
ENGROSSED SUBSTITUTE SENATE BILL 5992

State of Washington

64th Legislature

2015 Regular Session

By Senate Transportation (originally sponsored by Senators King, Hobbs, Fain, Lillas, Litzow, Braun, Schoesler, Parlette, Warnick, Sheldon, Becker, and Brown)

READ FIRST TIME 02/24/15.

1 AN ACT Relating to modifying certain requirements for ferry
2 vessel construction; amending RCW 47.60.005, 47.60.010, 47.60.810,
3 47.60.814, 47.60.820, and 47.56.030; adding a new section to chapter
4 47.60 RCW; creating a new section; repealing RCW 47.56.780; providing
5 an effective date; providing a contingent effective date; and
6 declaring an emergency.

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

8 **Sec. 1.** RCW 47.60.005 and 2008 c 124 s 1 are each amended to
9 read as follows:

10 The definitions in this section apply throughout this chapter
11 unless the context clearly requires otherwise.

12 (1) "Adaptive management" means a systematic process for
13 continually improving management policies and practices by learning
14 from the outcomes of operational programs.

15 (2) "Capital plan" means the state ferry system plan developed by
16 the department as described in RCW 47.06.050(2), reviewed by the
17 commission, and reported to the transportation committees of the
18 legislature by the (~~commission~~) department.

19 (3) "Capital project" has the same meaning as used in budget
20 instructions developed by the office of financial management.

1 (4) "Commission" means the transportation commission created in
2 RCW 47.01.051.

3 (5) "Improvement project" has the same meaning as in the budget
4 instructions developed by the office of financial management. If the
5 budget instructions do not define improvement project, then it has
6 the same meaning as "program project" in the budget instructions. If
7 a project meets both the improvement project and preservation project
8 definitions in this section it must be defined as an improvement
9 project. New vessel acquisitions must be defined as improvement
10 projects.

11 (6) "Life-cycle cost model" means that portion of a capital asset
12 inventory system which, among other things, is used to estimate
13 future preservation needs.

14 (7) "Maintenance cost" has the same meaning as used in budget
15 instructions developed by the office of financial management.

16 (8) "Preservation project" has the same meaning as used in budget
17 instructions developed by the office of financial management.

18 (9) "Route" means all ferry sailings from one location to
19 another, such as the Seattle to Bainbridge route or the Port Townsend
20 to Keystone route.

21 (10) "Sailing" means an individual ferry sailing for a specific
22 route, such as the 5:00 p.m. sailing from Seattle to Bremerton.

23 (11) "Travel shed" means one or more ferry routes with distinct
24 characteristics as determined by the department.

25 (12) "Fixed price contract" means a contract that requires the
26 contractor to deliver a specified project for a set price. Change
27 orders on fixed price contracts are allowable but should be used on a
28 very limited basis.

29 **Sec. 2.** RCW 47.60.010 and 2008 c 122 s 20 are each amended to
30 read as follows:

31 The department is authorized to acquire by lease, charter,
32 contract, purchase, condemnation, or construction, and partly by any
33 or all of such means, and to thereafter operate, improve, and extend,
34 a system of ferries on and crossing Puget Sound and any of its
35 tributary waters and connections thereof, and connecting with the
36 public streets and highways in the state. However, any new vessel
37 planning, construction, purchase, analysis, or design work must be
38 consistent with RCW 47.60.810. The system of ferries shall include
39 such boats, vessels, wharves, docks, approaches, landings,

1 franchises, licenses, and appurtenances as shall be determined by the
2 department to be necessary or desirable for efficient operation of
3 the ferry system and best serve the public. Subject to RCW 47.56.820,
4 the department may in like manner acquire by purchase, condemnation,
5 or construction and include in the ferry system such toll bridges,
6 approaches, and connecting roadways as may be deemed by the
7 department advantageous in channeling traffic to points served by the
8 ferry system. In addition to the powers of acquisition granted by
9 this section, the department is empowered to enter into any
10 contracts, agreements, or leases with any person, firm, or
11 corporation and to thereby provide, on such terms and conditions as
12 it shall determine, for the operation of any ferry or ferries or
13 system thereof, whether acquired by the department or not.

14 The authority of the department to sell and lease back any state
15 ferry, for federal tax purposes only, as authorized by 26 U.S.C.,
16 Sec. 168(f)(8) is confirmed. Legal title and all incidents of legal
17 title to any ferry sold and leased back (except for the federal tax
18 benefits attributable to the ownership thereof) shall remain in the
19 state of Washington.

20 **Sec. 3.** RCW 47.60.810 and 2001 c 226 s 4 are each amended to
21 read as follows:

22 (1) The department (~~(may purchase new auto ferries through)~~)
23 shall use ((~~of~~)) a modified request for proposals process when
24 purchasing new auto ferries, except for new 144-auto ferries
25 purchased through an option on a contract executed before the
26 effective date of this section, whereby the prevailing shipbuilder
27 and the department engage in a design and build partnership for the
28 design and construction of the auto ferries. The process consists of
29 the three phases described in subsection (~~((+2))~~) (3) of this section.

30 (2) Throughout the three phases described in subsection (3) of
31 this section, the department shall employ an independent owners
32 representative to serve as a third-party intermediary between the
33 department and the proposers, and subsequently the successful
34 proposer. The independent owners representative shall:

35 (a) Serve as the department's primary advocate and communicator
36 with the proposers and successful proposer;

37 (b) Perform project quality oversight;

38 (c) Manage any change order requests;

1 (d) Ensure that the contract is adhered to and the department's
2 best interests are considered in all decisions; and

3 (e) Possess knowledge of and experience with inland waterways,
4 Puget Sound vessel operations, the propulsion system of the new
5 vessels, and Washington state ferries operations.

6 (3) The definitions in this subsection apply throughout RCW
7 47.60.812 through 47.60.822.

8 (a) "Phase one" means the evaluation and selection of proposers
9 to participate in development of technical proposals in phase two.

10 (b) "Phase two" means the preparation of technical proposals by
11 the selected proposers in consultation with the department.

12 (c) "Phase three" means the submittal and evaluation of bids, the
13 award of the contract to the successful proposer, and the design and
14 construction of the auto ferries.

15 **Sec. 4.** RCW 47.60.814 and 2001 c 226 s 6 are each amended to
16 read as follows:

17 Subject to legislative appropriation for the procurement of
18 vessels, the department shall issue a request for proposals to
19 interested parties that must include, at least, the following:

20 (1) Solicitation of a proposal to participate in a design and
21 build partnership with the department to design and construct the
22 auto ferries;

23 (2) Instructions on the prequalification process and procedures;

24 (3) A description of the modified request for proposals process.
25 Under this process, the department may modify any component of the
26 request for proposals, including the outline specifications, by
27 addendum at any time before the submittal of bids in phase three;

28 (4) A description of the design and build partnership process to
29 be used for procurement of the vessels;

30 (5) Outline specifications that provide the requirements for the
31 vessels including, but not limited to, items such as length, beam,
32 displacement, speed, propulsion requirements, capacities for autos
33 and passengers, passenger space characteristics, and crew size. The
34 department will produce notional line drawings depicting hull
35 geometry that will interface with Washington state ferries terminal
36 facilities. Notional lines may be modified in phase two, subject to
37 approval by the department;

1 (6) Instructions for the development of technical proposals in
2 phase two, and information regarding confidentiality of technical
3 proposals;

4 (7) The vessel delivery schedule, identification of the port on
5 Puget Sound where delivery must take place, and the location where
6 acceptance trials must be held;

7 (8) The estimated price range for the contract;

8 (9) Notification that the contract will be a fixed price
9 contract;

10 (10) The form and amount of the required bid deposit and contract
11 security;

12 ~~((+10+))~~ (11) A copy of the contract that will be signed by the
13 successful proposer;

14 ~~((+11+))~~ (12) The date by which proposals in phase one must be
15 received by the department in order to be considered;

16 ~~((+12+))~~ (13) A description of information to be submitted in the
17 proposals in phase one concerning each proposer's qualifications,
18 capabilities, and experience;

19 ~~((+13+))~~ (14) A statement of the maximum number of proposers that
20 may be selected in phase one for development of technical proposals
21 in phase two;

22 ~~((+14+))~~ (15) Criteria that will be used for the phase one
23 selection of proposers to participate in the phase two development of
24 technical proposals;

25 ~~((+15+))~~ (16) A description of the process that will be used for
26 the phase three submittal and evaluation of bids, award of the
27 contract, and postaward administrative activities;

28 ~~((+16+))~~ (17) A requirement that the contractor comply with all
29 applicable laws, rules, and regulations including but not limited to
30 those pertaining to the environment, worker health and safety, and
31 prevailing wages;

32 ~~((+17+))~~ (18) A requirement that the vessels be constructed
33 within the boundaries of the state of Washington except that
34 equipment furnished by the state and components, products, and
35 systems that are standard manufactured items are not subject to the
36 in-state requirement under this subsection. For the purposes of this
37 subsection, "constructed" means the fabrication, by the joining
38 together by welding or fastening of all steel parts from which the
39 total vessel is constructed, including, but not limited to, all shell
40 frames, longitudinals, bulkheads, webs, piping runs, wire ways, and

1 ducting. "Constructed" also means the installation of all components
2 and systems, including, but not limited to, equipment and machinery,
3 castings, electrical, electronics, deck covering, lining, paint, and
4 joiner work required by the contract. "Constructed" also means the
5 interconnection of all equipment, machinery, and services, such as
6 piping, wiring, and ducting; (~~and~~

7 ~~(18))~~ (19) A requirement that all vessel design specifications
8 and drawings must be complete and, when applicable, meet United
9 States coast guard standards before vessel construction begins; and

10 (20) A requirement that all warranty work on the vessel must be
11 performed within the boundaries of the state of Washington, insofar
12 as practical.

13 NEW SECTION. Sec. 5. A new section is added to chapter 47.60
14 RCW to read as follows:

15 If all responses to the initial request for proposals under RCW
16 47.60.814 are greater than five percent above the department's
17 engineer's estimate for the project, the department must reject all
18 proposals and issue a subsequent request for proposal that is not
19 subject to RCW 47.60.814(18).

20 **Sec. 6.** RCW 47.60.820 and 2001 c 226 s 9 are each amended to
21 read as follows:

22 Phase three consists of the submittal and evaluation of bids and
23 the award of the contract to the successful proposer for the final
24 design and construction of the auto ferries, as follows:

25 (1) The department shall request bids for detailed design and
26 construction of the vessels after completion of the review of
27 technical proposals in phase two. The department will review detailed
28 design drawings in phase three for conformity with the technical
29 proposals submitted in phase two. In no case may the department's
30 review replace the builder's responsibility to deliver a product
31 meeting the phase two technical proposal. The department may only
32 consider bids from selected proposers that have qualified to bid by
33 submitting technical proposals that have been approved by the
34 department.

35 (2) Each qualified proposer must submit its total bid price for
36 all vessels, including certification that the bid is based upon its
37 approved technical proposal and the request for proposals.

1 (3) Bids constitute an offer and remain open for ninety days from
2 the date of the bid opening. A deposit in cash, certified check,
3 cashier's check, or surety bond in an amount specified in the request
4 for proposals must accompany each bid and no bid may be considered
5 unless the deposit is enclosed.

6 (4) The department shall evaluate the submitted bids. Upon
7 completing the bid evaluation, the department may select the
8 responsive and responsible proposer that offers the lowest total
9 fixed price bid (~~(price)~~) for all vessels.

10 (5) The department may waive informalities in the proposal and
11 bid process, accept a bid from the lowest responsive and responsible
12 proposer, reject any or all bids, republish, and revise or cancel the
13 request for proposals to serve the best interests of the department.

14 (6) The department may:

15 (a) Award the contract to the proposer that has been selected as
16 the responsive and responsible proposer that has submitted the lowest
17 total fixed price bid (~~(price)~~);

18 (b) If a contract cannot be signed with the apparent successful
19 proposer, award the contract to the next lowest responsive and
20 responsible proposer; or

21 (c) If necessary, repeat this procedure with each responsive and
22 responsible proposer in order of rank until the list of those
23 proposers has been exhausted.

24 (7) If the department awards a contract to a proposer under this
25 section, and the proposer fails to enter into the contract and
26 furnish satisfactory contract security as required by chapter 39.08
27 RCW within twenty days from the date of award, its deposit is
28 forfeited to the state and will be deposited by the state treasurer
29 to the credit of the Puget Sound capital construction account. Upon
30 the execution of a ferry design and construction contract all
31 proposal deposits will be returned.

32 (8) The department may provide an honorarium to reimburse each
33 unsuccessful phase three proposer for a portion of its technical
34 proposal preparation costs at a preset, fixed amount to be specified
35 in the request for proposals. If the department rejects all bids, the
36 department may provide the honoraria to all phase three proposers
37 that submitted bids.

38 (9) To accommodate change orders on a fixed price contract, the
39 department shall request that the legislative appropriation for any
40 auto ferry construction project include up to, but no more than, a

1 five percent price contingency. This contingency must be identified
2 in the funding request to the legislature and held in reserve until
3 the office of financial management approves the expenditure.

4 **Sec. 7.** RCW 47.56.030 and 2008 c 122 s 8 are each amended to
5 read as follows:

6 (1) Except as permitted under chapter 47.29 or 47.46 RCW:

7 (a) Unless otherwise delegated, and subject to RCW 47.56.820, the
8 department of transportation shall have full charge of the planning,
9 analysis, and construction of all toll bridges and other toll
10 facilities including the Washington state ferries, and the operation
11 and maintenance thereof.

12 (b) The transportation commission shall determine and establish
13 the tolls and charges thereon.

14 (c) Unless otherwise delegated, and subject to RCW 47.56.820, the
15 department shall have full charge of planning, analysis, and design
16 of all toll facilities. The department may conduct the planning,
17 analysis, and design of toll facilities as necessary to support the
18 legislature's consideration of toll authorization.

19 (d) The department shall utilize and administer toll collection
20 systems that are simple, unified, and interoperable. To the extent
21 practicable, the department shall avoid the use of toll booths. The
22 department shall set the statewide standards and protocols for all
23 toll facilities within the state, including those authorized by local
24 authorities.

25 (e) Except as provided in this section, the department shall
26 proceed with the construction of such toll bridges and other
27 facilities and the approaches thereto by contract in the manner of
28 state highway construction immediately upon there being made
29 available funds for such work and shall prosecute such work to
30 completion as rapidly as practicable. The department is authorized to
31 negotiate contracts for any amount without bid under (e)(i) and (ii)
32 of this subsection:

33 (i) Emergency contracts, in order to make repairs to ferries or
34 ferry terminal facilities or removal of such facilities whenever
35 continued use of ferries or ferry terminal facilities constitutes a
36 real or immediate danger to the traveling public or precludes prudent
37 use of such ferries or facilities; and

38 (ii) Single source contracts for vessel dry dockings, when there
39 is clearly and legitimately only one available bidder to conduct dry

1 dock-related work for a specific class or classes of vessels. The
2 contracts may be entered into for a single vessel dry docking or for
3 multiple vessel dry dockings for a period not to exceed two years.

4 (f) Any new vessel planning, construction, purchase, analysis, or
5 design work must be consistent with RCW 47.60.810.

6 (2) The department shall proceed with the procurement of
7 materials, supplies, services, and equipment needed for the support,
8 maintenance, and use of a ferry, ferry terminal, or other facility
9 operated by Washington state ferries, in accordance with chapter
10 43.19 RCW except as follows:

11 (a) When the secretary of the department of transportation
12 determines in writing that the use of invitation for bid is either
13 not practicable or not advantageous to the state and it may be
14 necessary to make competitive evaluations, including technical or
15 performance evaluations among acceptable proposals to complete the
16 contract award, a contract may be entered into by use of a
17 competitive sealed proposals method, and a formal request for
18 proposals solicitation. Such formal request for proposals
19 solicitation shall include a functional description of the needs and
20 requirements of the state and the significant factors.

21 (b) When purchases are made through a formal request for
22 proposals solicitation the contract shall be awarded to the
23 responsible proposer whose competitive sealed proposal is determined
24 in writing to be the most advantageous to the state taking into
25 consideration price and other evaluation factors set forth in the
26 request for proposals. No significant factors may be used in
27 evaluating a proposal that are not specified in the request for
28 proposals. Factors that may be considered in evaluating proposals
29 include but are not limited to: Price; maintainability; reliability;
30 commonality; performance levels; life cycle cost if applicable under
31 this section; cost of transportation or delivery; delivery schedule
32 offered; installation cost; cost of spare parts; availability of
33 parts and service offered; and the following:

34 (i) The ability, capacity, and skill of the proposer to perform
35 the contract or provide the service required;

36 (ii) The character, integrity, reputation, judgment, experience,
37 and efficiency of the proposer;

38 (iii) Whether the proposer can perform the contract within the
39 time specified;

1 (iv) The quality of performance of previous contracts or
2 services;

3 (v) The previous and existing compliance by the proposer with
4 laws relating to the contract or services;

5 (vi) Objective, measurable criteria defined in the request for
6 proposal. These criteria may include but are not limited to items
7 such as discounts, delivery costs, maintenance services costs,
8 installation costs, and transportation costs; and

9 (vii) Such other information as may be secured having a bearing
10 on the decision to award the contract.

11 (c) When purchases are made through a request for proposal
12 process, proposals received shall be evaluated based on the
13 evaluation factors set forth in the request for proposal. When
14 issuing a request for proposal for the procurement of propulsion
15 equipment or systems that include an engine, the request for proposal
16 must specify the use of a life cycle cost analysis that includes an
17 evaluation of fuel efficiency. When a life cycle cost analysis is
18 used, the life cycle cost of a proposal shall be given at least the
19 same relative importance as the initial price element specified in
20 the request of proposal documents. The department may reject any and
21 all proposals received. If the proposals are not rejected, the award
22 shall be made to the proposer whose proposal is most advantageous to
23 the department, considering price and the other evaluation factors
24 set forth in the request for proposal.

25 NEW SECTION. **Sec. 8.** RCW 47.56.780 (New ferry vessel
26 construction for service on routes that require a vessel that carries
27 no more than one hundred motor vehicles—How constructed—Warranty
28 work) and 2008 c 4 s 2 are each repealed.

29 NEW SECTION. **Sec. 9.** The provisions of this act apply to new
30 project contracts identified as connecting Washington projects and
31 supported by revenues generated under chapter ... (Substitute Senate
32 Bill No. 5987), Laws of 2015.

33 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
34 preservation of the public peace, health, or safety, or support of
35 the state government and its existing public institutions, and takes
36 effect July 1, 2015.

1 NEW SECTION. **Sec. 11.** This act takes effect only if chapter ...
2 (Substitute Senate Bill No. 5987), Laws of 2015 is enacted by June
3 30, 2015.

--- END ---