

CERTIFICATION OF ENROLLMENT

SECOND ENGROSSED SUBSTITUTE SENATE BILL 5992

64th Legislature
2015 3rd Special Session

Passed by the Senate June 28, 2015
Yeas 41 Nays 4

President of the Senate

Passed by the House June 30, 2015
Yeas 97 Nays 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND ENGROSSED SUBSTITUTE SENATE BILL 5992** as passed by Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SECOND ENGROSSED SUBSTITUTE SENATE BILL 5992

Passed Legislature - 2015 3rd Special Session

State of Washington

64th Legislature

2015 Regular Session

By Senate Transportation (originally sponsored by Senators King, Hobbs, Fain, Lias, 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; repealing RCW 47.56.780; and declaring an emergency.

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

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

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

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

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

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

19 (4) "Commission" means the transportation commission created in
20 RCW 47.01.051.

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

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

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

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

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

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

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

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

27 (13) "Life-cycle cost analysis" means an analysis of the full net
28 present value cost of constructing and operating a vessel over its
29 life span, including capital costs, financing costs, operation and
30 maintenance costs, decommissioning costs, and variable costs
31 including fuel.

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

34 The department is authorized to acquire by lease, charter,
35 contract, purchase, condemnation, or construction, and partly by any
36 or all of such means, and to thereafter operate, improve, and extend,
37 a system of ferries on and crossing Puget Sound and any of its
38 tributary waters and connections thereof, and connecting with the
39 public streets and highways in the state. However, any new vessel

1 planning, construction, purchase, analysis, or design work must be
2 consistent with RCW 47.60.810. The system of ferries shall include
3 such boats, vessels, wharves, docks, approaches, landings,
4 franchises, licenses, and appurtenances as shall be determined by the
5 department to be necessary or desirable for efficient operation of
6 the ferry system and best serve the public. Subject to RCW 47.56.820,
7 the department may in like manner acquire by purchase, condemnation,
8 or construction and include in the ferry system such toll bridges,
9 approaches, and connecting roadways as may be deemed by the
10 department advantageous in channeling traffic to points served by the
11 ferry system. In addition to the powers of acquisition granted by
12 this section, the department is empowered to enter into any
13 contracts, agreements, or leases with any person, firm, or
14 corporation and to thereby provide, on such terms and conditions as
15 it shall determine, for the operation of any ferry or ferries or
16 system thereof, whether acquired by the department or not.

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

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

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

33 (2) Throughout the three phases described in subsection (3) of
34 this section, the department shall employ an independent owner's
35 representative to serve as a third-party intermediary between the
36 department and the proposers, and subsequently the successful
37 proposer. However, this representative shall serve only during the
38 development and construction of the first vessel constructed as part

1 of a new class of vessels developed after the effective date of this
2 section. The independent owner's representative shall:

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

5 (b) Perform project quality oversight;

6 (c) Manage any change order requests;

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

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

12 (3) The definitions in this subsection apply throughout RCW
13 47.60.812 through 47.60.822.

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

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

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

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

23 (1) Subject to legislative appropriation for the procurement of
24 vessels, the department shall issue a request for proposals to
25 interested parties that must include, at least, the following:

26 ~~((1))~~ (a) Solicitation of a proposal to participate in a design
27 and build partnership with the department to design and construct the
28 auto ferries;

29 ~~((2))~~ (b) Instructions on the prequalification process and
30 procedures;

31 ~~((3))~~ (c) A description of the modified request for proposals
32 process. Under this process, the department may modify any component
33 of the request for proposals, including the outline specifications,
34 by addendum at any time before the submittal of bids in phase three;

35 ~~((4))~~ (d) A description of the design and build partnership
36 process to be used for procurement of the vessels;

37 ~~((5))~~ (e) Outline specifications that provide the requirements
38 for the vessels including, but not limited to, items such as length,
39 beam, displacement, speed, propulsion requirements, capacities for

1 autos and passengers, passenger space characteristics, and crew size.
2 The department will produce notional line drawings depicting hull
3 geometry that will interface with Washington state ferries terminal
4 facilities. Notional lines may be modified in phase two, subject to
5 approval by the department;

6 ~~((+6))~~ (f) Instructions for the development of technical
7 proposals in phase two, and information regarding confidentiality of
8 technical proposals;

9 ~~((+7))~~ (g) The vessel delivery schedule, identification of the
10 port on Puget Sound where delivery must take place, and the location
11 where acceptance trials must be held;

12 ~~((+8))~~ (h) The estimated price range for the contract;

13 ~~((+9))~~ (i) Notification that the contract will be a fixed price
14 contract;

15 (j) The form and amount of the required bid deposit and contract
16 security;

17 ~~((+10))~~ (k) A copy of the contract that will be signed by the
18 successful proposer;

19 ~~((+11))~~ (l) The date by which proposals in phase one must be
20 received by the department in order to be considered;

21 ~~((+12))~~ (m) A description of information to be submitted in the
22 proposals in phase one concerning each proposer's qualifications,
23 capabilities, and experience;

24 ~~((+13))~~ (n) A statement of the maximum number of proposers that
25 may be selected in phase one for development of technical proposals
26 in phase two;

27 ~~((+14))~~ (o) Criteria that will be used for the phase one
28 selection of proposers to participate in the phase two development of
29 technical proposals;

30 ~~((+15))~~ (p) A description of the process that will be used for
31 the phase three submittal and evaluation of bids, award of the
32 contract, and postaward administrative activities;

33 ~~((+16))~~ (q) A requirement that the contractor comply with all
34 applicable laws, rules, and regulations including but not limited to
35 those pertaining to the environment, worker health and safety, and
36 prevailing wages;

37 ~~((+17))~~ (r) A requirement that the vessels be constructed within
38 the boundaries of the state of Washington except that equipment
39 furnished by the state and components, products, and systems that are
40 standard manufactured items are not subject to the in-state

1 requirement under this subsection (1)(r). For the purposes of this
2 subsection (1)(r), "constructed" means the fabrication, by the
3 joining together by welding or fastening of all steel parts from
4 which the total vessel is constructed, including, but not limited to,
5 all shell frames, longitudinals, bulkheads, webs, piping runs, wire
6 ways, and ducting. "Constructed" also means the installation of all
7 components and systems, including, but not limited to, equipment and
8 machinery, castings, electrical, electronics, deck covering, lining,
9 paint, and joiner work required by the contract. "Constructed" also
10 means the interconnection of all equipment, machinery, and services,
11 such as piping, wiring, and ducting; (~~and~~

12 ~~(18))~~) (s) A requirement that all vessel design specifications
13 and drawings must be complete and, when applicable, meet United
14 States coast guard standards before vessel construction begins; and

15 (t) A requirement that all warranty work on the vessel must be
16 performed within the boundaries of the state of Washington, insofar
17 as practical.

18 (2) The department shall not issue a request for proposals for
19 the procurement of vessels, except on a contract executed before the
20 effective date of this section, without specific authorization to do
21 so from the legislature. After receiving such specific authorization,
22 any request for proposals issued by the department must comply with
23 section 5 of this act.

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

26 (1) The Washington state institute for public policy must conduct
27 a cost-benefit analysis of the state's ferry vessel procurement
28 practices. This analysis must (a) compare in-state construction to
29 construction at shipyards across the United States, (b) identify
30 barriers to receiving three or more in-state bids to a request for
31 proposals, and (c) recommend policies to encourage three or more in-
32 state bidders to respond to a request for proposals. This analysis
33 must be provided to the governor, the transportation committees of
34 the legislature, and the department by December 1, 2016.

35 (2) In developing its engineer's estimate to procure a ferry
36 vessel, the department must identify significant project cost
37 drivers, including materials, labor, overhead, delivery, and profit.

38 (3) After July 1, 2017, if all responses to the initial request
39 for proposals under RCW 47.60.814 are greater than five percent above

1 the department's engineer's estimate for the project, the department
2 must reject all proposals and issue a subsequent request for proposal
3 that is not subject to RCW 47.60.814(1)(r).

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

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

9 (1) The department shall request bids for detailed design and
10 construction of the vessels after completion of the review of
11 technical proposals in phase two. The department will review detailed
12 design drawings in phase three for conformity with the technical
13 proposals submitted in phase two. In no case may the department's
14 review replace the builder's responsibility to deliver a product
15 meeting the phase two technical proposal. The department may only
16 consider bids from selected proposers that have qualified to bid by
17 submitting technical proposals that have been approved by the
18 department.

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

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

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

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

35 (6) The department may:

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

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

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

7 (7) If the department awards a contract to a proposer under this
8 section, and the proposer fails to enter into the contract and
9 furnish satisfactory contract security as required by chapter 39.08
10 RCW within twenty days from the date of award, its deposit is
11 forfeited to the state and will be deposited by the state treasurer
12 to the credit of the Puget Sound capital construction account. Upon
13 the execution of a ferry design and construction contract all
14 proposal deposits will be returned.

15 (8) The department may provide an honorarium to reimburse each
16 unsuccessful phase three proposer for a portion of its technical
17 proposal preparation costs at a preset, fixed amount to be specified
18 in the request for proposals. If the department rejects all bids, the
19 department may provide the honoraria to all phase three proposers
20 that submitted bids.

21 (9)(a) To accommodate change orders on a fixed price contract,
22 the department shall request that the legislative appropriation for
23 any auto ferry construction project include a contingency in the
24 following amounts:

25 (i) For the first vessel in any class of vessels designed to be
26 powered by liquefied natural gas, the contingency may be no more than
27 ten percent of the contract price;

28 (ii) For all other vessels, the contingency may be no more than
29 five percent of the contract price.

30 (b) The contingency required by this subsection (9) must be
31 identified in the funding request to the legislature and held in
32 reserve until the office of financial management approves the
33 expenditure.

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

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

37 (a) Unless otherwise delegated, and subject to RCW 47.56.820, the
38 department of transportation shall have full charge of the planning,
39 analysis, and construction of all toll bridges and other toll

1 facilities including the Washington state ferries, and the operation
2 and maintenance thereof.

3 (b) The transportation commission shall determine and establish
4 the tolls and charges thereon.

5 (c) Unless otherwise delegated, and subject to RCW 47.56.820, the
6 department shall have full charge of planning, analysis, and design
7 of all toll facilities. The department may conduct the planning,
8 analysis, and design of toll facilities as necessary to support the
9 legislature's consideration of toll authorization.

10 (d) The department shall utilize and administer toll collection
11 systems that are simple, unified, and interoperable. To the extent
12 practicable, the department shall avoid the use of toll booths. The
13 department shall set the statewide standards and protocols for all
14 toll facilities within the state, including those authorized by local
15 authorities.

16 (e) Except as provided in this section, the department shall
17 proceed with the construction of such toll bridges and other
18 facilities and the approaches thereto by contract in the manner of
19 state highway construction immediately upon there being made
20 available funds for such work and shall prosecute such work to
21 completion as rapidly as practicable. The department is authorized to
22 negotiate contracts for any amount without bid under (e)(i) and (ii)
23 of this subsection:

24 (i) Emergency contracts, in order to make repairs to ferries or
25 ferry terminal facilities or removal of such facilities whenever
26 continued use of ferries or ferry terminal facilities constitutes a
27 real or immediate danger to the traveling public or precludes prudent
28 use of such ferries or facilities; and

29 (ii) Single source contracts for vessel dry dockings, when there
30 is clearly and legitimately only one available bidder to conduct dry
31 dock-related work for a specific class or classes of vessels. The
32 contracts may be entered into for a single vessel dry docking or for
33 multiple vessel dry dockings for a period not to exceed two years.

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

36 (2) The department shall proceed with the procurement of
37 materials, supplies, services, and equipment needed for the support,
38 maintenance, and use of a ferry, ferry terminal, or other facility
39 operated by Washington state ferries, in accordance with chapter
40 43.19 RCW except as follows:

1 (a) When the secretary of the department of transportation
2 determines in writing that the use of invitation for bid is either
3 not practicable or not advantageous to the state and it may be
4 necessary to make competitive evaluations, including technical or
5 performance evaluations among acceptable proposals to complete the
6 contract award, a contract may be entered into by use of a
7 competitive sealed proposals method, and a formal request for
8 proposals solicitation. Such formal request for proposals
9 solicitation shall include a functional description of the needs and
10 requirements of the state and the significant factors.

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

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

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

28 (iii) Whether the proposer can perform the contract within the
29 time specified;

30 (iv) The quality of performance of previous contracts or
31 services;

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

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

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

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

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

19 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
20 preservation of the public peace, health, or safety, or support of
21 the state government and its existing public institutions, and takes
22 effect immediately.

--- END ---