

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 2378**

60th Legislature  
2007 Regular Session

Passed by the House April 11, 2007  
Yeas 91 Nays 6

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**Speaker of the House of Representatives**

Passed by the Senate April 13, 2007  
Yeas 45 Nays 0

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2378** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 2378**

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Passed Legislature - 2007 Regular Session

**State of Washington                      60th Legislature                      2007 Regular Session**

**By** House Committee on Transportation (originally sponsored by Representatives Flannigan, Jarrett, Clibborn, Eddy, Seaquist and Roberts)

READ FIRST TIME 04/03/07.

1            AN ACT Relating to construction of new vessels for Washington state  
2 ferries; adding a new section to chapter 47.60 RCW; creating a new  
3 section; and declaring an emergency.

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

5            NEW SECTION.    **Sec. 1.** The legislature finds that the Washington  
6 state ferry system has an excellent safety record and has commenced a  
7 long-term vessel procurement plan to ensure the replacement of older  
8 and outdated ferry vessels. The legislature further finds that the  
9 current vessel procurement process must move forward with all due  
10 speed, balancing the interests of both the taxpayers and shipyards.  
11 The commencement of construction of new vessels is important not only  
12 for safety reasons, but also to keep skilled marine construction jobs  
13 in the Puget Sound region and to sustain the capacity of the region to  
14 meet the ongoing preservation needs of the ferry system fleet of  
15 vessels.

16            The legislature further finds that the balancing of interests  
17 described in this section may necessitate the department of  
18 transportation to consider in the department's current new 144--auto  
19 ferries request for proposals a single proposal submitted jointly by

1 the current best-qualified proposers. The department may, therefore,  
2 consider and accept or reject in the department's discretion such a  
3 single proposal, and the current best-qualified proposers may meet and  
4 confer to discuss matters that are reasonably necessary to determine  
5 whether to submit such a single proposal and to implement a single  
6 final contract if the proposal is accepted by the department.  
7 Discussions may address the terms of any agreement that may be entered  
8 into between the best qualified proposers for purposes of submitting a  
9 single proposal, as well as any agreement that may be entered into with  
10 the department. Discussions may also address cost and price  
11 information and division of work under the request for proposals. The  
12 current best-qualified proposers shall each expressly declare in  
13 writing to the department, their intent, if any, to jointly submit a  
14 single proposal within thirty days of the effective date of this act,  
15 and shall further provide within the thirty-day period information that  
16 may be required by the department including, but not limited to,  
17 information regarding the proposed shipyard organizational structure  
18 and responsibilities of each participant. If at the end of the thirty-  
19 day period the proposers have not declared such an intent and provided  
20 the information required by the department, or if the department, in  
21 its discretion, determines that the joint venture, other legal entity,  
22 or organizational structure, or division of responsibilities intended  
23 by the joint proposers are unacceptable and not in the best interests  
24 of the state, the proposers will be deemed as proposing separately to  
25 the request for proposals, and further discussions related to the  
26 request for proposals shall not be allowed between the proposers.

27 To further facilitate the balancing of interests described in this  
28 section, the department of transportation may, in its discretion, make  
29 revisions to the request for proposals that the department deems  
30 necessary or appropriate to balance such interests.

31 NEW SECTION. **Sec. 2.** A new section is added to chapter 47.60 RCW  
32 to read as follows:

33 If at any point there is only a single best-qualified proposer  
34 participating in the competitive design-build procurement process prior  
35 to the submission of bids in phase three, or if there is only a single  
36 responsive and responsible bid submitted in phase three, or if the  
37 current best-qualified proposers elect to jointly submit a single

1 proposal, the department may negotiate a fair-value contract with the  
2 proposer or joint proposers. The negotiations may consider the scope  
3 of work as well as contract price. The contract price must be  
4 established between the department and the proposer through negotiation  
5 based on detailed cost and price information provided by the proposer,  
6 the department, and other relevant sources in a format as determined by  
7 the department. To achieve efficiencies, the department may negotiate  
8 incentives and economic cost sharing between the state and the  
9 proposer. In addition to the cost incentives, other incentives may be  
10 considered, as determined by the department, to be in the best  
11 interests of the state. Such incentives may include, but are not  
12 limited to, key schedule milestones, technological innovations,  
13 performance efficiencies, constructability, and operational value or  
14 life-cycle cost. The department may issue guidelines, requirements,  
15 and procedures for all negotiations.

16 If the department conducts negotiations with a single remaining  
17 proposer or joint proposers prior to the submission of bids in phase  
18 three, all negotiations must be completed within forty-five days of the  
19 department's approval of the final technical proposal. If the  
20 department conducts negotiations with a single responsive and  
21 responsible phase three bidder, all negotiations must be completed  
22 within thirty days of submission of the phase three bids.

23 If the department reaches an agreement with the proposer or joint  
24 proposers, the department shall submit a copy of the contract, the  
25 final negotiated price, and supporting information to the office of  
26 financial management at least ten days prior to execution of the  
27 contract. If the final negotiated price is greater than the  
28 legislature's adopted expenditure plan for vessel construction, the  
29 department may not execute the contract until the legislature reviews  
30 the final proposals and adjusts the expenditure plan accordingly.

31 If the department is unable within the designated time period to  
32 reach an agreement with the proposer or joint proposers that is fair,  
33 reasonable, and in the department's budget, or if the proposers  
34 initially provide notice of their intent to jointly submit a single  
35 proposal but fail to do so, or if any one of the proposers withdraws  
36 from a jointly submitted single proposal before entering into a  
37 contract with the department, or if both of the current best-qualified  
38 proposers withdraw or otherwise fail to proceed with the request for

1 proposals process, the department may issue a new request for proposals  
2 or cancel the request for proposals process, to serve the best  
3 interests of the state.

4 The department may pay an honorarium in a specified amount  
5 determined by the department to a proposer or joint proposers who has  
6 submitted a final, approved technical proposal and with whom the  
7 department has engaged in unsuccessful negotiations. The proposer or  
8 joint proposers shall not receive any other compensation for attempting  
9 to negotiate a contract, except to the extent allowed by the department  
10 in a final contract awarded pursuant to the request for proposal.

11 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
12 preservation of the public peace, health, or safety, or support of the  
13 state government and its existing public institutions, and takes effect  
14 immediately.

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