81.84.010, 81.84.020, 81.84.060, and  
4 47.60.115; and repealing RCW 47.60.120.

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

6            **Sec. 1.** RCW 81.84.010 and 2009 c 557 s 2 are each amended to read  
7 as follows:

8            (1) A commercial ferry may not operate any vessel or ferry for the  
9 public use for hire between fixed termini or over a regular route upon  
10 the waters within this state, including the rivers and lakes (~~and~~  
11 ~~Puget Sound~~)), without first applying for and obtaining from the  
12 commission a certificate declaring that public convenience and  
13 necessity require such operation. Service authorized by certificates  
14 issued to a commercial ferry operator must be exercised by the operator  
15 in a manner consistent with the conditions established in the  
16 certificate and tariff filed under chapter 81.28 RCW. However, a  
17 certificate is not required for a vessel primarily engaged in  
18 transporting freight other than vehicles, whose gross earnings from the

1 transportation of passengers or vehicles, or both, are not more than  
2 ten percent of the total gross annual earnings of such vessel.

3 (2) If the commission finds, after a hearing, that an existing or  
4 a proposed commercial ferry service does not serve an essential  
5 transportation purpose and is solely for recreation, the commission  
6 may, by order, exempt that service from the requirements of  
7 certification and regulation under this chapter. If the nonessential  
8 service is a proposed service not already provided by an existing  
9 certificate holder, the commission must also find, after notice to any  
10 existing certificate holder operating within the same territory and an  
11 opportunity to be heard, that the proposed service would not adversely  
12 affect the rates or services of any existing certificate holder.

13 (3) This section does not affect the right of any county public  
14 transportation benefit area or other public agency within this state to  
15 construct, condemn, purchase, operate, or maintain, itself or by  
16 contract, agreement, or lease, with any person, firm, or corporation,  
17 ferries or boats across the waters within this state, including rivers  
18 and lakes and Puget Sound, if the operation is not over the same route  
19 or between the same districts being served by a certificate holder  
20 without first acquiring the rights granted to the certificate holder  
21 under the certificate.

22 (4) The holder of a certificate of public convenience and necessity  
23 granted under this chapter must initiate service within five years of  
24 obtaining the certificate(~~(, except that the holder of a certificate of~~  
25 ~~public convenience and necessity for passenger-only ferry service in~~  
26 ~~Puget Sound must initiate service within twenty months of obtaining the~~  
27 ~~certificate)~~). The certificate holder shall report to the commission  
28 every six months after the certificate is granted on the progress of  
29 the certificated route. The reports shall include, but not be limited  
30 to, the progress of environmental impact, parking, local government  
31 land use, docking, and financing considerations. (~~Except in the case~~  
32 ~~of passenger-only ferry service in Puget Sound,~~) If service has not  
33 been initiated within five years of obtaining the certificate, the  
34 commission may extend the certificate on a twelve-month basis for up to  
35 three years if the six-month progress reports indicate there is  
36 significant advancement toward initiating service.

37 (5) This section does not apply to a commercial ferry operating on  
38 Puget Sound.

1       **Sec. 2.** RCW 81.84.020 and 2007 c 234 s 93 are each amended to read  
2 as follows:

3       (1) Upon the filing of an application, the commission shall give  
4 reasonable notice to the department, affected cities, counties, and  
5 public transportation benefit areas and any common carrier which might  
6 be adversely affected, of the time and place for hearing on such  
7 application. The commission may, after notice and an opportunity for  
8 a hearing, issue the certificate as prayed for, or refuse to issue it,  
9 or issue it for the partial exercise only of the privilege sought, and  
10 may attach to the exercise of the rights granted by the certificate any  
11 terms and conditions as in its judgment the public convenience and  
12 necessity may require; but the commission may not grant a certificate  
13 to operate between districts or into any territory (~~prohibited by RCW~~  
14 ~~47.60.120 or~~) already served by an existing certificate holder, unless  
15 the existing certificate holder has failed or refused to furnish  
16 reasonable and adequate service, has failed to provide the service  
17 described in its certificate or tariffs after the time allowed to  
18 initiate service has elapsed, or has not objected to the issuance of  
19 the certificate as prayed for.

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

32       (3) In granting a certificate for passenger-only ferries and  
33 determining what conditions to place on the certificate, the commission  
34 shall consider and give substantial weight to the effect of its  
35 decisions on public agencies operating, or eligible to operate,  
36 passenger-only ferry service.

37       (~~(4) Until July 1, 2007, the commission shall not accept or~~  
38 ~~consider an application for passenger-only ferry service serving any~~

1 ~~county in the Puget Sound area with a population of over one million~~  
2 ~~people. Applications for passenger only ferry service serving any~~  
3 ~~county in the Puget Sound area with a population of over one million~~  
4 ~~pending before the commission as of May 9, 2005, must be held in~~  
5 ~~abeyance and not be considered before July 1, 2007.)~~

6 **Sec. 3.** RCW 81.84.060 and 2007 c 234 s 97 are each amended to read  
7 as follows:

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

12 (1) Failure of the certificate holder to initiate service by the  
13 conclusion of the fifth year after the certificate has been granted or  
14 by the conclusion of an extension granted under RCW 81.84.010(~~(+2)~~)  
15 (4), if the commission has considered the progress report information  
16 required under RCW 81.84.010(~~(+2)~~) (4);

17 ~~(2) ((Failure of a certificate holder for passenger only ferry~~  
18 ~~service in Puget Sound to initiate service by the conclusion of the~~  
19 ~~twentieth month after the certificate has been granted;~~

20 ~~(+3))~~ Failure of the certificate holder to file an annual report;

21 ~~((+4))~~ (3) The filing by a certificate holder of an annual report  
22 that shows no revenue in the previous twelve-month period after service  
23 has been initiated;

24 ~~((+5))~~ (4) The violation of any provision of this chapter;

25 ~~((+6))~~ (5) The violation of or failure to observe the provisions  
26 or conditions of the certificate or tariffs;

27 ~~((+7))~~ (6) The violation of an order, decision, rule, regulation,  
28 or requirement established by the commission under this chapter;

29 ~~((+8))~~ (7) Failure of a certificate holder to maintain the  
30 required insurance coverage in full force and effect; or

31 ~~((+9))~~ (8) Failure or refusal to furnish reasonable and adequate  
32 service after initiating service.

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

1       **Sec. 4.** RCW 47.60.115 and 1983 c 3 s 134 are each amended to read  
2 as follows:

3       The bonds herein authorized shall, in the discretion of the  
4 department, be exchanged at the best possible price for the bonds being  
5 refunded, or any such bonds not exchanged shall be sold in the manner  
6 provided in RCW 47.60.090. The bonds herein authorized shall be issued  
7 in accordance with, and shall be subject to, the provisions of RCW  
8 47.60.050, 47.60.060, 47.60.080, 47.60.100, and 47.60.110(~~, and~~  
9 ~~47.60.120~~)).

10       NEW SECTION. **Sec. 5.** RCW 47.60.120 (Other crossings--Infringement  
11 of existing franchises--Waivers) and 2003 c 373 s 2, 2003 c 83 s 204,  
12 1993 c 427 s 1, 1984 c 7 s 307, & 1961 c 13 s 47.60.120 are each  
13 repealed.

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