

HB 1388 - H AMD 330

By Representative Woods

ADOPTED 03/31/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that the Washington
4 state department of transportation should focus on its core ferry
5 mission of moving automobiles on Washington state's marine highways.
6 The legislature finds that current statutes impose barriers to entities
7 other than the state operating passenger-only ferries. The legislature
8 intends to lift those barriers to allow entities other than the state
9 to provide passenger-only ferry service. The legislature finds that
10 the provision of this service and the improvement in the mobility of
11 the citizens of Washington state is legally adequate consideration for
12 the use of state facilities in conjunction with the provision of the
13 service, and the legislature finds that allowing the operators of
14 passenger-only ferries to use state facilities on the basis of legally
15 adequate consideration does not evince donative intent on the part of
16 the legislature.

17 **Sec. 2.** RCW 47.60.120 and 1993 c 427 s 1 are each amended to read
18 as follows:

19 (1) If the department acquires or constructs, maintains, and
20 operates any ferry crossings upon or toll bridges over Puget Sound or
21 any of its tributary or connecting waters, there shall not be
22 constructed, operated, or maintained any other ferry crossing upon or
23 bridge over any such waters within ten miles of any such crossing or
24 bridge operated or maintained by the department excepting such bridges
25 or ferry crossings in existence, and being operated and maintained
26 under a lawfully issued franchise at the time of the location of the
27 ferry crossing or construction of the toll bridge by the department.

28 (2) The ten-mile distance in subsection (1) of this section means

1 ten statute miles measured by airline distance. The ten-mile
2 restriction shall be applied by comparing the two end points (termini)
3 of a state ferry crossing to those of a private ferry crossing.

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

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

25 (5) This section does not apply to operators of passenger-only
26 ferry service.

27 **Sec. 3.** RCW 47.64.090 and 1983 c 15 s 27 are each amended to read
28 as follows:

29 (1) Except as provided in subsection (2) of this section, if any
30 party assumes the operation and maintenance of any ferry or ferry
31 system by rent, lease, or charter from the department of
32 transportation, such party shall assume and be bound by all the
33 provisions herein and any agreement or contract for such operation of
34 any ferry or ferry system entered into by the department shall provide
35 that the wages to be paid, hours of employment, working conditions and
36 seniority rights of employees will be established by the marine

1 employees' commission in accordance with the terms and provisions of
2 this chapter and it shall further provide that all labor disputes shall
3 be adjudicated in accordance with chapter 47.64 RCW.

4 (2) The department of transportation shall make its terminal, dock,
5 and pier space available to private operators of passenger-only ferries
6 if the space can be made available without limiting the operation of
7 car ferries operated by the department. These private operators are
8 not bound by the provisions of subsection (1) of this section. Charges
9 for the equipment and space must be fair market value taking into
10 account the public benefit derived from the passenger-only ferry
11 service.

12 **Sec. 4.** RCW 81.84.010 and 1993 c 427 s 2 are each amended to read
13 as follows:

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

1 contract entered into prior to January 15, 1927, for the operation of
2 ferries or boats upon the waters within this state, which was entered
3 into in good faith by any county with any person, firm, or corporation,
4 except that in case of the operation or maintenance by any county,
5 city, town, port district, or other political subdivision by contract,
6 agreement, or lease with any person, firm, or corporation, of ferries
7 or boats across or wharfs at or upon the waters within this state,
8 including rivers and lakes and Puget Sound, the commission shall have
9 power and authority to regulate rates and services of such operation or
10 maintenance of ferries, boats, or wharfs, to make, fix, alter, or amend
11 said rates, and to regulate service and safety of operations thereof,
12 in the manner and to the same extent as it is empowered to regulate a
13 commercial ferry, notwithstanding the provisions of any act or parts of
14 acts inconsistent herewith.

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

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

1 **Sec. 5.** RCW 81.84.020 and 1993 c 427 s 3 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 (~~and~~), counties,
5 and public transportation benefit areas and any common carrier which
6 might be adversely affected, of the time and place for hearing on such
7 application. The commission shall have power after hearing, to issue
8 the certificate as prayed for, or to refuse to issue it, or to issue it
9 for the partial exercise only of the privilege sought, and may attach
10 to the exercise of the rights granted by said certificate such terms
11 and conditions as in its judgment the public convenience and necessity
12 may require; but the commission shall not have power to grant a
13 certificate to operate between districts and/or into any territory
14 prohibited by RCW 47.60.120 or already served by an existing
15 certificate holder, unless such existing certificate holder has failed
16 or refused to furnish reasonable and adequate service or has failed to
17 provide the service described in its certificate or tariffs after the
18 time period allowed to initiate service has elapsed: PROVIDED, A
19 certificate shall be granted when it shall appear to the satisfaction
20 of the commission that the commercial ferry was actually operating in
21 good faith over the route for which such certificate shall be sought,
22 on January 15, 1927: PROVIDED, FURTHER, That in case two or more
23 commercial ferries shall upon said date have been operating vessels
24 upon the same route, or between the same districts the commission shall
25 determine after public hearing whether one or more certificates shall
26 issue, and in determining to whom a certificate or certificates shall
27 be issued, the commission shall consider all material facts and
28 circumstances including the prior operation, schedules, and services
29 rendered by either of the ferries, and in case more than one
30 certificate shall issue, the commission shall fix and determine the
31 schedules and services of the ferries to which the certificates are
32 issued to the end that duplication of service be eliminated and public
33 convenience be furthered.

34 (2) Before issuing a certificate, the commission shall determine
35 that the applicant has the financial resources to operate the proposed
36 service for at least twelve months, based upon the submission by the
37 applicant of a pro forma financial statement of operations. Issuance

1 of a certificate shall be determined upon, but not limited to, the
2 following factors: Ridership and revenue forecasts; the cost of
3 service for the proposed operation; an estimate of the cost of the
4 assets to be used in providing the service; a statement of the total
5 assets on hand of the applicant that will be expended on the proposed
6 operation; and a statement of prior experience, if any, in such field
7 by the applicant. The documentation required of the applicant under
8 this section shall comply with the provisions of RCW 9A.72.085.

9 (3) Subsection (2) of this section does not apply to an application
10 for a certificate that is pending as of July 25, 1993.

11 (4) In granting a certificate for passenger-only ferries and
12 determining what conditions to place on the certificate, the commission
13 shall consider and give substantial weight to the effect of its
14 decisions on public agencies operating, or eligible to operate,
15 passenger-only ferry service.

16 (5) Until March 1, 2005, the commission shall not consider an
17 application for passenger-only ferry service serving any county in
18 Puget Sound, unless the public transportation benefit area authority or
19 ferry district serving that county, by resolution, agrees to the
20 application.

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

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

27 (1) Failure of the certificate holder to initiate service by the
28 conclusion of the fifth year after the certificate has been granted or
29 by the conclusion of an extension granted under RCW 81.84.010 (2) or
30 (3), if the commission has considered the progress report information
31 required under RCW 81.84.010 (2) or (3);

32 (2) Failure of a certificate holder for passenger-only ferry
33 service in Puget Sound to initiate service by the conclusion of the
34 twentieth month after the certificate has been granted;

35 (3) Failure of the certificate holder to file an annual report;

- 1 ~~((3))~~ (4) The filing by a certificate holder of an annual report
2 that shows no revenue in the previous twelve-month period after service
3 has been initiated;
- 4 ~~((4))~~ (5) The violation of any provision of this chapter;
- 5 ~~((5))~~ (6) The violation of or failure to observe the provisions
6 or conditions of the certificate or tariffs;
- 7 ~~((6))~~ (7) The violation of an order, decision, rule, regulation,
8 or requirement established by the commission under this chapter;
- 9 ~~((7))~~ (8) Failure of a certificate holder to maintain the
10 required insurance coverage in full force and effect; or
- 11 ~~((8))~~ (9) Failure or refusal to furnish reasonable and adequate
12 service after initiating service.

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

16 Correct the title.

EFFECT: Exempts passenger-only (POF) ferry service from the State Ferry system 10-mile no competition rule.

Directs the DOT to make space available at its terminals and docks for private operators of POFs if those operations do not interfere with auto-ferry service; charges must be fair market value, taking into account public benefit from the POF service.

Adds to the considerations for the WUTC when granting operating permits to private ferry operators:

The effect on public agencies operating, or eligible to operate, POFs; and

No certificates may be issued until March 1, 2005, where a Public Transportation Benefit District or County Ferry District is eligible to operate a POF unless those local agencies agree to certificate application.

Requires that when the WUTC grants a certificate for a private POF, the certificate holder must initiate service within twenty months.

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