

**Chapter 81.84 RCW
COMMERCIAL FERRIES**

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RCW 81.84.010 Certificate of convenience and necessity required—Recreation exemption—Service initiation—Progress reports. (1) A commercial ferry may not operate any vessel or ferry for the public use for hire between fixed termini or over a regular route upon the waters within this state, including the rivers and lakes and Puget Sound, without first applying for and obtaining from the commission a certificate declaring that public convenience and necessity require such operation. Service authorized by certificates issued to a commercial ferry operator must be exercised by the operator in a manner consistent with the conditions established in the certificate and tariff filed under chapter 81.28 RCW. However, a certificate is not required for a vessel primarily engaged in transporting freight other than vehicles, whose gross earnings from the transportation of passengers or vehicles, or both, are not more than ten percent of the total gross annual earnings of such vessel.

(2) If the commission finds, after a hearing, that an existing or a proposed commercial ferry service does not serve an essential transportation purpose and is solely for recreation, the commission may, by order, exempt that service from the requirements of certification and regulation under this chapter. If the nonessential service is a proposed service not already provided by an existing

certificate holder, the commission must also find, after notice to any existing certificate holder operating within the same territory and an opportunity to be heard, that the proposed service would not adversely affect the rates or services of any existing certificate holder.

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

(4) The holder of a certificate of public convenience and necessity granted under this chapter must initiate service within five years of obtaining the certificate, except that the holder of a certificate of public convenience and necessity for passenger-only ferry service in Puget Sound must initiate service within twenty months of obtaining the certificate. The certificate holder shall report to the commission every six months after the certificate is granted on the progress of the certificated route. The reports shall include, but not be limited to, the progress of environmental impact, parking, local government land use, docking, and financing considerations. Except in the case of passenger-only ferry service in Puget Sound, if service has not been initiated within five years of obtaining the certificate, the commission may extend the certificate on a twelve-month basis for up to three years if the six-month progress reports indicate there is significant advancement toward initiating service. [2009 c 557 s 2; 2007 c 234 s 92. Prior: 2003 c 373 s 4; 2003 c 83 s 211; 1993 c 427 s 2; 1961 c 14 s 81.84.010; prior: 1950 ex.s. c 6 s 1, part; 1927 c 248 s 1, part; RRS s 10361-1, part.]

Findings—Intent—2003 c 373: See note following RCW 47.64.090.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

RCW 81.84.020 Application—Hearing—Issuance of certificate—Determining factors. (1) Upon the filing of an application, the commission shall give reasonable notice to the department, affected cities, counties, and public transportation benefit areas and any common carrier which might be adversely affected, of the time and place for hearing on such application. The commission may, after notice and an opportunity for a hearing, issue the certificate as prayed for, or refuse to issue it, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate any terms and conditions as in its judgment the public convenience and necessity may require; but the commission may not grant a certificate to operate between districts or into any territory prohibited by RCW 47.60.120 or already served by an existing certificate holder, unless the existing certificate holder has failed or refused to furnish reasonable and adequate service, has failed to provide the service described in its certificate or tariffs after the time allowed to initiate service has

elapsed, or has not objected to the issuance of the certificate as prayed for.

(2) Before issuing a certificate, the commission shall determine that the applicant has the financial resources to operate the proposed service for at least twelve months, based upon the submission by the applicant of a pro forma financial statement of operations. Issuance of a certificate must be determined upon, but not limited to, the following factors: Ridership and revenue forecasts; the cost of service for the proposed operation; an estimate of the cost of the assets to be used in providing the service; a statement of the total assets on hand of the applicant that will be expended on the proposed operation; and a statement of prior experience, if any, in such field by the applicant. The documentation required of the applicant under this section must comply with the provisions of chapter 5.50 RCW.

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

(4) Until July 1, 2007, the commission shall not accept or consider an application for passenger-only ferry service serving any county in the Puget Sound area with a population of over one million people. Applications for passenger-only ferry service serving any county in the Puget Sound area with a population of over one million pending before the commission as of May 9, 2005, must be held in abeyance and not be considered before July 1, 2007. [2019 c 232 s 26; 2007 c 234 s 93; 2006 c 332 s 11. Prior: 2005 c 313 s 609; 2005 c 121 s 7; 2003 c 373 s 5; 2003 c 83 s 212; 1993 c 427 s 3; 1961 c 14 s 81.84.020; prior: 1950 ex.s. c 6 s 1, part; 1927 c 248 s 1, part; RRS s 10361-1, part.]

Severability—2005 c 313: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 313 s 901.]

Effective date—2005 c 313: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2005]." [2005 c 313 s 902.]

Findings—Intent—2003 c 373: See note following RCW 47.64.090.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

RCW 81.84.025 Certificate—Insurance or bond required—Amounts. The commission, in granting a certificate to operate as a commercial ferry, shall require the operator to first obtain liability and property damage insurance from a company licensed to write liability insurance in the state or a surety bond of a company licensed to write surety bonds in the state, on each vessel or ferry to be used, in the amount of not less than one hundred thousand dollars for any recovery for personal injury by one person, and not less than one million dollars and in such additional amount as the commission shall

determine, for all persons receiving personal injury and property damage by reason of one act of negligence, and not less than fifty thousand dollars for damage to property of any person other than the insured; or combined bodily injury and property damage liability insurance of not less than one million dollars, and to maintain such liability and property damage insurance or surety bond in force on each vessel or ferry while so used. Each policy for liability or property damage insurance or surety bond required by this section must be filed with the commission and kept in full force and effect, and failure to do so is cause for revocation of the operator's certificate. [1993 c 427 s 4.]

RCW 81.84.030 Certificate—Transfer. No certificate or any right or privilege thereunder held, owned, or obtained under the provisions of this chapter shall be sold, assigned, leased, mortgaged, or in any manner transferred, either by the act of the parties or by operation of law, except upon authorization by the commission first obtained. [1993 c 427 s 5; 1961 c 14 s 81.84.030. Prior: 1950 ex.s. c 6 s 1, part; 1927 c 248 s 1, part; RRS s 10361-1, part.]

RCW 81.84.040 Filing fees. Any application for a certificate of public convenience and necessity or amendment thereof, or application to sell, lease, mortgage, or transfer a certificate of public convenience and necessity or any interest therein, shall be accompanied by such filing fee as the commission may prescribe by rule: PROVIDED, That such fee shall not exceed two hundred dollars. [1973 c 115 s 14; 1961 c 14 s 81.84.040. Prior: 1955 c 125 s 10; prior: 1939 c 123 s 3, part; 1937 c 158 s 4, part; RRS s 10417-3, part.]

RCW 81.84.050 Penalties—Remission, mitigation. Every commercial ferry and every officer, agent, or employee of any commercial ferry who violates or who procures, aids, or abets in the violation of any provision of this title, or any order, rule, regulation, or decision of the commission shall incur a penalty of one hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for.

The penalty herein provided for shall become due and payable when the person incurring the same receives a notice in writing from the commission describing such violation with reasonable particularity and advising such person that the penalty is due.

The commission may, upon written application therefor, received within fifteen days, remit or mitigate any penalty provided for in this section or discontinue any prosecution to recover the same upon such terms as it in its discretion shall deem proper, and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as it may deem proper.

If the amount of such penalty is not paid to the commission within fifteen days after receipt of notice imposing the same or, if application for remission or mitigation has not been made, within fifteen days after the violator has received notice of the disposition of such application, the attorney general shall bring an action to recover the penalty in the name of the state of Washington in the superior court of Thurston county or of some other county in which such violator may do business. In all such actions the procedure and rules of evidence shall be the same as in ordinary civil actions except as otherwise herein provided. All penalties recovered by the state under this chapter shall be paid into the state treasury and credited to the public service revolving fund. [1993 c 427 s 6; 1961 c 14 s 81.84.050. Prior: 1937 c 169 s 6; RRS s 10361-2.]

RCW 81.84.060 Certificate—Grounds for cancellation, revocation, suspension, alteration, or amendment. The commission, upon complaint by an interested party, or upon its own motion after notice and opportunity for hearing, may cancel, revoke, suspend, alter, or amend a certificate issued under this chapter on any of the following grounds:

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

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

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

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

(5) The violation of any provision of this chapter;

(6) The violation of or failure to observe the provisions or conditions of the certificate or tariffs;

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

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

(9) Failure or refusal to furnish reasonable and adequate service after initiating service.

The commission shall take appropriate action within thirty days upon a complaint by an interested party or of its own finding that a provision of this section has been violated. [2007 c 234 s 97; 2003 c 373 s 6; 2003 c 83 s 213; 1993 c 427 s 7.]

***Reviser's note:** RCW 81.84.010 was amended by 2009 c 557 s 2, changing subsection (2) to subsection (4).

Findings—Intent—2003 c 373: See note following RCW 47.64.090.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

**RCW 81.84.070 Temporary certificate—Immediate and urgent need—
Waiver of provisions during state of emergency.** The commission may, with or without a hearing, issue temporary certificates to operate under this chapter, but only after it finds that the issuance of the temporary certificate is necessary due to an immediate and urgent need and is otherwise consistent with the public interest. The certificate may be issued for a period of up to one hundred eighty days. The commission may prescribe such special rules and impose special terms and conditions on the granting of the certificate as in its judgment are reasonable and necessary in carrying out this chapter. The commission shall collect a filing fee, not to exceed two hundred dollars, for each application for a temporary certificate. The commission shall not issue a temporary certificate to operate on a route for which a certificate has been issued or for which an application by another commercial ferry operator is pending.

During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 s 416; 1993 c 427 s 8.]

Part headings not law—2008 c 181: See note following RCW 43.06.220.