

**SEVENTEENTH DAY**

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MORNING SESSION

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Senate Chamber, Olympia, Thursday, May 12, 2011

The Senate was called to order at 10:00 a.m. by President Owen. The Secretary called the roll and announced to the President that all Senators were present with the exception of Senators Becker, Benton, Holmquist Newbry, McAuliffe, Murray, Shin and Stevens.

The Sergeant at Arms Color Guard consisting of Senate staff Noah Ullman and Karen Wickstrom, presented the Colors. Senator Kilmer offered the prayer.

MOTION

On motion of Senator Eide, the reading of the Journal of the previous day was dispensed with and it was approved.

MOTION

On motion of Senator Eide, the Senate advanced to the third order of business.

MESSAGE FROM THE GOVERNOR  
GUBERNATORIAL APPOINTMENTS

May 11, 2011

TO THE HONORABLE, THE SENATE OF THE STATE OF WASHINGTON

Ladies and Gentlemen:

I have the honor to submit the following appointment, subject to your confirmation.

ANNE E. HALEY, appointed April 22, 2011, for the term ending June 30, 2012, as Member of the Transportation Commission.

Sincerely,

CHRISTINE O. GREGOIRE, Governor

Referred to Committee on Transportation.

MOTION

On motion of Senator Eide, the appointee listed on the Gubernatorial Appointment report was referred to the committee as designated.

MOTION

At 10:14 a.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

The Senate was called to order at 11:49 a.m. by President Owen.

MOTION

On motion of Senator Eide, the Senate advanced to the seventh order of business.

THIRD READING

SUBSTITUTE SENATE BILL NO. 5222, by Senate Committee on Economic Development, Trade & Innovation (originally sponsored by Senators Kastama, Delvin, Eide,

Honeyford, Hargrove, Haugen, Prentice, Hobbs, Shin and Chase).

Increasing the flexibility for industrial development district levies for public port districts.

The bill was read on Third Reading.

Senator Kastama spoke in favor of passage of the bill.  
Senator Schoesler spoke against passage of the bill.

MOTION

On motion of Senator Ericksen, Senators Becker, Benton, Holmquist Newbry and Stevens were excused.

MOTION

On motion of Senator White, Senators McAuliffe, Murray and Shin were excused.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5222.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5222 and the bill passed the Senate by the following vote: Yeas, 33; Nays, 7; Absent, 2; Excused, 7.

Voting yea: Senators Brown, Chase, Conway, Delvin, Eide, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Litzow, Morton, Nelson, Prentice, Pridemore, Ranker, Regala, Rockefeller, Sheldon, Swecker, Tom, White and Zarelli

Voting nay: Senators Baxter, Carrell, Ericksen, Parlette, Pflug, Roach and Schoesler

Absent: Senators Baumgartner and Kohl-Welles

Excused: Senators Becker, Benton, Holmquist Newbry, McAuliffe, Murray, Shin and Stevens

SUBSTITUTE SENATE BILL NO. 5222, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator Eide, the Senate reverted to the sixth order of business.

MOTION

On motion of Senator Eide, Senator Kohl-Welles was excused.

SECOND READING

SENATE BILL NO. 5873, by Senators Prentice, Parlette, Hewitt, Murray, Harper, Holmquist Newbry, Chase, Zarelli, Hobbs, King, Fain, Honeyford, Tom, Kilmer and McAuliffe

Concerning the sales and use tax exemption for qualifying businesses of eligible server equipment.

The measure was read the second time.

#### MOTION

Senator Kastama moved that the following amendment by Senators Kastama and Rockefeller be adopted:

On page 5, line 20, strike "2016" and insert "2014"

On page 6, line 12, strike "2023" and insert "2021"

On page 7, line 16, strike "2023" and insert "2021"

On page 8, line 15, strike "2023" and insert "2021"

Renumber the remaining sections consecutively and correct any internal references accordingly

Senators Kastama and Prentice spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Kastama and Rockefeller on page 5, line 20 to Senate Bill No. 5873.

The motion by Senator Kastama carried and the amendment was adopted by voice vote.

#### MOTION

On motion of Senator Prentice, the rules were suspended, Engrossed Senate Bill No. 5873 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Prentice, Kastama and Holmquist Newbry spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Senate Bill No. 5873.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Senate Bill No. 5873 and the bill passed the Senate by the following vote: Yeas, 41; Nays, 1; Absent, 0; Excused, 7.

Voting yea: Senators Baumgartner, Baxter, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Litzow, Morton, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Swecker, Tom, White and Zarelli

Voting nay: Senator Hargrove

Excused: Senators Becker, Benton, Kohl-Welles, McAuliffe, Murray, Shin and Stevens

ENGROSSED SENATE BILL NO. 5873, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### MOTION

On motion of Senator Eide, Substitute Senate Bill No. 5222 and Engrossed Senate Bill No. 5873 were immediately transmitted to the House of Representatives.

#### MOTION

On motion of Senator Eide, the Senate advanced to the seventh order of business.

#### THIRD READING

ENGROSSED SUBSTITUTE SENATE BILL NO. 5742, by Senate Committee on Transportation (originally sponsored by Senators Haugen, Ranker and Shin).

Concerning the administration and distribution of Washington state ferry system revenue. Revised for 1st Substitute: Providing funding and cost saving measures for the Washington state ferry system.

The bill was read on Third Reading.

#### MOTION

On motion of Senator Haugen, the rules were suspended and Engrossed Substitute Senate Bill No. 5742 was returned to second reading for the purpose of amendment.

#### SECOND READING

ENGROSSED SUBSTITUTE SENATE BILL NO. 5742, by Senate Committee on Transportation (originally sponsored by Senators Haugen, Ranker and Shin)

Concerning the administration and distribution of Washington state ferry system revenue. Revised for 1st Substitute: Providing funding and cost saving measures for the Washington state ferry system.

The measure was read the second time.

#### MOTION

Senator Haugen moved that the following striking amendment by Senators Haugen and King be adopted:

Strike everything after the enacting clause and insert the following:

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

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

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

(a) All moneys directed by law;

(b) All revenues generated from ferry fares; and

(c) All revenues generated from commercial advertising, concessions, parking, and leases as allowed under RCW 47.60.140.

(3) Moneys in the account may be spent only after appropriation.

(4) Expenditures from the account may be used only for the maintenance, administration, and operation of the ((Washington state ferries including the Hood Canal bridge, supplementing as required the revenues available from the)) Washington state ferry system.

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

(1) The capital vessel replacement account is created in the motor vehicle fund. All revenues generated from the vessel replacement surcharge under RCW 47.60.315(7) must be deposited into the account. Moneys in the account may be spent only after

SEVENTEENTH DAY, MAY 12, 2011

2011 1ST SPECIAL SESSION

appropriation. Expenditures from the account may be used only for the construction or purchase of ferry vessels and to pay the principal and interest on bonds authorized for the construction or purchase of ferry vessels. However, expenditures from the account must first be used to support the construction or purchase, including any applicable financing costs, of a ferry vessel with a carrying capacity of at least one hundred forty-four cars.

(2) The state treasurer may not transfer any moneys from the capital vessel replacement account except to the transportation 2003 account (nickel account) for debt service on bonds issued for the construction of a 144-car class ferry vessel.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) The fuel is purchased by a county-owned ferry for use in ferry vessels after June 30, 2013; or

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

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

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

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

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

(2) Motor vehicle and special fuel if:

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

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

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

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

(e) The fuel is purchased by a county-owned ferry for use in ferry vessels after June 30, 2013; or

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

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

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

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

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased

banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

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

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the common school construction fund, the county arterial preservation account, the county criminal justice assistance account, the county sales and use tax equalization account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight congestion relief account, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the health system capacity account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety account, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multiagency permitting team account, the multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public transportation systems account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puyallup tribal settlement account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource

management cost account, the rural arterial trust account, the rural Washington loan fund, the site closure account, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the urban arterial trust account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts.

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

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

**Sec. 7.** RCW 47.64.120 and 2010 c 283 s 10 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, the employer and ferry system employee organizations, through their collective bargaining representatives, shall meet at reasonable times to negotiate in good faith with respect to wages, hours, working conditions, and insurance, and other matters mutually agreed upon. Employer funded retirement benefits shall be provided under the public employees retirement system under chapter 41.40 RCW and shall not be included in the scope of collective bargaining. Except as provided under RCW 47.64.270, the employer is not required to bargain over health care benefits. Any retirement system or retirement benefits shall not be subject to collective bargaining.

(2) Upon ratification of bargaining agreements, ferry employees are entitled to an amount equivalent to the interest earned on retroactive compensation increases. For purposes of this section, the interest earned on retroactive compensation increases is the same monthly rate of interest that was earned on the amount of the compensation increases while held in the state treasury. The

SEVENTEENTH DAY, MAY 12, 2011

interest will be computed for each employee until the date the retroactive compensation is paid, and must be allocated in accordance with appropriation authority. The interest earned on retroactive compensation is not considered part of the ongoing compensation obligation of the state and is not compensation earnable for the purposes of chapter 41.40 RCW. Negotiations shall also include grievance procedures for resolving any questions arising under the agreement, which shall be embodied in a written agreement and signed by the parties.

(3) The employer shall not bargain over the rights of management as identified in RCW 41.80.040.

(4) A collective bargaining agreement may not contain any provision that extends the term of an existing collective bargaining agreement or applicability of items incompatible with this section in an existing collective bargaining agreement.

(5) Except as otherwise provided in this chapter, if a conflict exists between an executive order, administrative rule, or agency policy relating to wages, hours, and terms and conditions of employment and a collective bargaining agreement negotiated under this chapter, the collective bargaining agreement shall prevail. A provision of a collective bargaining agreement that conflicts with the terms of a statute is invalid and unenforceable.

**NEW SECTION. Sec. 8.** A new section is added to chapter 47.64 RCW to read as follows:

(1) Effective July 1, 2013, all captains of Washington state ferry vessels are part of Washington state ferries management.

(2) The captain, also known as the master of a vessel or the commanding officer, is the ultimate authority on and has responsibility for the entire vessel. The captain's responsibilities include, but are not limited to:

(a) Ensuring the safe navigation of the vessel and its crew and passengers;

(b) Following all applicable federal, state, and agency policies and regulations;

(c) Supervising crew in performance, operations, training, security, and environmental protection; and

(d) Overseeing all aspects of vessel operations.

(3) Effective July 1, 2013, the public employment relations commission shall sever from the masters, mates, and pilots bargaining unit all captains. In anticipation of the captains' severance from the masters, mates, and pilots bargaining unit, the public employment relations commission shall conduct an election by August 31, 2011, to determine representation of the captains. A union seeking to represent captains does not have to demonstrate a showing of interest to be included on the ballot. If a majority of the captains in the masters, mates, and pilots bargaining unit indicate by vote that they desire to be included in a newly formed captains-only bargaining unit, the public employment relations commission shall certify a captains-only bargaining unit, to be effective July 1, 2013. Notwithstanding the results of the election, captains shall remain a part of the masters, mates, and pilots bargaining unit through June 30, 2013.

(4) If a new captains-only bargaining unit is created, the employer and the exclusive bargaining representative for the captains-only bargaining unit must negotiate a collective bargaining agreement exclusive to the captains-only bargaining unit.

(5) For negotiations covering the 2013-2015 biennium, the employer and the exclusive bargaining representative of the captains-only bargaining unit must negotiate agreements that are consistent with this section.

(6) A collective bargaining agreement may not contain any provision that extends the term of an existing collective bargaining agreement or applicability of items incompatible with this section in an existing collective bargaining agreement.

2011 1ST SPECIAL SESSION

**NEW SECTION. Sec. 9.** A new section is added to chapter 47.64 RCW to read as follows:

For the purposes of this section and sections 10 through 15 of this act:

(1) "Management" means an employee at the Washington state ferries who is part of Washington management services, is exempt, or is a captain.

(2) "Performance measure" means measurable standards to be used by the department to evaluate the sufficiency of the services being provided to ferry riders.

(3) "Performance report" means a report that summarizes ferry system performance using the performance measures identified in sections 10 and 11 of this act.

(4) "Performance target" means the desired outcome of a performance measure.

**NEW SECTION. Sec. 10.** A new section is added to chapter 47.64 RCW to read as follows:

Performance targets must be established by an ad hoc committee with members from and designated by the office of the governor, which must include at least one member from labor. The committee may not consist of more than eleven members. By July 1, 2011, the committee shall present performance targets to the representatives of the legislative transportation committees and the joint transportation committee for review of the performance measures listed under this section. The committee may also develop performance measures in addition to the following:

(1) Safety performance as measured by passenger injuries per one million passenger miles and by injuries per ten thousand revenue service hours that are recordable by standards of the federal occupational safety and health administration and related to standard operating procedures;

(2) Service effectiveness measures including, but not limited to, passenger satisfaction of interactions with ferry employees, cleanliness and comfort of vessels and terminals, and satisfactory response to requests for assistance. Passenger satisfaction must be measured by an evaluation that is created by a contracted market research company and conducted by the Washington state transportation commission as part of the ferry riders' opinion group survey. The Washington state transportation commission shall, to the extent possible, integrate the passenger satisfaction evaluation into the ferry user data survey described in RCW 47.60.286;

(3) Cost-containment measures including, but not limited to, operating cost per passenger mile, operating cost per revenue service mile, discretionary overtime as a percentage of straight time, and gallons of fuel consumed per revenue service mile; and

(4) Maintenance and capital program effectiveness measures including, but not limited to: Project delivery rate as measured by the number of projects completed on time and within the omnibus transportation appropriations act; vessel and terminal design and engineering costs as measured by a percentage of the total capital program, including measurement of the ongoing operating and maintenance costs; and total vessel out-of-service time.

**NEW SECTION. Sec. 11.** A new section is added to chapter 47.64 RCW to read as follows:

(1) Beginning on October 1, 2011, the department shall report on peak-direction, peak-time, on-time performance by route for all runs except those delayed or canceled due to tidal conditions.

On-time is defined as within ten minutes of the scheduled time.

Peak-time for the Mukilteo/Clinton, Edmonds/Kingston, Seattle/Bainbridge, Seattle/Bremerton, Fauntleroy/Vashon/

Southworth, and Point Defiance/Tahlequah ferry routes means weekdays from 5:00 a.m. to 9:00 a.m. and 3:00 p.m. to 7:00 p.m.

Peak-time for the Coupeville (Keystone)/Port Townsend and Anacortes/San Juan Island ferry routes means Fridays from 3:00

p.m. to closing, Saturdays all day, Sundays all day, holidays all day, and Mondays from opening to 12:00 p.m.

(2) The department shall, on a quarterly basis, report Washington state ferry system management's performance as it relates to the performance measure in subsection (1) of this section (a) to the transportation committees of the legislature, (b) on its vessels, (c) at all ferry terminals, and (d) on the department's web site. The statistics must include reasons for any delays over five minutes and any delays over ten minutes from the scheduled time.

(3) The department may not eliminate any ferry route without prior legislative approval.

**NEW SECTION. Sec. 12.** A new section is added to chapter 47.64 RCW to read as follows:

(1) The office of financial management shall complete a government management and accountability performance report that provides a baseline assessment of current performance on the performance measures identified in sections 10 and 11 of this act using final 2009-2011 data. This report must be presented to the legislature by November 1, 2011, through the attainment report required in RCW 47.01.071(5) and 47.04.280.

(2) By October 1, 2012, and each year thereafter, the office of financial management shall complete a performance report for the prior fiscal year. This report must be reviewed by the joint transportation committee, and the findings of the report must be incorporated into the governor's proposed biennial transportation budget. The office of financial management shall transmit a copy of the accepted performance report to the legislature with the governor's biennial transportation budget.

(3) Management shall lead implementation of the performance measures in sections 10 and 11 of this act.

**NEW SECTION. Sec. 13.** A new section is added to chapter 47.64 RCW to read as follows:

If the Washington state ferries does not meet at least eighty percent of the performance target that is set for each performance measure identified in sections 10 and 11 of this act by June 30, 2013, the governor, with the consensus of the chairs and ranking minorities of the transportation committees of the legislature, shall appoint a governor's management representative who, within sixty days, shall develop and submit a corrective action plan to achieve the performance targets in sections 10 and 11 of this act within the following twelve months. The plan must be submitted to the governor and the transportation committees of the legislature.

**NEW SECTION. Sec. 14.** A new section is added to chapter 47.64 RCW to read as follows:

(1) If the Washington state ferries does not meet at least eighty percent of the performance target that is set for each performance measure identified in sections 10 and 11 of this act by June 30, 2013, the department must:

(a) Solicit a fixed cost bid for meeting the performance measures in sections 10 and 11 of this act, which must include a request for information or a request for qualifications to identify qualifications necessary and costs associated with privatizing the management functions of the Washington state ferries; and

(b) Present the results of the request for information or request for qualifications to the transportation committees of the legislature and the governor.

(2) In consultation with the governor's office, the transportation committees of the legislature shall utilize the information provided in subsection (1) of this section to determine whether or not to competitively contract out the management functions of the Washington state ferry system the following biennium.

(3) If the governor and the transportation committees of the legislature opt to competitively contract out the management functions of the Washington state ferry system in the following biennium, the contract must be a fixed cost contract that requires the private management services firm to meet or exceed the

performance target for eighty percent of the performance measures under sections 10 and 11 of this act. Based on these performance measures, the contract must provide for incentive or retained payment arrangements as a means of ensuring satisfactory performance of the contract and improved performance of the ferry system over time.

(4) The contract must include a requirement that the firm retain existing and future collective bargaining agreements as negotiated between the state and the employees' labor representatives. The private management services firm may rehire Washington management services employees or exempt employees at the Washington state ferries.

(5) The contract must be for a two-year period. If the private management services firm meets or exceeds the performance measures under sections 10 and 11 of this act, the contract is renewable for an additional two years for a maximum of ten years. After ten years, the department shall implement an invitation for bid process.

(6) Consistent with RCW 41.06.142(3), the contract is not subject to requirements for agencies purchasing services that have been customarily and historically provided by state employees.

**NEW SECTION. Sec. 15.** A new section is added to chapter 47.64 RCW to read as follows:

The report required in RCW 47.01.071(5) and 47.04.280 must include the performance measures in sections 10 and 11 of this act.

**NEW SECTION. Sec. 16.** A new section is added to chapter 41.58 RCW to read as follows:

(1) There is created the marine employees' commission within the public employment relations commission. The governor shall appoint the marine employees' commission with the consent of the senate. The marine employees' commission shall consist of three members: One member to be appointed from labor; one member from industry; and one member from the public who has significant knowledge of maritime affairs. The public member is chair of the marine employees' commission. Any member of the marine employees' commission may be removed by the governor, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause. Marine employees' commission members are not eligible for state retirement under chapter 41.40 RCW by virtue of their service on the marine employees' commission. Members of the marine employees' commission must be compensated in accordance with RCW 43.03.250 and must receive reimbursement for official travel and other expenses at the same rate and on the same terms as provided for the transportation commission under RCW 47.01.061.

(2) The rules of procedure adopted by the public employment relations commission under chapter 34.05 RCW apply to state ferry system employees, except that the marine employees' commission shall act in place of the public employment relations commission for appeals of unfair labor practice complaints, questions concerning representation, and unit clarifications.

(3) In addition to subsection (2) of this section, the marine employees' commission shall perform the duties as provided in RCW 47.64.280.

(4) This section expires June 30, 2013.

**Sec. 17.** RCW 41.58.050 and 1975 1st ex.s. c 296 s 7 are each amended to read as follows:

The ((board)) commission shall have authority from time to time to make, amend, and rescind, in the manner prescribed by the administrative procedure act, chapter 34.05 RCW, such rules and regulations as may be necessary to carry out the provisions of this chapter.

**Sec. 18.** RCW 41.58.060 and 1983 c 15 s 22 are each amended to read as follows:

For any matter concerning the state ferry system and employee relations, collective bargaining, or labor disputes or stoppages, the

SEVENTEENTH DAY, MAY 12, 2011

provisions of this chapter and chapter 47.64 RCW shall govern. However, if a conflict exists between this chapter and chapter 47.64 RCW, this chapter shall govern.

**Sec. 19.** RCW 47.64.130 and 2010 c 8 s 10021 are each amended to read as follows:

(1) It is an unfair labor practice for the employer or its representatives:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by this chapter;

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it. However, subject to rules made by the public employment relations commission pursuant to RCW ~~((47.64.280))~~ 41.58.050, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure of employment, or any term or condition of employment, but nothing contained in this subsection prevents an employer from requiring, as a condition of continued employment, payment of periodic dues and fees uniformly required to an exclusive bargaining representative pursuant to RCW 47.64.160. However, nothing prohibits the employer from agreeing to obtain employees by referral from a lawful hiring hall operated by or participated in by a labor organization;

(d) To discharge or otherwise discriminate against an employee because he or she has filed charges or given testimony under this chapter;

(e) To refuse to bargain collectively with the representatives of its employees.

(2) It is an unfair labor practice for an employee organization:

(a) To restrain or coerce (i) employees in the exercise of the rights guaranteed by this chapter. However, this subsection does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or (ii) an employer in the selection of his or her representatives for the purposes of collective bargaining or the adjustment of grievances;

(b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;

(c) To refuse to bargain collectively with an employer.

(3) The expression of any view, argument, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this chapter, if the expression contains no threat of reprisal or force or promise of benefit.

**Sec. 20.** RCW 47.64.280 and 2010 c 283 s 14 are each amended to read as follows:

~~(1) ((There is created the marine employees' commission. The governor shall appoint the commission with the consent of the senate. The commission shall consist of three members: One member to be appointed from labor, one member from industry, and one member from the public who has significant knowledge of maritime affairs. The public member shall be chair of the commission. One of the original members shall be appointed for a term of three years, one for a term of four years, and one for a term of five years. Their successors shall be appointed for terms of five years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he or she succeeds. Commission members are eligible for reappointment. Any member of the commission may be removed by the governor, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause. Commission~~

2011 1ST SPECIAL SESSION

~~members are not eligible for state retirement under chapter 41.40 RCW by virtue of their service on the commission. Members of the commission shall be compensated in accordance with RCW 43.03.250 and shall receive reimbursement for official travel and other expenses at the same rate and on the same terms as provided for the transportation commission by RCW 47.01.061. The payments shall be made from the Puget Sound ferry operations account.~~

~~—(2)) The marine employees' commission, created in section 16 of this act, shall~~((:—(a)))~~ adjust all complaints, grievances, and disputes between labor and management arising out of the operation of the ferry system as provided in RCW 47.64.150~~((:;(b) provide for impasse mediation as required in RCW 47.64.210; and (c) perform those duties required in RCW 47.64.300.~~~~

~~—(3)(a) In adjudicating all complaints, grievances, and disputes, the party claiming labor disputes shall, in writing, notify the commission, which shall make careful inquiry into the cause thereof and issue an order advising the ferry employee, or the ferry employee organization representing him or her, and the department of transportation, as to the decision of the commission.~~

~~—(b) The parties are entitled to offer evidence relating to disputes at all hearings conducted by the commission. The orders and awards of the commission are final and binding upon any ferry employee or employees or their representative affected thereby and upon the department.~~

~~—(c) The commission shall adopt rules of procedure under chapter 34.05 RCW.~~

~~—(d) The commission has the authority to subpoena any ferry employee or employees, or their representatives, and any member or representative of the department, and any witnesses. The commission may require attendance of witnesses and the production of all pertinent records at any hearings held by the commission. The subpoenas of the commission are enforceable by order of any superior court in the state of Washington for the county within which the proceeding may be pending. The commission may hire staff as necessary, appoint consultants, enter into contracts, and conduct studies as reasonably necessary to carry out this chapter).~~

(2) All unfair labor practice complaints, questions concerning representation, and unit clarifications must be filed with the public employment relations commission and processed in accordance with the commission's rules adopted under chapter 34.05 RCW, except that the marine employees' commission shall act in place of the public employment relations commission for appeals.

(3) This section expires June 30, 2013.

**Sec. 21.** RCW 47.64.300 and 2007 c 160 s 4 are each amended to read as follows:

(1) If an agreement has not been reached following a reasonable period of negotiations and, when applicable, mediation, upon the recommendation of the assigned mediator that the parties remain at impasse or, with respect to biennial bargaining, in compliance with the interest arbitration agreement under RCW 47.64.170(6)(a), all impasse items shall be submitted to arbitration under this section. The issues for arbitration shall be limited to the issues certified by the ~~((commission))~~ executive director.

(2) The parties may agree to submit the dispute to a single arbitrator, whose authority and duties shall be the same as those of an arbitration panel. If the parties cannot agree on the arbitrator within five working days, the selection shall be made under subsection (3) of this section, except with respect to biennial bargaining described under RCW 47.64.170(6). The full costs of arbitration under this section shall be shared equally by the parties to the dispute.

(3) Within seven days following the issuance of the determination of the ~~((commission))~~ executive director, each party shall, absent an agreement to the contrary, name one person to serve

as its arbitrator on the arbitration panel. Except with respect to biennial bargaining described under RCW 47.64.170(6), the two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chair of the arbitration panel. Upon the failure of the arbitrators to select a neutral chair within seven days, either party may apply to the federal mediation and conciliation service, or, with the consent of the parties, the American arbitration association to provide a list of five qualified arbitrators from which the neutral chair shall be chosen. Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chair shall be shared equally between the parties.

(4) In consultation with the parties, the arbitrator or arbitration panel shall promptly establish a date, time, and place for a hearing and shall provide reasonable notice thereof to the parties to the dispute. The parties shall exchange final positions in writing, with copies to the arbitrator or arbitration panel, with respect to every issue to be arbitrated, on a date mutually agreed upon, but in no event later than ten working days before the date set for hearing. A hearing, which shall be informal, shall be held, and each party shall have the opportunity to present evidence and make argument. No member of the arbitration panel may present the case for a party to the proceedings. The rules of evidence prevailing in judicial proceedings may be considered, but are not binding, and any oral testimony or documentary evidence or other data deemed relevant by the chair of the arbitration panel may be received in evidence. A recording of the proceedings shall be taken. The arbitration panel has the power to administer oaths, require the attendance of witnesses, and require the production of such books, papers, contracts, agreements, and documents as may be deemed by the panel to be material to a just determination of the issues in dispute. If any person refuses to obey a subpoena issued by the arbitration panel, or refuses to be sworn or to make an affirmation to testify, or any witness, party, or attorney for a party is guilty of any contempt while in attendance at any hearing held hereunder, the arbitration panel may invoke the jurisdiction of the superior court in the county where the labor dispute exists, and the court has jurisdiction to issue an appropriate order. Any failure to obey the order may be punished by the court as a contempt thereof.

(5) The neutral chair shall consult with the other members of the arbitration panel, if a panel has been created. Within thirty days following the conclusion of the hearing, or sooner as the October 1st deadline set forth in RCW 47.64.170 (6)(c) and (7) necessitates, the neutral chair shall make written findings of fact and a written determination of the issues in dispute, based on the evidence presented. A copy thereof shall be served on each of the other members of the arbitration panel, and on each of the parties to the dispute. That determination is final and binding upon both parties, subject to review by the superior court upon the application of either party solely upon the question of whether the decision of the panel was arbitrary or capricious.

**Sec. 22.** RCW 41.06.070 and 2010 c 271 s 801, 2010 c 2 s 2, and 2010 c 1 s 1 are each reenacted and amended to read as follows:

(1) The provisions of this chapter do not apply to:

(a) The members of the legislature or to any employee of, or position in, the legislative branch of the state government including members, officers, and employees of the legislative council, joint legislative audit and review committee, statute law committee, and any interim committee of the legislature;

(b) The justices of the supreme court, judges of the court of appeals, judges of the superior courts or of the inferior courts, or to any employee of, or position in the judicial branch of state government;

(c) Officers, academic personnel, and employees of technical colleges;

(d) The officers of the Washington state patrol;

(e) Elective officers of the state;

(f) The chief executive officer of each agency;

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

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

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

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

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

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

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

(j) Assistant attorneys general;

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

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

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

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

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

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

(q) Officers and employees of the Washington tree fruit research commission;

(r) Officers and employees of the Washington state beef commission;

(s) Officers and employees of the Washington grain commission;

(t) Officers and employees of any commission formed under chapter 15.66 RCW;

(u) Officers and employees of agricultural commissions formed under chapter 15.65 RCW;

(v) Officers and employees of the nonprofit corporation formed under chapter 67.40 RCW;

(w) Executive assistants for personnel administration and labor relations in all state agencies employing such executive assistants including but not limited to all departments, offices, commissions, committees, boards, or other bodies subject to the provisions of this chapter and this subsection shall prevail over any provision of law inconsistent herewith unless specific exception is made in such law;

(x) In each agency with fifty or more employees: Deputy agency heads, assistant directors or division directors, and not more than three principal policy assistants who report directly to the agency head or deputy agency heads;



SEVENTEENTH DAY, MAY 12, 2011

2011 1ST SPECIAL SESSION

~~((y))~~ ~~((All employees of the marine employees' commission; —(z)))~~ Staff employed by the department of commerce to administer energy policy functions;

~~((aa))~~ ~~((z))~~ The manager of the energy facility site evaluation council;

~~((bb))~~ ~~((aa))~~ A maximum of ten staff employed by the department of commerce to administer innovation and policy functions, including the three principal policy assistants exempted under (x) of this subsection;

~~((ee))~~ ~~((bb))~~ Staff employed by Washington State University to administer energy education, applied research, and technology transfer programs under RCW 43.21F.045 as provided in RCW 28B.30.900(5).

(2) The following classifications, positions, and employees of institutions of higher education and related boards are hereby exempted from coverage of this chapter:

(a) Members of the governing board of each institution of higher education and related boards, all presidents, vice presidents, and their confidential secretaries, administrative, and personal assistants; deans, directors, and chairs; academic personnel; and executive heads of major administrative or academic divisions employed by institutions of higher education; principal assistants to executive heads of major administrative or academic divisions; other managerial or professional employees in an institution or related board having substantial responsibility for directing or controlling program operations and accountable for allocation of resources and program results, or for the formulation of institutional policy, or for carrying out personnel administration or labor relations functions, legislative relations, public information, development, senior computer systems and network programming, or internal audits and investigations; and any employee of a community college district whose place of work is one which is physically located outside the state of Washington and who is employed pursuant to RCW 28B.50.092 and assigned to an educational program operating outside of the state of Washington;

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

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

(3) In addition to the exemptions specifically provided by this chapter, the director of personnel may provide for further exemptions pursuant to the following procedures. The governor or other appropriate elected official may submit requests for exemption to the director of personnel stating the reasons for requesting such exemptions. The director of personnel shall hold a public hearing, after proper notice, on requests submitted pursuant to this subsection. If the director determines that the position for which exemption is requested is one involving substantial responsibility for the formulation of basic agency or executive policy or one involving directing and controlling program operations of an agency or a major administrative division thereof, the director of personnel shall grant the request and such determination shall be final as to any decision made before July 1, 1993. The total number of additional exemptions permitted under this subsection shall not exceed one percent of the number of employees in the classified service not including employees of institutions of higher education and related boards for those agencies not directly under the authority of any elected public official other than the governor, and shall not exceed

a total of twenty-five for all agencies under the authority of elected public officials other than the governor.

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

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

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

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

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

Any person holding a classified position subject to the provisions of this chapter shall, when and if such position is subsequently exempted from the application of this chapter, be afforded the following rights: If such person previously held permanent status in another classified position, such person shall have a right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

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

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

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

**NEW SECTION. Sec. 23.** (1) Consistent with section 16 of this act, the marine employees' commission's powers, duties, and functions are transferred to the public employment relations commission.

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

commission shall be assigned to the public employment relations commission.

(b) Any appropriations made to the marine employees' commission shall, on the effective date of this section, be transferred and credited to the public employment relations commission.

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

(3) All pending business before the marine employees' commission shall be continued and acted upon by the public employment relations commission. All existing contracts and obligations shall remain in full force and shall be performed by the public employment relations commission.

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

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

**Sec. 24.** RCW 47.64.011 and 2006 c 164 s 1 are each amended to read as follows:

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

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

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

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

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

(5) "Executive director" means the executive director of the commission.

~~((6))~~ (6) "Ferry employee" means any employee of the marine transportation division of the department of transportation who is a member of a collective bargaining unit represented by a ferry employee organization and does not include an exempt employee pursuant to RCW 41.06.079.

~~((6))~~ (7) "Ferry employee organization" means any labor organization recognized to represent a collective bargaining unit of ferry employees.

~~((7))~~ (8) "Lockout" means the refusal of the employer to furnish work to ferry employees in an effort to get ferry employee organizations to make concessions during collective bargaining, grievance, or other labor relation negotiations. Curtailment of employment of ferry employees due to lack of work resulting from a strike or work stoppage shall not be considered a lockout.

~~((8))~~ (9) "Office of financial management" means the office as created in RCW 43.41.050.

~~((9))~~ (10) "Strike or work stoppage" means a ferry employee's refusal, in concerted action with others, to report to duty, or his or her willful absence from his or her position, or his or her stoppage or slowdown of work, or his or her abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in conditions, compensation, rights, privileges, or obligations of his, her, or any other ferry employee's employment. A refusal, in good faith, to work under conditions which pose an

endangerment to the health and safety of ferry employees or the public, as determined by the master of the vessel, shall not be considered a strike for the purposes of this chapter.

**Sec. 25.** RCW 47.64.090 and 2003 c 373 s 3 and 2003 c 91 s 1 are each reenacted and amended to read as follows:

(1) Except as provided in RCW 47.60.656 and subsections (2) and (4) of this section, or as provided in RCW 36.54.130 and subsection (3) of this section, if any party assumes the operation and maintenance of any ferry or ferry system by rent, lease, or charter from the department of transportation, such party shall assume and be bound by all the provisions herein and any agreement or contract for such operation of any ferry or ferry system entered into by the department shall provide that the wages to be paid, hours of employment, working conditions, and seniority rights of employees will be established by the ~~((marine employees'))~~ commission in accordance with the terms and provisions of this chapter and it shall further provide that all labor disputes shall be adjudicated in accordance with chapter 47.64 RCW.

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

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

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

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

(3) If a ferry district is formed under RCW 36.54.110 to operate passenger-only ferry service, it may enter into an agreement with Washington State Ferries to rent, lease, or purchase vessels, related equipment, or terminal space for purposes of loading and unloading the ferry. Charges for the vessels, equipment, and space must be fair market value taking into account the public benefit derived from the ferry service. A ferry district or subcontractor of that district that qualifies under this subsection is not subject to the restrictions of subsection (1) of this section, but is subject to:

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

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

SEVENTEENTH DAY, MAY 12, 2011

2011 1ST SPECIAL SESSION

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

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

**NEW SECTION. Sec. 26.** A new section is added to chapter 47.64 RCW to read as follows:

(1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders; however, a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. This power shall not be affected or impaired by any means of adjustment, mediation, or conciliation in labor disputes that have been or may hereafter be established by law.

(2) If the commission determines that any person has engaged in or is engaging in an unfair labor practice, the commission shall issue and cause to be served upon the person an order requiring the person to cease and desist from such unfair labor practice, and to take such affirmative action as will effectuate the purposes and policy of this chapter, such as the payment of damages and the reinstatement of employees.

(3) The commission may petition the superior court for the county in which the main office of the employer is located or in which the person who has engaged or is engaging in such unfair labor practice resides or transacts business, for the enforcement of its order and for appropriate temporary relief.

**NEW SECTION. Sec. 27.** A new section is added to chapter 47.64 RCW to read as follows:

(1) The commission shall determine all questions pertaining to representation and shall administer all elections and be responsible for the processing and adjudication of all disputes that arise as a consequence of elections. The commission shall adopt rules that provide for at least the following:

- (a) Secret balloting;
- (b) Consulting with employee organizations;
- (c) Access to lists of employees, job classification, work locations, and home mailing addresses;
- (d) Absentee voting;
- (e) Procedures for the greatest possible participation in voting;
- (f) Campaigning on the employer's property during working hours; and
- (g) Election observers.

(2) If an employee organization has been certified as the exclusive bargaining representative of the employees of a bargaining unit, the employee organization may act for and negotiate master collective bargaining agreements that will include within the coverage of the agreement all employees in the bargaining unit.

(3) The certified exclusive bargaining representative is responsible for representing the interests of all the employees in the bargaining unit. This section shall not be construed to limit an exclusive representative's right to exercise its discretion to refuse to process grievances of employees that are unmeritorious.

(4) No question concerning representation may be raised if:

(a) Fewer than twelve months have elapsed since the last certification or election; or

(b) A valid collective bargaining agreement exists covering the unit, except for that period of no more than one hundred twenty calendar days and no less than ninety calendar days before the expiration of the contract.

**NEW SECTION. Sec. 28.** The following acts or parts of acts are each repealed:

(1) RCW 47.64.080 (Employee seniority rights) and 1984 c 7 s 341 & 1961 c 13 s 47.64.080; and

(2) RCW 47.64.150 (Grievance procedures) and 1983 c 15 s 6.

**NEW SECTION. Sec. 29.** 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.

**NEW SECTION. Sec. 30.** Sections 1 through 15 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

**NEW SECTION. Sec. 31.** Sections 16 through 25 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2011.

**NEW SECTION. Sec. 32.** Sections 26 through 28 of this act take effect July 1, 2013."

Senator Haugen spoke in favor of adoption of the striking amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Haugen and King to Engrossed Substitute Senate Bill No. 5742.

The motion by Senator Haugen carried and the striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "Relating to" strike the remainder of the title and insert "the Washington state ferry system; amending RCW 47.60.530, 47.60.315, 82.08.0255, 82.12.0256, 47.64.120, 41.58.050, 41.58.060, 47.64.130, 47.64.280, 47.64.300, and 47.64.011; reenacting and amending RCW 43.84.092, 41.06.070, and 47.64.090; adding a new section to chapter 47.60 RCW; adding new sections to chapter 47.64 RCW; adding a new section to chapter 41.58 RCW; creating a new section; repealing RCW 47.64.080 and 47.64.150; providing effective dates; providing expiration dates; and declaring an emergency."

#### MOTION

On motion of Senator Haugen, the rules were suspended, Second Engrossed Substitute Senate Bill No. 5742 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Haugen spoke in favor of passage of the bill.

#### POINT OF INQUIRY

Senator King: "Would Senator Haugen yield to a question? Senator Haugen, does anything in this bill preclude the ferries' management from implementing part time shifts as an alternative to any proposed service reductions?"

Senator Haugen: "No Senator. As a right of management nothing in this bill precludes ferry management from

implementing part time shifts as an alternative service reductions.”

Senators King, Rockefeller, Ranker and Nelson spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Engrossed Substitute Senate Bill No. 5742.

#### ROLL CALL

The Secretary called the roll on the final passage of Second Engrossed Substitute Senate Bill No. 5742 and the bill passed the Senate by the following vote: Yeas, 34; Nays, 10; Absent, 0; Excused, 5.

Voting yea: Senators Baumgartner, Brown, Delvin, Eide, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Honeyford, Kastama, Kilmer, King, Litzow, Morton, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Rockefeller, Schoesler, Sheldon, Swecker, Tom, White and Zarelli

Voting nay: Senators Baxter, Carrell, Chase, Conway, Ericksen, Holmquist Newbry, Keiser, Kline, Kohl-Welles and Roach

Excused: Senators Becker, Benton, McAuliffe, Shin and Stevens

**SECOND ENGROSSED SUBSTITUTE SENATE BILL NO. 5742**, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### MOTION

On motion of Senator Eide, Second Engrossed Substitute Senate Bill No. 5742 was immediately transmitted to the House of Representatives.

#### MOTION

At 12:28 p.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

#### AFTERNOON SESSION

The Senate was called to order at 1:33 p.m. by President Owen.

#### MOTION

At 1:33 p.m., on motion of Senator Eide, the Senate adjourned until 10:00 a.m. Friday, May 13, 2011.

BRAD OWEN, President of the Senate

THOMAS HOEMANN, Secretary of the Senate



5222-S  
 Other Action .....2  
 Third Reading.....1  
 Third Reading Final Passage .....1  
 5742-S  
 Other Action .....11  
 Other Action .....2  
 Second Reading .....2  
 Third Reading .....2  
 Third Reading Final Passage .....12

5873  
 Other Action ..... 2  
 Second Reading ..... 1, 2  
 Third Reading Final Passage..... 2  
 9171 Anne E. Haley  
 Introduced ..... 1  
**MESSAGE FROM GOVERNOR**  
 Gubernatorial Appointments ..... 1  
**WASHINGTON STATE SENATE**  
 Point of Inquiry, Senator King ..... 11