
SUBSTITUTE SENATE BILL 5742

State of Washington 62nd Legislature 2011 Regular Session

By Senate Transportation (originally sponsored by Senators Haugen, Ranker, and Shin)

READ FIRST TIME 02/25/11.

1 AN ACT Relating to providing funding and cost saving measures for
2 the Washington state ferry system; amending RCW 47.60.530, 47.60.315,
3 82.08.0255, 82.12.0256, 47.64.011, 47.64.210, 47.64.150, 41.58.060, and
4 39.04.320; reenacting and amending RCW 43.84.092, 47.64.090, and
5 41.06.070; adding a new section to chapter 47.60 RCW; creating a new
6 section; and repealing RCW 47.64.280.

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

8 **Sec. 1.** RCW 47.60.530 and 1979 c 27 s 4 are each amended to read
9 as follows:

10 (~~There is hereby created in the motor vehicle fund~~) (1) The Puget
11 Sound ferry operations account ((to the credit of which shall be
12 deposited all moneys directed by law to be deposited therein. All
13 moneys deposited in this account shall be expended pursuant to
14 appropriations only for reimbursement of the motor vehicle fund for any
15 state moneys, other than insurance proceeds, expended therefrom for
16 alternate transportation services instituted as a result of the
17 destruction of the Hood Canal bridge, and)) is created in the motor
18 vehicle fund.

19 (2) The following funds must be deposited into the account:

- 1 (a) All moneys directed by law;
2 (b) All revenues generated from ferry fares; and
3 (c) All revenues generated from commercial advertising,
4 concessions, parking, and leases as allowed under RCW 47.60.140.
5 (3) Moneys in the account may be spent only after appropriation.
6 (4) Expenditures from the account may be used only for the
7 maintenance and operation of the Washington state ferries (~~(including~~
8 ~~the Hood Canal bridge, supplementing as required the revenues available~~
9 ~~from the Washington state ferry system))~~).

10 NEW SECTION. Sec. 2. A new section is added to chapter 47.60 RCW
11 to read as follows:

12 (1) The capital vessel replacement account is created in the motor
13 vehicle fund. All revenues generated from the vessel replacement
14 surcharge under RCW 47.60.315(7) must be deposited into the account.
15 Moneys in the account may be spent only after appropriation.
16 Expenditures from the account may be used only for the construction or
17 purchase of ferry vessels.

18 (2) The state treasurer shall not transfer any moneys from the
19 capital vessel replacement account.

20 **Sec. 3.** RCW 47.60.315 and 2007 c 512 s 6 are each amended to read
21 as follows:

22 (1) The commission shall adopt fares and pricing policies by rule,
23 under chapter 34.05 RCW, according to the following schedule:

24 (a) Each year the department shall provide the commission a report
25 of its review of fares and pricing policies, with recommendations for
26 the revision of fares and pricing policies for the ensuing year;

27 (b) By September 1st of each year, beginning in 2008, the
28 commission shall adopt by rule fares and pricing policies for the
29 ensuing year.

30 (2) The commission may adopt by rule fares that are effective for
31 more or less than one year for the purposes of transitioning to the
32 fare schedule in subsection (1) of this section.

33 (3) The commission may increase ferry fares included in the
34 schedule of charges adopted under this section by a percentage that
35 exceeds the fiscal growth factor.

1 (4) The chief executive officer of the ferry system may authorize
2 the use of promotional, discounted, and special event fares to the
3 general public and commercial enterprises for the purpose of maximizing
4 capacity use and the revenues collected by the ferry system. The
5 department shall report to the commission a summary of the promotional,
6 discounted, and special event fares offered during each fiscal year and
7 the financial results from these activities.

8 (5) Fare revenues and other revenues deposited in the Puget Sound
9 ferry operations account created in RCW 47.60.530 may not be used to
10 support the Puget Sound capital construction account created in RCW
11 47.60.505, unless the support for capital is separately identified in
12 the fare.

13 (6) The commission may not raise fares until the fare rules contain
14 pricing policies developed under RCW 47.60.290, or September 1, 2009,
15 whichever is later.

16 (7) The commission shall impose a vessel replacement surcharge of
17 twenty-five cents on every ferry fare sold, including multiride and
18 monthly pass fares. This surcharge must be clearly indicated to ferry
19 passengers and drivers and, if possible, on the fare media itself.

20 **Sec. 4.** RCW 82.08.0255 and 2007 c 223 s 9 are each amended to read
21 as follows:

22 (1) The tax levied by RCW 82.08.020 shall not apply to sales of
23 motor vehicle and special fuel if:

24 (a) The fuel is purchased for the purpose of public transportation
25 and the purchaser is entitled to a refund or an exemption under RCW
26 82.36.275 or 82.38.080(3); or

27 (b) The fuel is purchased by a private, nonprofit transportation
28 provider certified under chapter 81.66 RCW and the purchaser is
29 entitled to a refund or an exemption under RCW 82.36.285 or
30 82.38.080(1)(h); or

31 (c) The fuel is purchased by a public transportation benefit area
32 created under chapter 36.57A RCW or a county-owned ferry or county
33 ferry district created under chapter 36.54 RCW for use in passenger-
34 only ferry vessels; or

35 (d) The fuel is purchased by the Washington state ferry system for
36 use in a state-owned ferry after June 30, 2013; or

37 (e) The fuel is taxable under chapter 82.36 or 82.38 RCW.

1 (2) Any person who has paid the tax imposed by RCW 82.08.020 on the
2 sale of special fuel delivered in this state shall be entitled to a
3 credit or refund of such tax with respect to fuel subsequently
4 established to have been actually transported and used outside this
5 state by persons engaged in interstate commerce. The tax shall be
6 claimed as a credit or refunded through the tax reports required under
7 RCW 82.38.150.

8 **Sec. 5.** RCW 82.12.0256 and 2007 c 223 s 10 are each amended to
9 read as follows:

10 The provisions of this chapter shall not apply in respect to the
11 use of:

12 (1) Special fuel purchased in this state upon which a refund is
13 obtained as provided in RCW 82.38.180(2); and

14 (2) Motor vehicle and special fuel if:

15 (a) The fuel is used for the purpose of public transportation and
16 the purchaser is entitled to a refund or an exemption under RCW
17 82.36.275 or 82.38.080(3); or

18 (b) The fuel is purchased by a private, nonprofit transportation
19 provider certified under chapter 81.66 RCW and the purchaser is
20 entitled to a refund or an exemption under RCW 82.36.285 or
21 82.38.080(1)(h); or

22 (c) The fuel is purchased by a public transportation benefit area
23 created under chapter 36.57A RCW or a county-owned ferry or county
24 ferry district created under chapter 36.54 RCW for use in passenger-
25 only ferry vessels; or

26 (d) The fuel is taxable under chapter 82.36 or 82.38 RCW:
27 PROVIDED, That the use of motor vehicle and special fuel upon which a
28 refund of the applicable fuel tax is obtained shall not be exempt under
29 this subsection (2)(d), and the director of licensing shall deduct from
30 the amount of such tax to be refunded the amount of tax due under this
31 chapter and remit the same each month to the department of revenue; or

32 (e) The fuel is purchased by the Washington state ferry system for
33 use in a state-owned ferry after June 30, 2013.

34 **Sec. 6.** RCW 43.84.092 and 2010 1st sp.s. c 30 s 20, 2010 1st sp.s.
35 c 9 s 7, 2010 c 248 s 6, 2010 c 222 s 5, 2010 c 162 s 6, and 2010 c 145
36 s 11 are each reenacted and amended to read as follows:

1 (1) All earnings of investments of surplus balances in the state
2 treasury shall be deposited to the treasury income account, which
3 account is hereby established in the state treasury.

4 (2) The treasury income account shall be utilized to pay or receive
5 funds associated with federal programs as required by the federal cash
6 management improvement act of 1990. The treasury income account is
7 subject in all respects to chapter 43.88 RCW, but no appropriation is
8 required for refunds or allocations of interest earnings required by
9 the cash management improvement act. Refunds of interest to the
10 federal treasury required under the cash management improvement act
11 fall under RCW 43.88.180 and shall not require appropriation. The
12 office of financial management shall determine the amounts due to or
13 from the federal government pursuant to the cash management improvement
14 act. The office of financial management may direct transfers of funds
15 between accounts as deemed necessary to implement the provisions of the
16 cash management improvement act, and this subsection. Refunds or
17 allocations shall occur prior to the distributions of earnings set
18 forth in subsection (4) of this section.

19 (3) Except for the provisions of RCW 43.84.160, the treasury income
20 account may be utilized for the payment of purchased banking services
21 on behalf of treasury funds including, but not limited to, depository,
22 safekeeping, and disbursement functions for the state treasury and
23 affected state agencies. The treasury income account is subject in all
24 respects to chapter 43.88 RCW, but no appropriation is required for
25 payments to financial institutions. Payments shall occur prior to
26 distribution of earnings set forth in subsection (4) of this section.

27 (4) Monthly, the state treasurer shall distribute the earnings
28 credited to the treasury income account. The state treasurer shall
29 credit the general fund with all the earnings credited to the treasury
30 income account except:

31 (a) The following accounts and funds shall receive their
32 proportionate share of earnings based upon each account's and fund's
33 average daily balance for the period: The aeronautics account, the
34 aircraft search and rescue account, the budget stabilization account,
35 the capital vessel replacement account, the capitol building
36 construction account, the Cedar River channel construction and
37 operation account, the Central Washington University capital projects
38 account, the charitable, educational, penal and reformatory

1 institutions account, the cleanup settlement account, the Columbia
2 river basin water supply development account, the common school
3 construction fund, the county arterial preservation account, the county
4 criminal justice assistance account, the county sales and use tax
5 equalization account, the deferred compensation administrative account,
6 the deferred compensation principal account, the department of
7 licensing services account, the department of retirement systems
8 expense account, the developmental disabilities community trust
9 account, the drinking water assistance account, the drinking water
10 assistance administrative account, the drinking water assistance
11 repayment account, the Eastern Washington University capital projects
12 account, the education construction fund, the education legacy trust
13 account, the election account, the energy freedom account, the energy
14 recovery act account, the essential rail assistance account, The
15 Evergreen State College capital projects account, the federal forest
16 revolving account, the ferry bond retirement fund, the freight
17 congestion relief account, the freight mobility investment account, the
18 freight mobility multimodal account, the grade crossing protective
19 fund, the public health services account, the health system capacity
20 account, the high capacity transportation account, the state higher
21 education construction account, the higher education construction
22 account, the highway bond retirement fund, the highway infrastructure
23 account, the highway safety account, the high occupancy toll lanes
24 operations account, the hospital safety net assessment fund, the
25 industrial insurance premium refund account, the judges' retirement
26 account, the judicial retirement administrative account, the judicial
27 retirement principal account, the local leasehold excise tax account,
28 the local real estate excise tax account, the local sales and use tax
29 account, the marine resources stewardship trust account, the medical
30 aid account, the mobile home park relocation fund, the motor vehicle
31 fund, the motorcycle safety education account, the multiagency
32 permitting team account, the multimodal transportation account, the
33 municipal criminal justice assistance account, the municipal sales and
34 use tax equalization account, the natural resources deposit account,
35 the oyster reserve land account, the pension funding stabilization
36 account, the perpetual surveillance and maintenance account, the public
37 employees' retirement system plan 1 account, the public employees'
38 retirement system combined plan 2 and plan 3 account, the public

1 facilities construction loan revolving account beginning July 1, 2004,
2 the public health supplemental account, the public transportation
3 systems account, the public works assistance account, the Puget Sound
4 capital construction account, the Puget Sound ferry operations account,
5 the Puyallup tribal settlement account, the real estate appraiser
6 commission account, the recreational vehicle account, the regional
7 mobility grant program account, the resource management cost account,
8 the rural arterial trust account, the rural Washington loan fund, the
9 site closure account, the small city pavement and sidewalk account, the
10 special category C account, the special wildlife account, the state
11 employees' insurance account, the state employees' insurance reserve
12 account, the state investment board expense account, the state
13 investment board commingled trust fund accounts, the state patrol
14 highway account, the state route number 520 civil penalties account,
15 the state route number 520 corridor account, the supplemental pension
16 account, the Tacoma Narrows toll bridge account, the teachers'
17 retirement system plan 1 account, the teachers' retirement system
18 combined plan 2 and plan 3 account, the tobacco prevention and control
19 account, the tobacco settlement account, the transportation 2003
20 account (nickel account), the transportation equipment fund, the
21 transportation fund, the transportation improvement account, the
22 transportation improvement board bond retirement account, the
23 transportation infrastructure account, the transportation partnership
24 account, the traumatic brain injury account, the tuition recovery trust
25 fund, the University of Washington bond retirement fund, the University
26 of Washington building account, the urban arterial trust account, the
27 volunteer firefighters' and reserve officers' relief and pension
28 principal fund, the volunteer firefighters' and reserve officers'
29 administrative fund, the Washington judicial retirement system account,
30 the Washington law enforcement officers' and firefighters' system plan
31 1 retirement account, the Washington law enforcement officers' and
32 firefighters' system plan 2 retirement account, the Washington public
33 safety employees' plan 2 retirement account, the Washington school
34 employees' retirement system combined plan 2 and 3 account, the
35 Washington state health insurance pool account, the Washington state
36 patrol retirement account, the Washington State University building
37 account, the Washington State University bond retirement fund, the
38 water pollution control revolving fund, and the Western Washington

1 University capital projects account. Earnings derived from investing
2 balances of the agricultural permanent fund, the normal school
3 permanent fund, the permanent common school fund, the scientific
4 permanent fund, and the state university permanent fund shall be
5 allocated to their respective beneficiary accounts.

6 (b) Any state agency that has independent authority over accounts
7 or funds not statutorily required to be held in the state treasury that
8 deposits funds into a fund or account in the state treasury pursuant to
9 an agreement with the office of the state treasurer shall receive its
10 proportionate share of earnings based upon each account's or fund's
11 average daily balance for the period.

12 (5) In conformance with Article II, section 37 of the state
13 Constitution, no treasury accounts or funds shall be allocated earnings
14 without the specific affirmative directive of this section.

15 **Sec. 7.** RCW 47.64.011 and 2006 c 164 s 1 are each amended to read
16 as follows:

17 As used in this chapter, unless the context otherwise requires, the
18 definitions in this section shall apply.

19 (1) "Collective bargaining representative" means the persons
20 designated by the governor and employee organizations to be the
21 exclusive representatives during collective bargaining negotiations.

22 (2) "Commission" means the (~~(marine employees)~~) public employment
23 relations commission created in RCW (~~(47.64.280)~~) 41.58.010.

24 (3) "Department of transportation" means the department as defined
25 in RCW 47.01.021.

26 (4) "Employer" means the state of Washington.

27 (5) "Ferry employee" means any employee of the marine
28 transportation division of the department of transportation who is a
29 member of a collective bargaining unit represented by a ferry employee
30 organization and does not include an exempt employee pursuant to RCW
31 41.06.079.

32 (6) "Ferry employee organization" means any labor organization
33 recognized to represent a collective bargaining unit of ferry
34 employees.

35 (7) "Lockout" means the refusal of the employer to furnish work to
36 ferry employees in an effort to get ferry employee organizations to
37 make concessions during collective bargaining, grievance, or other

1 labor relation negotiations. Curtailment of employment of ferry
2 employees due to lack of work resulting from a strike or work stoppage
3 shall not be considered a lockout.

4 (8) "Office of financial management" means the office as created in
5 RCW 43.41.050.

6 (9) "Strike or work stoppage" means a ferry employee's refusal, in
7 concerted action with others, to report to duty, or his or her willful
8 absence from his or her position, or his or her stoppage or slowdown of
9 work, or his or her abstinence in whole or in part from the full,
10 faithful, and proper performance of the duties of employment, for the
11 purpose of inducing, influencing, or coercing a change in conditions,
12 compensation, rights, privileges, or obligations of his, her, or any
13 other ferry employee's employment. A refusal, in good faith, to work
14 under conditions which pose an endangerment to the health and safety of
15 ferry employees or the public, as determined by the master of the
16 vessel, shall not be considered a strike for the purposes of this
17 chapter.

18 **Sec. 8.** RCW 47.64.210 and 2007 c 160 s 2 are each amended to read
19 as follows:

20 In the (~~absence of an impasse~~) event there is no agreement
21 between the parties (~~or the failure of either party to utilize its~~
22 ~~procedures~~) by August 1st in the even-numbered year preceding the
23 biennium, either party may request the commission to appoint an
24 impartial and disinterested person to act as mediator. It is the
25 function of the mediator to bring the parties together to effectuate a
26 settlement of the dispute, but the mediator shall not compel the
27 parties to agree.

28 **Sec. 9.** RCW 47.64.090 and 2003 c 373 s 3 and 2003 c 91 s 1 are
29 each reenacted and amended to read as follows:

30 (1) Except as provided in RCW 47.60.656 and subsections (2) and (4)
31 of this section, or as provided in RCW 36.54.130 and subsection (3) of
32 this section, if any party assumes the operation and maintenance of any
33 ferry or ferry system by rent, lease, or charter from the department of
34 transportation, such party shall assume and be bound by all the
35 provisions herein and any agreement or contract for such operation of
36 any ferry or ferry system entered into by the department shall provide

1 that the wages to be paid, hours of employment, working conditions, and
2 seniority rights of employees will be established by the ((~~marine~~
3 ~~employees~~)) commission in accordance with the terms and provisions of
4 this chapter and it shall further provide that all labor disputes shall
5 be adjudicated in accordance with chapter 47.64 RCW.

6 (2) If a public transportation benefit area meeting the
7 requirements of RCW 36.57A.200 has voter approval to operate passenger-
8 only ferry service, it may enter into an agreement with Washington
9 State Ferries to rent, lease, or purchase passenger-only vessels,
10 related equipment, or terminal space for purposes of loading and
11 unloading the passenger-only ferry. Charges for the vessels,
12 equipment, and space must be fair market value taking into account the
13 public benefit derived from the ferry service. A benefit area or
14 subcontractor of that benefit area that qualifies under this subsection
15 is not subject to the restrictions of subsection (1) of this section,
16 but is subject to:

17 (a) The terms of those collective bargaining agreements that it or
18 its subcontractors negotiate with the exclusive bargaining
19 representatives of its or its subcontractors' employees under chapter
20 41.56 RCW or the National Labor Relations Act, as applicable;

21 (b) Unless otherwise prohibited by federal or state law, a
22 requirement that the benefit area and any contract with its
23 subcontractors, give preferential hiring to former employees of the
24 department of transportation who separated from employment with the
25 department because of termination of the ferry service by the state of
26 Washington; and

27 (c) Unless otherwise prohibited by federal or state law, a
28 requirement that the benefit area and any contract with its
29 subcontractors, on any questions concerning representation of employees
30 for collective bargaining purposes, may be determined by conducting a
31 cross-check comparing an employee organization's membership records or
32 bargaining authorization cards against the employment records of the
33 employer.

34 (3) If a ferry district is formed under RCW 36.54.110 to operate
35 passenger-only ferry service, it may enter into an agreement with
36 Washington State Ferries to rent, lease, or purchase vessels, related
37 equipment, or terminal space for purposes of loading and unloading the
38 ferry. Charges for the vessels, equipment, and space must be fair

1 market value taking into account the public benefit derived from the
2 ferry service. A ferry district or subcontractor of that district that
3 qualifies under this subsection is not subject to the restrictions of
4 subsection (1) of this section, but is subject to:

5 (a) The terms of those collective bargaining agreements that it or
6 its subcontractors negotiate with the exclusive bargaining
7 representatives of its or its subcontractors' employees under chapter
8 41.56 RCW or the National Labor Relations Act, as applicable;

9 (b) Unless otherwise prohibited by federal or state law, a
10 requirement that the ferry district and any contract with its
11 subcontractors, give preferential hiring to former employees of the
12 department of transportation who separated from employment with the
13 department because of termination of the ferry service by the state of
14 Washington; and

15 (c) Unless otherwise prohibited by federal or state law, a
16 requirement that the ferry district and any contract with its
17 subcontractors, on any questions concerning representation of employees
18 for collective bargaining purposes, may be determined by conducting a
19 cross-check comparing an employee organization's membership records or
20 bargaining authorization cards against the employment records of the
21 employer.

22 (4) The department of transportation shall make its terminal, dock,
23 and pier space available to private operators of passenger-only ferries
24 if the space can be made available without limiting the operation of
25 car ferries operated by the department. These private operators are
26 not bound by the provisions of subsection (1) of this section. Charges
27 for the equipment and space must be fair market value taking into
28 account the public benefit derived from the passenger-only ferry
29 service.

30 **Sec. 10.** RCW 47.64.150 and 1983 c 15 s 6 are each amended to read
31 as follows:

32 An agreement with a ferry employee organization that is the
33 exclusive representative of ferry employees in an appropriate unit may
34 provide procedures for the consideration of ferry employee grievances
35 and of disputes over the interpretation and application of agreements.
36 Negotiated procedures may provide for binding arbitration of ferry
37 employee grievances and of disputes over the interpretation and

1 application of existing agreements. An arbitrator's decision on a
2 grievance shall not change or amend the terms, conditions, or
3 applications of the collective bargaining agreement. The procedures
4 shall provide for the invoking of arbitration only (~~with the~~
5 ~~approval~~) by mutual agreement of the employee organization and
6 management. The costs of arbitrators shall be shared equally by the
7 parties.

8 Ferry system employees shall follow (~~either~~) the grievance
9 procedures provided in a collective bargaining agreement (~~, or if no~~
10 ~~such procedures are so provided, shall submit the grievances to the~~
11 ~~marine employees' commission as provided in RCW 47.64.280~~)).

12 **Sec. 11.** RCW 41.58.060 and 1983 c 15 s 22 are each amended to read
13 as follows:

14 For any matter concerning the state ferry system and employee
15 relations, collective bargaining, or labor disputes or stoppages, the
16 provisions of chapter 47.64 RCW and this chapter shall govern.
17 However, if a conflict exists between the provisions of chapter 47.64
18 RCW and this chapter, the provisions of chapter 47.64 RCW shall govern.

19 **Sec. 12.** RCW 41.06.070 and 2010 c 271 s 801, 2010 c 2 s 2, and
20 2010 c 1 s 1 are each reenacted and amended to read as follows:

- 21 (1) The provisions of this chapter do not apply to:
 - 22 (a) The members of the legislature or to any employee of, or
23 position in, the legislative branch of the state government including
24 members, officers, and employees of the legislative council, joint
25 legislative audit and review committee, statute law committee, and any
26 interim committee of the legislature;
 - 27 (b) The justices of the supreme court, judges of the court of
28 appeals, judges of the superior courts or of the inferior courts, or to
29 any employee of, or position in the judicial branch of state
30 government;
 - 31 (c) Officers, academic personnel, and employees of technical
32 colleges;
 - 33 (d) The officers of the Washington state patrol;
 - 34 (e) Elective officers of the state;
 - 35 (f) The chief executive officer of each agency;

1 (g) In the departments of employment security and social and health
2 services, the director and the director's confidential secretary; in
3 all other departments, the executive head of which is an individual
4 appointed by the governor, the director, his or her confidential
5 secretary, and his or her statutory assistant directors;

6 (h) In the case of a multimember board, commission, or committee,
7 whether the members thereof are elected, appointed by the governor or
8 other authority, serve ex officio, or are otherwise chosen:

9 (i) All members of such boards, commissions, or committees;

10 (ii) If the members of the board, commission, or committee serve on
11 a part-time basis and there is a statutory executive officer: The
12 secretary of the board, commission, or committee; the chief executive
13 officer of the board, commission, or committee; and the confidential
14 secretary of the chief executive officer of the board, commission, or
15 committee;

16 (iii) If the members of the board, commission, or committee serve
17 on a full-time basis: The chief executive officer or administrative
18 officer as designated by the board, commission, or committee; and a
19 confidential secretary to the chair of the board, commission, or
20 committee;

21 (iv) If all members of the board, commission, or committee serve ex
22 officio: The chief executive officer; and the confidential secretary
23 of such chief executive officer;

24 (i) The confidential secretaries and administrative assistants in
25 the immediate offices of the elective officers of the state;

26 (j) Assistant attorneys general;

27 (k) Commissioned and enlisted personnel in the military service of
28 the state;

29 (l) Inmate, student, part-time, or temporary employees, and part-
30 time professional consultants, as defined by the Washington personnel
31 resources board;

32 (m) The public printer or to any employees of or positions in the
33 state printing plant;

34 (n) Officers and employees of the Washington state fruit
35 commission;

36 (o) Officers and employees of the Washington apple commission;

37 (p) Officers and employees of the Washington state dairy products
38 commission;

- 1 (q) Officers and employees of the Washington tree fruit research
2 commission;
- 3 (r) Officers and employees of the Washington state beef commission;
- 4 (s) Officers and employees of the Washington grain commission;
- 5 (t) Officers and employees of any commission formed under chapter
6 15.66 RCW;
- 7 (u) Officers and employees of agricultural commissions formed under
8 chapter 15.65 RCW;
- 9 (v) Officers and employees of the nonprofit corporation formed
10 under chapter 67.40 RCW;
- 11 (w) Executive assistants for personnel administration and labor
12 relations in all state agencies employing such executive assistants
13 including but not limited to all departments, offices, commissions,
14 committees, boards, or other bodies subject to the provisions of this
15 chapter and this subsection shall prevail over any provision of law
16 inconsistent herewith unless specific exception is made in such law;
- 17 (x) In each agency with fifty or more employees: Deputy agency
18 heads, assistant directors or division directors, and not more than
19 three principal policy assistants who report directly to the agency
20 head or deputy agency heads;
- 21 (y) (~~All employees of the marine employees' commission;~~
22 ~~(z)~~) Staff employed by the department of commerce to administer
23 energy policy functions;
- 24 (~~(aa)~~) (z) The manager of the energy facility site evaluation
25 council;
- 26 (~~(bb)~~) (aa) A maximum of ten staff employed by the department of
27 commerce to administer innovation and policy functions, including the
28 three principal policy assistants exempted under (x) of this
29 subsection;
- 30 (~~(cc)~~) (bb) Staff employed by Washington State University to
31 administer energy education, applied research, and technology transfer
32 programs under RCW 43.21F.045 as provided in RCW 28B.30.900(5).
- 33 (2) The following classifications, positions, and employees of
34 institutions of higher education and related boards are hereby exempted
35 from coverage of this chapter:
- 36 (a) Members of the governing board of each institution of higher
37 education and related boards, all presidents, vice presidents, and
38 their confidential secretaries, administrative, and personal

1 assistants; deans, directors, and chairs; academic personnel; and
2 executive heads of major administrative or academic divisions employed
3 by institutions of higher education; principal assistants to executive
4 heads of major administrative or academic divisions; other managerial
5 or professional employees in an institution or related board having
6 substantial responsibility for directing or controlling program
7 operations and accountable for allocation of resources and program
8 results, or for the formulation of institutional policy, or for
9 carrying out personnel administration or labor relations functions,
10 legislative relations, public information, development, senior computer
11 systems and network programming, or internal audits and investigations;
12 and any employee of a community college district whose place of work is
13 one which is physically located outside the state of Washington and who
14 is employed pursuant to RCW 28B.50.092 and assigned to an educational
15 program operating outside of the state of Washington;

16 (b) The governing board of each institution, and related boards,
17 may also exempt from this chapter classifications involving research
18 activities, counseling of students, extension or continuing education
19 activities, graphic arts or publications activities requiring
20 prescribed academic preparation or special training as determined by
21 the board: PROVIDED, That no nonacademic employee engaged in office,
22 clerical, maintenance, or food and trade services may be exempted by
23 the board under this provision;

24 (c) Printing craft employees in the department of printing at the
25 University of Washington.

26 (3) In addition to the exemptions specifically provided by this
27 chapter, the director of personnel may provide for further exemptions
28 pursuant to the following procedures. The governor or other
29 appropriate elected official may submit requests for exemption to the
30 director of personnel stating the reasons for requesting such
31 exemptions. The director of personnel shall hold a public hearing,
32 after proper notice, on requests submitted pursuant to this subsection.
33 If the director determines that the position for which exemption is
34 requested is one involving substantial responsibility for the
35 formulation of basic agency or executive policy or one involving
36 directing and controlling program operations of an agency or a major
37 administrative division thereof, the director of personnel shall grant
38 the request and such determination shall be final as to any decision

1 made before July 1, 1993. The total number of additional exemptions
2 permitted under this subsection shall not exceed one percent of the
3 number of employees in the classified service not including employees
4 of institutions of higher education and related boards for those
5 agencies not directly under the authority of any elected public
6 official other than the governor, and shall not exceed a total of
7 twenty-five for all agencies under the authority of elected public
8 officials other than the governor.

9 The salary and fringe benefits of all positions presently or
10 hereafter exempted except for the chief executive officer of each
11 agency, full-time members of boards and commissions, administrative
12 assistants and confidential secretaries in the immediate office of an
13 elected state official, and the personnel listed in subsections (1)(j)
14 through (v) (~~and (y)~~) and (2) of this section, shall be determined by
15 the director of personnel. Changes to the classification plan
16 affecting exempt salaries must meet the same provisions for classified
17 salary increases resulting from adjustments to the classification plan
18 as outlined in RCW 41.06.152.

19 From February 18, 2009, through June 30, 2011, a salary or wage
20 increase shall not be granted to any position exempt from
21 classification under this chapter, except that a salary or wage
22 increase may be granted to employees pursuant to collective bargaining
23 agreements negotiated under chapter 28B.52, 41.56, 47.64, or 41.76 RCW,
24 or negotiated by the nonprofit corporation formed under chapter 67.40
25 RCW, and except that increases may be granted for positions for which
26 the employer has demonstrated difficulty retaining qualified employees
27 if the following conditions are met:

28 (a) The salary increase can be paid within existing resources; and

29 (b) The salary increase will not adversely impact the provision of
30 client services.

31 Any agency granting a salary increase from February 15, 2010,
32 through June 30, 2011, to a position exempt from classification under
33 this chapter shall submit a report to the fiscal committees of the
34 legislature no later than July 31, 2011, detailing the positions for
35 which salary increases were granted, the size of the increases, and the
36 reasons for giving the increases.

37 Any person holding a classified position subject to the provisions
38 of this chapter shall, when and if such position is subsequently

1 exempted from the application of this chapter, be afforded the
2 following rights: If such person previously held permanent status in
3 another classified position, such person shall have a right of
4 reversion to the highest class of position previously held, or to a
5 position of similar nature and salary.

6 Any classified employee having civil service status in a classified
7 position who accepts an appointment in an exempt position shall have
8 the right of reversion to the highest class of position previously
9 held, or to a position of similar nature and salary.

10 A person occupying an exempt position who is terminated from the
11 position for gross misconduct or malfeasance does not have the right of
12 reversion to a classified position as provided for in this section.

13 From February 15, 2010, until June 30, 2011, no monetary
14 performance-based awards or incentives may be granted by the director
15 or employers to employees covered by rules adopted under this section.
16 This subsection does not prohibit the payment of awards provided for in
17 chapter 41.60 RCW.

18 NEW SECTION. **Sec. 13.** (1) The marine employees' commission is
19 hereby abolished and its powers, duties, and functions are hereby
20 transferred to the public employment relations commission.

21 (2)(a) All reports, documents, surveys, books, records, files,
22 papers, or written material in the possession of the marine employees'
23 commission shall be delivered to the custody of the public employment
24 relations commission. All cabinets, furniture, office equipment, motor
25 vehicles, and other tangible property employed by the marine employees'
26 commission shall be made available to the public employment relations
27 commission. All funds, credits, or other assets held by the marine
28 employees' commission shall be assigned to the public employment
29 relations commission.

30 (b) If any question arises as to the transfer of any funds, books,
31 documents, records, papers, files, equipment, or other tangible
32 property used or held in the exercise of the powers and the performance
33 of the duties and functions transferred, the director of financial
34 management shall make a determination as to the proper allocation and
35 certify the same to the state agencies concerned.

36 (3) All rules and all pending business before the marine employees'
37 commission shall be continued and acted upon by the public employment

1 relations commission. All existing contracts and obligations shall
2 remain in full force and shall be performed by the public employment
3 relations commission.

4 (4) The transfer of the powers, duties, and functions of the marine
5 employees' commission shall not affect the validity of any act
6 performed before the effective date of this section.

7 (5) If apportionments of budgeted funds are required because of the
8 transfers directed by this section, the director of financial
9 management shall certify the apportionments to the agencies affected,
10 the state auditor, and the state treasurer. Each of these shall make
11 the appropriate transfer and adjustments in funds and appropriation
12 accounts and equipment records in accordance with the certification.

13 NEW SECTION. **Sec. 14.** RCW 47.64.280 (Marine employees'
14 commission) and 2010 c 283 s 14, 2006 c 164 s 18, 1984 c 287 s 95, &
15 1983 c 15 s 19 are each repealed.

16 **Sec. 15.** RCW 39.04.320 and 2009 c 197 s 1 are each amended to read
17 as follows:

18 (1)(a) Except as provided in (b) through (d) of this subsection,
19 from January 1, 2005, and thereafter, for all public works estimated to
20 cost one million dollars or more, all specifications shall require that
21 no less than fifteen percent of the labor hours be performed by
22 apprentices.

23 (b)(i) This section does not apply to contracts advertised for bid
24 before July 1, 2007, for any public works by the department of
25 transportation.

26 (ii) For contracts advertised for bid on or after July 1, 2007, and
27 before July 1, 2008, for all public works by the department of
28 transportation estimated to cost five million dollars or more, all
29 specifications shall require that no less than ten percent of the labor
30 hours be performed by apprentices.

31 (iii) For contracts advertised for bid on or after July 1, 2008,
32 and before July 1, 2009, for all public works by the department of
33 transportation estimated to cost three million dollars or more, all
34 specifications shall require that no less than twelve percent of the
35 labor hours be performed by apprentices.

1 (iv) For contracts advertised for bid on or after July 1, 2009, for
2 all public works by the department of transportation estimated to cost
3 two million dollars or more and for all public works by the Washington
4 state ferries estimated to cost five million dollars or more, all
5 specifications shall require that no less than fifteen percent of the
6 labor hours be performed by apprentices.

7 (c)(i) This section does not apply to contracts advertised for bid
8 before January 1, 2008, for any public works by a school district, or
9 to any project funded in whole or in part by bond issues approved
10 before July 1, 2007.

11 (ii) For contracts advertised for bid on or after January 1, 2008,
12 for all public works by a school district estimated to cost three
13 million dollars or more, all specifications shall require that no less
14 than ten percent of the labor hours be performed by apprentices.

15 (iii) For contracts advertised for bid on or after January 1, 2009,
16 for all public works by a school district estimated to cost two million
17 dollars or more, all specifications shall require that no less than
18 twelve percent of the labor hours be performed by apprentices.

19 (iv) For contracts advertised for bid on or after January 1, 2010,
20 for all public works by a school district estimated to cost one million
21 dollars or more, all specifications shall require that no less than
22 fifteen percent of the labor hours be performed by apprentices.

23 (d)(i) For contracts advertised for bid on or after January 1,
24 2010, for all public works by a four-year institution of higher
25 education estimated to cost three million dollars or more, all
26 specifications must require that no less than ten percent of the labor
27 hours be performed by apprentices.

28 (ii) For contracts advertised for bid on or after January 1, 2011,
29 for all public works by a four-year institution of higher education
30 estimated to cost two million dollars or more, all specifications must
31 require that no less than twelve percent of the labor hours be
32 performed by apprentices.

33 (iii) For contracts advertised for bid on or after January 1, 2012,
34 for all public works by a four-year institution of higher education
35 estimated to cost one million dollars or more, all specifications must
36 require that no less than fifteen percent of the labor hours be
37 performed by apprentices.

1 (2) Awarding entities may adjust the requirements of this section
2 for a specific project for the following reasons:

3 (a) The demonstrated lack of availability of apprentices in
4 specific geographic areas;

5 (b) A disproportionately high ratio of material costs to labor
6 hours, which does not make feasible the required minimum levels of
7 apprentice participation;

8 (c) Participating contractors have demonstrated a good faith effort
9 to comply with the requirements of RCW 39.04.300 and 39.04.310 and this
10 section; or

11 (d) Other criteria the awarding entity deems appropriate, which are
12 subject to review by the office of the governor.

13 (3) The secretary of the department of transportation shall adjust
14 the requirements of this section for a specific project for the
15 following reasons:

16 (a) The demonstrated lack of availability of apprentices in
17 specific geographic areas; or

18 (b) A disproportionately high ratio of material costs to labor
19 hours, which does not make feasible the required minimum levels of
20 apprentice participation.

21 (4) This section applies to public works contracts awarded by the
22 state, to public works contracts awarded by school districts, and to
23 public works contracts awarded by state four-year institutions of
24 higher education. However, this section does not apply to contracts
25 awarded by state agencies headed by a separately elected public
26 official.

27 (5)(a) The department of general administration must provide
28 information and technical assistance to affected agencies and collect
29 the following data from affected agencies for each project covered by
30 this section:

31 (i) The name of each apprentice and apprentice registration number;

32 (ii) The name of each project;

33 (iii) The dollar value of each project;

34 (iv) The date of the contractor's notice to proceed;

35 (v) The number of apprentices and labor hours worked by them,
36 categorized by trade or craft;

37 (vi) The number of journey level workers and labor hours worked by
38 them, categorized by trade or craft; and

1 (vii) The number, type, and rationale for the exceptions granted
2 under subsection (2) of this section.

3 (b) The department of labor and industries shall assist the
4 department of general administration in providing information and
5 technical assistance.

6 (6) The secretary of transportation shall establish an
7 apprenticeship utilization advisory committee, which shall include
8 statewide geographic representation and consist of equal numbers of
9 representatives of contractors and labor. The committee must include
10 at least one member representing contractor businesses with less than
11 thirty-five employees. The advisory committee shall meet regularly
12 with the secretary of transportation to discuss implementation of this
13 section by the department of transportation, including development of
14 the process to be used to adjust the requirements of this section for
15 a specific project. The committee shall provide a report to the
16 legislature by January 1, 2008, on the effects of the apprentice labor
17 requirement on transportation projects and on the availability of
18 apprentice labor and programs statewide.

19 (7) At the request of the senate labor, commerce, research and
20 development committee, the house of representatives commerce and labor
21 committee, or their successor committees, and the governor, the
22 department of general administration and the department of labor and
23 industries shall compile and summarize the agency data and provide a
24 joint report to both committees. The report shall include
25 recommendations on modifications or improvements to the apprentice
26 utilization program and information on skill shortages in each trade or
27 craft.

--- END ---