

# HOUSE BILL REPORT

## SHB 1635

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As Amended by the Senate

**Title:** An act relating to jumbo ferry purchases.

**Brief Description:** Purchasing jumbo ferries.

**Sponsors:** By House Committee on Transportation (originally sponsored by Representatives Zellinsky, Schmidt, King, Ballard, Dorn, Sehlin, Heavey, Kremen, Brough, Sheldon, Wood, Jones, Jacobsen, J. Kohl, R. Johnson, Karahalios, Holm, Scott, Orr, Kessler, Pruitt, R. Fisher, Wang, Springer, Quall, Conway, Anderson, Shin, Voloria, Leonard, Campbell, R. Meyers, Ballasiotes, Vance, Foreman, Patterson, Valle, Johanson, Miller, Chandler, G. Fisher, Roland, Linville and Cothern.)

**Brief History:**

Reported by House Committee on:  
Transportation, March 3, 1993, DPS;  
Passed House, March 13, 1993, 98-0;  
Amended by Senate.

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**HOUSE COMMITTEE ON TRANSPORTATION**

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 27 members: Representatives R. Fisher, Chair; Brown, Vice Chair; Jones, Vice Chair; Schmidt, Ranking Minority Member; Mielke, Assistant Ranking Minority Member; Brough; Brumsickle; Cothern; Eide; Finkbeiner; Forner; Fuhrman; Hansen; Heavey; Horn; Johanson; J. Kohl; R. Meyers; Miller; H. Myers; Orr; Patterson; Quall; Sheldon; Shin; Wood; and Zellinsky.

**Staff:** Vicki FabrÀ (786-7313).

**Background:** Due to current and projected demands for transportation across Puget Sound, Washington State has decided to construct three new jumbo ferries (218 cars, 2,500 passengers) beginning in the 1993-95 biennium. The 1991-93 transportation budget contained \$1.1 million for the design of a jumbo class ferry. Total cost of construction for the three ferries is estimated to be approximately \$216 million. The new jumbo ferries will be financed in part with \$210 million generated from bond sales authorized by the 1992 Legislature. From the bond authorization, the

Legislature has appropriated \$10 million for long-lead time propulsion equipment. Repayment of the bonds will be accomplished from existing revenues from the motor vehicle excise tax and the motor vehicle fuel tax. If the 1993 Legislature appropriates the necessary funds, under the design and construction schedule established by the Department of Transportation (DOT), delivery of the first vessel could occur in late 1995.

Current law governing public contracting procedures establishes a competitive comprehensive bidding process which awards contracts to the lowest qualified bidder. In the last decade the number of shipyards in Puget Sound qualified to bid on and perform major overhauls on state ferries and new construction has decreased. The decline of the shipyard industry is due to a combination of economic pressures and state regulatory requirements. During the 1992 Legislative Session and interim, the DOT ferry labor unions and local shipyard representatives examined ways to increase the possibility of in-state construction of the proposed jumbo ferries and improve and enhance competition among Washington yards.

The 1992 supplemental transportation budget contained language requiring that the construction and assembly of the new vessels occur within Washington. Because, by law, this budget proviso expires in June 1993, this issue needs to be reexamined when the Legislature authorizes additional bond sales during the 1993 session.

In 1977 the Legislature statutorily authorized construction of additional ferries. Under the statute the builder was selected through a competitive bidding procedure which included an in-state preference provision. The statute established a preference for shipbuilding firms located in Washington, provided the bid of the Washington firm did not exceed by more than 6 percent the lowest price proposal for a negotiated contract.

Although the in-state preference provision was contested by an unsuccessful out-of-state firm as being discriminatory and unconstitutional, the Washington Supreme Court upheld the preferential treatment on the basis that it had a rational economic basis and was not in violation of the Constitution.

**Summary of Bill:** Upon legislative authorization to purchase one or more jumbo ferry vessels, the Department of Transportation (DOT) is required to publish notice of its intent in at least one state trade paper and one other paper of general circulation. The notice must contain information about (1) the number of vessels to be constructed and the

proposed delivery date for each vessel; (2) bidder prequalification requirements; and (3) an address and telephone number to obtain the bid package.

The DOT is required to send to any requesting firm its bidding documents specifying the criteria for the jumbo ferry vessels. Bid documents must include information on the following: (1) solicitation of a bid to deliver vessels that are constructed according to DOT plans and specifications; (2) a requirement that the bids submitted should include one bid for the construction of three vessels; (3) the amount and form of the required contract security; (4) a copy of the vessel construction contract; (5) the final date for receiving bids; (6) a requirement that the contractor comply with applicable state laws, rules and regulations; (7) a requirement that vessels, excluding equipment provided by the state and components, products and systems that are standard manufactured items, be constructed within state boundaries and that all warranty work be performed within the state, insofar as practicable; and (8) a list of all equipment to be furnished by the state.

The department is required to provide in the bidding documents a list of all components, products and systems that are standard manufactured items that will be produced in the state and those items produced out of state.

All proposals remain open for 90 days and must be accompanied by a bid deposit in the amount of 5 percent of the bid amount.

The DOT, upon concluding its evaluation of the bid proposals, may select the firm submitting the lowest responsible bid, reject all bids not in compliance with the bid document requirements, or reject all bids.

If on the first bid, the lowest responsible bid exceeds by more than 5 percent the engineer's estimate, the department is required to request the Legislative Transportation Committee (LTC) to perform within 60 days after the bid opening, an independent review of the engineer's estimate to determine its appropriateness. The LTC can, as a result of the review, confirm the engineer's estimate or revise it to reflect appropriate and current information. If the engineer's estimate should be adjusted, the department must evaluate the lowest responsible bid against the revised estimate. If the lowest responsible bid does not exceed 5 percent of the revised engineer's estimate, the department will negotiate a contract with the successful bidder. However, if the lowest responsible bid does exceed the confirmed or revised estimate by more than 5 percent, the department must solicit new bids, continuing to observe the

requirement that the construction of the vessels be within state boundaries. If the lowest responsible bid again exceeds the confirmed or revised estimate by more than 5 percent, the department is directed to rebid the project, eliminating the in-state construction requirement.

Upon selecting the lowest responsible bidder and ranking the remaining firms in preferential order, the DOT must sign a contract with the firm presenting the lowest responsible bid. If agreement cannot be reached, the DOT may contract with the firm ranked next lowest bidder and, if necessary, may repeat this procedure until the list of firms is exhausted. If a contract is awarded and the selected firm fails to enter into a contract or furnish satisfactory contract security, its bid deposit is forfeited and deposited in the Puget Sound capital construction account.

Firms that are not selected must be notified immediately. The DOT's selection is conclusive unless appealed within five days after notice of the final decision. An appeal must be heard within 10 days and on five days notice to the DOT. Appeals are heard on the administrative record. The court may affirm the DOT's decision or reverse if it finds the action of the department was arbitrary or capricious.

**EFFECT OF SENATE AMENDMENT(S):**

- (1) The provision requiring the department to provide, in the bidding documents, a list of all components, products and systems that are standard manufactured items, produced in-state and out-of-state, is deleted.

This requirement was deleted because DOT only provides a general description of the components required for construction and leaves it to the industry to develop the detailed plans. DOT is not able to determine ahead of construction which products the shipbuilder will choose to purchase in-state or out-of-state, and who is the best and most cost effective vendor of materials.

- (2) Language is added in Section 4 of the bill which clarifies that the engineer's estimate developed by DOT must address the specific and unique costs of building the new jumbo vessels in the state of Washington.
- (3) In the event the LTC must review the engineer's estimate, it is required to consult with experts familiar with developing bid estimates for ferry construction in the Pacific Northwest.

**Fiscal Note:** Requested February 26, 1993.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** The construction of three new jumbo ferries is necessary to accommodate current and projected demands for travel across Puget Sound. Construction of the vessels within state boundaries will benefit the public interest by keeping tax dollars in state; increasing employment, state revenues and personal income; preserving a temporarily depressed shipbuilding industry; and promoting future in-state vessel maintenance capability.

**Testimony Against:** None.

**Witnesses:** Pat McLain, Build Them in Washington; Dyan Oldenburg, People for Puget Sound; Don Wick, Economic Development Association of Skagit County; Gordon Baxter, Puget Sound Metal Trades Council; Hans Schaefer, Todd Shipyards; David Gwinn, Todd Shipyards; Joe Martinac, Evergreen Group; Dick Nelson, Dakota Creek Industries; Fred Olson, AK-WA, Inc.; and Terry McCarthy, Department of Transportation (with concerns).

**VOTE ON FINAL PASSAGE:**

Yeas 98