
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; repealing RCW 47.56.780; providing an effective date;
5 providing a contingent effective date; and declaring an emergency.

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

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

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

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

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

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

20 (4) "Commission" means the transportation commission created in
21 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 **Sec. 2.** RCW 47.60.010 and 2008 c 122 s 20 are each amended to
28 read as follows:

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

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

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

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

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

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

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

35 (b) Perform project quality oversight;

36 (c) Manage any change order requests;

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

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

4 (3) The definitions in this subsection apply throughout RCW
5 47.60.812 through 47.60.822.

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

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

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

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

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

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

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

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

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

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

36 (6) Instructions for the development of technical proposals in
37 phase two, and information regarding confidentiality of technical
38 proposals;

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

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

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

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

9 ~~((+10))~~ (11) A copy of the contract that will be signed by the
10 successful proposer;

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

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

16 ~~((+13))~~ (14) A statement of the maximum number of proposers that
17 may be selected in phase one for development of technical proposals
18 in phase two;

19 ~~((+14))~~ (15) Criteria that will be used for the phase one
20 selection of proposers to participate in the phase two development of
21 technical proposals;

22 ~~((+15))~~ (16) A description of the process that will be used for
23 the phase three submittal and evaluation of bids, award of the
24 contract, and postaward administrative activities;

25 ~~((+16))~~ (17) A requirement that the contractor comply with all
26 applicable laws, rules, and regulations including but not limited to
27 those pertaining to the environment, worker health and safety, and
28 prevailing wages;

29 ~~((+17))~~ (18) A requirement that the vessels be constructed
30 within the boundaries of the state of Washington except that
31 equipment furnished by the state and components, products, and
32 systems that are standard manufactured items are not subject to the
33 in-state requirement under this subsection. For the purposes of this
34 subsection, "constructed" means the fabrication, by the joining
35 together by welding or fastening of all steel parts from which the
36 total vessel is constructed, including, but not limited to, all shell
37 frames, longitudinals, bulkheads, webs, piping runs, wire ways, and
38 ducting. "Constructed" also means the installation of all components
39 and systems, including, but not limited to, equipment and machinery,
40 castings, electrical, electronics, deck covering, lining, paint, and

1 joiner work required by the contract. "Constructed" also means the
2 interconnection of all equipment, machinery, and services, such as
3 piping, wiring, and ducting; (~~and~~
4 ~~(18))~~) (19) A requirement that all vessel design specifications
5 and drawings must be complete and, when applicable, meet United
6 States coast guard standards before vessel construction begins; and
7 (20) A requirement that all warranty work on the vessel must be
8 performed within the boundaries of the state of Washington, insofar
9 as practical.

10 NEW SECTION. **Sec. 5.** A new section is added to chapter 47.60
11 RCW to read as follows:

12 If all responses to the initial request for proposals under RCW
13 47.60.814 are greater than five percent above the department's
14 engineer's estimate for the project, the department must reject all
15 proposals and issue a subsequent request for proposal that is not
16 subject to RCW 47.60.814(18).

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

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

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

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

35 (3) Bids constitute an offer and remain open for ninety days from
36 the date of the bid opening. A deposit in cash, certified check,
37 cashier's check, or surety bond in an amount specified in the request

1 for proposals must accompany each bid and no bid may be considered
2 unless the deposit is enclosed.

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

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

11 (6) The department may:

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

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

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

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

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

35 (9) To accommodate change orders on a fixed price contract, the
36 department shall request that the legislative appropriation for any
37 auto ferry construction project include up to, but no more than, a
38 five percent price contingency. This contingency must be identified
39 in the funding request to the legislature and held in reserve until
40 the office of financial management approves the expenditure.

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

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

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

9 (b) The transportation commission shall determine and establish
10 the tolls and charges thereon.

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

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

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

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

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

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

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

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

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

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

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

35 (iii) Whether the proposer can perform the contract within the
36 time specified;

37 (iv) The quality of performance of previous contracts or
38 services;

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

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

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

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

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

25 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
26 preservation of the public peace, health, or safety, or support of
27 the state government and its existing public institutions, and takes
28 effect July 1, 2015.

29 NEW SECTION. **Sec. 10.** This act takes effect only if chapter ...
30 (Senate Bill No. ... (S-1301/15)), Laws of 2015 is enacted by June
31 30, 2015.

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