

**10 Years of Accounting Entries for Ferry System Repair & Maintenance:
the blue dots are 1,107 entries for 2013 through April 2023**

Is this predictable for fare setting? No.
 Is it fair commuting cost changes for those who buy houses and take jobs? No.
 Should the 2006 WCC Chapter 10.34 wording be changed to allow this? No.



2022 and 2023 expenses
for Lummi Island
dock repair to extend
life until new boat

FILE UNDER AB 2023 . 258
 DATE RECEIVED: 6-20-2023
 SUBMITTED BY: Pam
via Bob Anderson
 COUNCIL MEETING
 COMMITTEE
 EXHIBIT: #3 RErve, DHarper, PGould, LIWG

Pam Gould-Lummi Island

6/20/23 Whatcom County Council

Remarks about changing the language "regular and routine" in the current ferry rate code chapter 10.34

First, I would like to thank Public Works for recommending an amendment to clearly establishing the 2007 date for fare calculations. I would also like to thank them for the forthought to amend the code language to accept ARPA funds should we be fortunate enough to get them.

Now, I would like to address another issue, Ferry System stability. The key to managing a ferry system for the county and for island residents is stability. The current stable ferry system is what has allowed our community to survive the last 17 years and be financially stable even through covid.

The previous speaker outlined that dropping large charges into a regular and routine system can start a tsunami of fluctuation. The hard facts show how failure to fence in irregular, non-routine and as the interagency agreement characterizes it unanticipated maintenance, destroys the ability to have predictable, stable ferry fares. The attached **scatter graph** demonstrates the **irregular, unanticipated and extreme** nature of recent charges for dolphin repair that were place in our fare box recovery charges. It does not appear that any justification has been advanced for failing to consider this extreme distortion of what goes into our fare box. We request time and opportunity to discuss this issue with the Public Works Dept.

Your own member Todd Donovan was concerned about this problem at the April 25th County Council Meeting and recommended not making up new language with unpredictable outcomes. He recommended keeping the current language of "regular and routine" and referencing both the statute our state has already drafted for this purpose, and the interagency agreement between WSDOT Local Programs and Whatcom County. These two documents we are already a party to and they *clearly* define capital and operation and maintenance costs. There is no reason to redefine this language. Just reference these 2 documents.

Wash. Admin. Code § 136-400-030 - Definition of ferry capital improvement projects. (see attached)

GCB 3514

**INTERAGENCY AGREEMENT
BETWEEN
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
LOCAL PROGRAMS AND WHATCOM COUNTY (see attached)**

This will act to keep the ferry system stable for all Whatcom County residents.

For this and other reasons, we urge the council to hold open for discussion Public Works proposed amendments to Whatcom County Code chapter 10:34. The community would welcome a discussion with Public Works about these matters and a LIFAC meeting would be a great place to start.

**INTERAGENCY AGREEMENT
BETWEEN
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
LOCAL PROGRAMS AND WHATCOM COUNTY**

THIS AGREEMENT is made and entered into by and between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, LOCAL PROGRAMS, hereinafter referred to as "WSDOT," and Whatcom COUNTY, hereinafter referred to as the "COUNTY," collectively the "PARTIES" and individually the "PARTY".

IT IS THE PURPOSE OF THIS AGREEMENT to carry out the provisions of RCW 47.56.725 regarding a distribution of the funds identified in RCW 46.68.090 (2) (h) and to replace existing interagency AGREEMENT GCB-2546 with interagency AGREEMENT GCB-3514; and

WHEREAS, it is mutually agreed that the continued operation of the Puget Sound county ferry system operated by Pierce, Skagit and Whatcom counties is a benefit to the traveling public; and

WHEREAS, since 1976, the three counties have received a subsidy of up to 50 percent of the county ferry maintenance and operating deficit up to the amount identified in RCW 47.56.725 through a continuing agreement;

NOW, THEREFORE, pursuant to RCW 47.56.725, 46.68.090(2)(h), chapter 468-22 WAC, the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, covenants, and performances contained herein,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. TERMS AND CONDITIONS

- **1.1 WSDOT agrees to continue to reimburse the COUNTY for up to fifty percent (50%) of the previous year's annual operating deficit incurred in the operation and maintenance of the COUNTY ferry system. The COUNTY shall maintain tolls on its ferry at least equal to published fares in place on January 1, 2015, excluding surcharges. All toll changes shall be made in accordance with chapter 468-22 WAC.**
- **1.2 The annual fiscal year operating and maintenance deficit is defined as a total of operating and maintenance expenditures less the sum of**

ferry toll revenues and that portion of the fuel tax revenue distribution that is attributable to the county ferry system.

1.3 Operating and maintenance expenditures are defined as:

- Routine costs of operating and maintaining the ferry, including salaries, benefits, fuel, supplies, utilities, repairs, inspection, advertising, taxes, small tools, land leases, rentals, postage, printing, etc.
- Routine anticipated replacement of piling, wing-wall facing, repairing docks, etc. which does not extend the useful life, nor increase the efficiency or capacity of an asset.
- Routine dry-docking and associated repairs to maintain the vessel's certification.
- Routine engine repair or rebuilding.
- Work directed toward preservation of the existing roadway or facility and related appurtenances as necessary for safe and efficient operation.
- Any surface treatments less than .06 feet thick, crack sealing, etc.

Other work not defined as capital and agreed to in writing by WSDOT.

1.4 Excluded from operating and maintenance expenditures are:
Depreciation

- Interest

• **Other work or repairs that are considered capital improvements.**

- 1.5 The COUNTY shall maintain records of actual costs in accordance with the Budgeting, Accounting and Reporting System (BARS) for counties and other accounting procedures as prescribed by the Office of the State Auditor. WSDOT reserves the right to conduct an audit of the COUNTY ferry system operations and maintenance and to disallow any costs not in accordance with BARS and/or this AGREEMENT.
 - 1.6 By April 1 of each year, the COUNTY shall submit a "County Ferry Operations Report which details the receipts and expenses resulting from the operations and maintenance of the COUNTY ferry system for the previous COUNTY fiscal year, January 1 through December 31. The report shall be in a format, which shall include:
 - A declaration certifying that the amounts claimed are true and correct; that ferry tolls are at least equal to published fares in place on January 1, 2015; that the amount claimed as a deficit is due and payable from the COUNTY's share of the gas tax under the terms of this AGREEMENT and all applicable laws, rules and regulations; and that the signatory is authorized to sign for the COUNTY;
 - The total ferry receipts for the fiscal year; the calculation of the fuel tax revenue attributed to the ferry operation; the total operating and maintenance expenditures and the net deficit; and
 - An expenditure cost breakdown to include the following categories of expenditures: salaries; fringe benefits; miscellaneous costs; diesel and fuel; mechanical costs; insurance.
- 1.6.1 The County Ferry Operations Report shall be submitted to the following address or to such other address as may be from time to time specified:

Director, Local Programs WSDOT
P. O. Box 47390

Olympia, WA 98504-7390

1.7 Within the first thirty (30) calendar days of the beginning of the subsequent state fiscal year, WSDOT shall submit a request to the Office of the State Treasurer to direct a distribution to the COUNTY in accordance with RCW 46.68.090 (2) (h) in the next regular distribution.

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1.7.1

The biennial amount set aside by RCW 47.56.725 (2) for reimbursement to Pierce, Skagit and Whatcom counties for the county ferry system operating and maintenance deficits shall be distributed equitably and, was set not exceed a combined total of one million eight hundred thousand dollars in the 2015-2017 biennium. For subsequent biennia, the amount authorized and distributed to the counties must increase by the fiscal growth factor as defined in RCW 43.135.025. The following methodology shall be employed:

A.

During the first state fiscal year of the biennium, from the cash available under RCW 47.56.725 (2), WSDOT shall reimburse each county based upon one of the situations following:

-
-

Situation 1: In the circumstance where the combined total of fifty percent (50%) of each county's annual ferry system operating and maintenance deficit does not exceed one-half of the amount provided in RCW 47.56.725 (2), WSDOT shall reimburse each county for fifty percent (50%) of its annual ferry system operating and maintenance deficit incurred in the previous county fiscal year.

Situation 2: In the circumstance where the combined total of fifty percent (50%) of each county's annual ferry system operating and maintenance deficit incurred in the previous county fiscal year exceeds one-half of the amount provided in

RCW 47.56.725 (2), WSDOT shall reimburse each county based upon the formula following:

B. During the second state fiscal year of the biennium, from the remaining cash available under RCW 47.56.725 (2), WSDOT shall reimburse each county based upon one of the situations following:

- Situation 3: In the circumstance where the combined total of fifty percent (50%) of each county's annual ferry system operating and maintenance deficit does not exceed the total amount provided under RCW 47.56.725 (2), less cash reimbursements made during the first fiscal year of the biennium. WSDOT shall reimburse each county for fifty percent (50%) of its annual ferry system operating and maintenance deficit incurred in the previous county fiscal year if there are surplus funds remaining in this situation, AND during the first fiscal year of the cash distribution, Situation B was the method of disbursement, the surplus funds remaining shall be distributed in an adjustment of the first year distribution up to fifty percent (50%) of the annual ferry system operating deficit.

- Situation 4: In the circumstance where the combined total of fifty percent (50%) of each county's annual ferry system operating and maintenance deficit incurred in the previous county fiscal year exceeds the total amount provided under RCW 47.56.725 (2), less the amount reimbursed during the first fiscal year, WSDOT shall reimburse each county based upon the formula following:

1.7.2 The total cash payments to the counties during any state fiscal biennium shall not exceed the amount provided by RCW 47.56.725 (2). If, through audit findings or by other means, it is determined that the COUNTY has been paid in excess of fifty percent (50%) of its annual fiscal year operation and maintenance deficits in any of the preceding years, the COUNTY agrees to refund the excess amount to WSDOT within thirty (30) calendar days of written notice of the overage paid. The COUNTY agrees that should it fail to make such refund as provided, WSDOT shall withhold the overage amount paid from funds due to the COUNTY from fuel tax distributions.

2. PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this AGREEMENT shall commence July 1, 2021 and continue through June 30, 2025, unless terminated sooner as provided herein.

3. AGREEMENT ALTERATIONS AND AMENDMENTS

This AGREEMENT may be amended by mutual agreement of the PARTIES. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the PARTIES.

4. TERMINATION

Whatcom County Deficit divided by: Total Combined Annual Deficits of Pierce, Skagit and Whatcom Multiplied by: $\frac{1}{2}$ Biennial Amount Available Equals: Whatcom County Share

Whatcom County Deficit divided by: Total Combined Annual Deficits of Pierce, Skagit Multiplied by: Biennial Amount Available less the first fiscal year reimbursement Equals: Whatcom County Share

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Either PARTY may terminate this AGREEMENT upon thirty (30) calendar days prior written notification to the other PARTY. If this AGREEMENT is so terminated, the PARTIES shall be liable only for performance rendered or costs incurred in accordance with the terms of this AGREEMENT prior to the effective date of termination. In addition, this AGREEMENT automatically terminate if statutory funding is no longer made available through legislative action.

5. INDEMNIFICATION AND HOLD HARMLESS

The PARTIES shall protect, defend, indemnify, and hold harmless each other and their employees, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, each Party's obligations to be performed pursuant to the provisions of this AGREEMENT. The Parties shall not be required to indemnify, defend, or hold harmless the other PARTY if the claim, suit, or action for injuries, death, or damages (both to persons and /or property) is caused by the negligence of the other PARTY; provided that, if such claims, suits, or actions result from the concurrent negligence of the STATE, its employees and (b) the COUNTY, its employees , or includes those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of

the negligence of each PARTY and its employees. This indemnification shall survive the termination of this AGREEMENT.

6. LIABILITY

WSDOT shall assume no liability or responsibility for the COUNTY's ferry system except for statutory funding as identified in this AGREEMENT.

7. RECORDS RETENTION

During the term of this Agreement and for a period not less than six (6) years from the date of final payment by the WSDOT, the records and accounts pertaining to the COUNTY's ferry tolls and operations and maintenance costs and accounting therefore are to be kept available for inspection and audit by Washington State and/or the federal government and copies of all records, accounts, documents, or other data pertaining to the COUNTY's ferry tolls and operations and maintenance costs will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until said litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the six- (6) year retention period.

8. DISPUTES

In the event that a dispute arises under this AGREEMENT, it shall be resolved as follows: The WSDOT and the COUNTY shall each appoint a member to a dispute board, these two members shall select a third board member not affiliated with either PARTY. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. An attempt at such dispute resolution in compliance with aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute. The PARTIES shall equally share in the cost of the third board member; however, each PARTY shall be responsible for its own costs and fees.

9. GOVERNANCE

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9.19.2

This AGREEMENT is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this AGREEMENT shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this AGREEMENT, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the order following:

a. b.

Applicable state and federal statutes and rules; and
Any other provisions of this AGREEMENT, including materials incorporated by reference.

10. VENUE

In the event that either PARTY deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the PARTIES agree that any such action or proceedings shall be brought in Thurston County Superior Court. Further, the PARTIES agree that each will be solely responsible for payment of its own attorney's fees, witness fees, and costs.

11. WAIVER

A failure by either PARTY to exercise its rights under this AGREEMENT shall not preclude that PARTY from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this AGREEMENT unless stated to be such in a writing signed by an authorized representative of the PARTY and attached to the original AGREEMENT.

12. SEVERABILITY

If any provision of this AGREEMENT or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this AGREEMENT which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this AGREEMENT, and to this end the provisions of this AGREEMENT are declared to be severable.

12. ALL WRITINGS CONTAINED HEREIN

This AGREEMENT contains all the terms and conditions agreed upon by the PARTIES. No other understandings, oral or otherwise, regarding the subject

matter of this AGREEMENT shall be deemed to exist or to bind any of the PARTIES hereto.

13.

AGREEMENT MANAGEMENT

- The program manager for each of the PARTIES shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this AGREEMENT.
- The Program Manager for WSDOT is: Director, Local Programs, PO Box 47390, Olympia, WA 98504- 7390.
- The Program Manager for Whatcom County is: Public Works Director, Whatcom County, 322 N Commercial Street, Ste 210, Bellingham, WA 98225-4042.
- Or, to such other persons and/or addresses as may be specified from time to time by notice to the other PARTY.

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signed below.

Printed:

Date:

Printed:
Prosecuting Attorney

Date:

6/16/21

Stephanie Tax

Date:

Scott Lockwood Attorney General Date:

**WHATCOM COUNTY,
WASHINGTON**

**WASHINGTON STATE
DEPARTMENT OF**

By:

By:

Title:

**Interim Director of Local
Programs Division**

APPROVED TO FORM

APPROVED TO FORM

By:

By:

Approved Via Email-Christopher
Quinn

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signed below.
Printed:
Date:
Printed:
Prosecuting Attorney
Date:
Stephanie Tax

LII > State Regulations > Washington Administrative Code

> Title 136 - County Road Administration Board

> Chapter 136-400 - Administration of the county ferry capital improvement program > Wash. Admin. Code § 136-400-030 - Definition of ferry capital

improvement projects

Wash. Admin. Code § 136-400-030 - Definition of ferry capital improvement projects

State Regulations Compare

County ferry capital improvement projects shall include the following:

- (1) Purchase of a new vessel which replaces an existing vessel;
- (2) Major vessel refurbishment (e.g., engines, structural steel, controls) that substantially extends the life of the vessel;
- (3) Facility refurbishment/replacement (e.g., complete replacement, major rebuilding or redecking of a dock) that substantially extends the life of the facility;

(4) Installation of items that substantially improve ferry facilities or operations; and/or

(5) Construction of infrastructure that provides new or additional access or increases the capacity of terminal facilities.

Notes

Wash. Admin. Code § 136-400-030

Amended by WSR 22-22-074, Filed 10/31/2022,
effective 12/1/2022

Statutory Authority: Chapter 36.79 RCW. 08-10-026, §
136-400-030, filed 4/28/08, effective 5/29/08.

Statutory Authority: 1991 c 310 § 1(4). 91-21-138
(Order 85), § 136-400-030, filed 10/23/91, effective
11/23/91.

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