
SENATE BILL 5858

State of Washington

63rd Legislature

2013 Regular Session

By Senator King

Read first time 02/26/13. Referred to Committee on Transportation.

1 AN ACT Relating to modifying certain requirements for ferry vessel
2 construction; amending RCW 47.60.005, 47.60.010, 47.60.810, 47.60.814,
3 47.60.820, 47.56.030, and 39.04.320; and repealing RCW 47.56.780.

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

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

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

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

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

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

18 (4) "Commission" means the transportation commission created in RCW
19 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 the
4 same meaning as "program project" in the budget instructions. If a
5 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 future
11 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 another,
17 such as the Seattle to Bainbridge route or the Port Townsend to
18 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 read
28 as follows:

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

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

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

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

21 (1) The department (~~((may purchase new auto ferries through))~~) shall
22 use (~~((of))~~) a modified request for proposals process when purchasing new
23 auto ferries whereby the prevailing shipbuilder and the department
24 engage in a design and build partnership for the design and
25 construction of the auto ferries. The process consists of the three
26 phases described in subsection (~~((+2))~~) (3) of this section.

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

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

34 (b) Perform project quality oversight;

35 (c) Manage any change order requests; and

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

1 (3) The definitions in this subsection apply throughout RCW
2 47.60.812 through 47.60.822.

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

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

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

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

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

15 (1) Solicitation of a proposal to participate in a design and build
16 partnership with the department to design and construct the auto
17 ferries;

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

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

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

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

33 (6) Instructions for the development of technical proposals in
34 phase two, and information regarding confidentiality of technical
35 proposals;

36 (7) The vessel delivery schedule, identification of the port on

1 Puget Sound where delivery must take place, and the location where
2 acceptance trials must be held;

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

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

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

7 ~~((+10))~~ (11) A copy of the contract that will be signed by the
8 successful proposer;

9 ~~((+11))~~ (12) The date by which proposals in phase one must be
10 received by the department in order to be considered;

11 ~~((+12))~~ (13) A description of information to be submitted in the
12 proposals in phase one concerning each proposer's qualifications,
13 capabilities, and experience;

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

17 ~~((+14))~~ (15) Criteria that will be used for the phase one
18 selection of proposers to participate in the phase two development of
19 technical proposals;

20 ~~((+15))~~ (16) A description of the process that will be used for
21 the phase three submittal and evaluation of bids, award of the
22 contract, and postaward administrative activities;

23 ~~((+16))~~ (17) A requirement that the contractor comply with all
24 applicable laws, rules, and regulations including but not limited to
25 those pertaining to the environment, worker health and safety, and
26 prevailing wages;

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

1 the contract. — "Constructed" also means the interconnection of all
2 equipment, machinery, and services, such as piping, wiring, and
3 ducting; and))

4 (18) A requirement that all vessel design specifications and
5 drawings must be complete and be approved by the United States coast
6 guard before vessel construction begins; and

7 (19) A requirement that all warranty work on the vessel must be
8 performed within the boundaries of the state of Washington, insofar as
9 practical.

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

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

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

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

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

32 (4) The department shall evaluate the submitted bids. Upon
33 completing the bid evaluation, the department may select the responsive
34 and responsible proposer that offers the lowest total fixed price bid
35 ((price)) for all vessels.

36 (5) The department may waive informalities in the proposal and bid

1 process, accept a bid from the lowest responsive and responsible
2 proposer, reject any or all bids, republish, and revise or cancel the
3 request for proposals to serve the best interests of the department.

4 (6) The department may:

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

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

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

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

22 (8) The department may provide an honorarium to reimburse each
23 unsuccessful phase three proposer for a portion of its technical
24 proposal preparation costs at a preset, fixed amount to be specified in
25 the request for proposals. If the department rejects all bids, the
26 department may provide the honoraria to all phase three proposers that
27 submitted bids.

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

34 **Sec. 6.** RCW 47.56.030 and 2008 c 122 s 8 are each amended to read
35 as follows:

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

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

6 (b) The transportation commission shall determine and establish the
7 tolls and charges thereon.

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

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

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

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

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

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

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

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

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

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

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

32 (iii) Whether the proposer can perform the contract within the time
33 specified;

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

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

37 (vi) Objective, measurable criteria defined in the request for

1 proposal. These criteria may include but are not limited to items such
2 as discounts, delivery costs, maintenance services costs, installation
3 costs, and transportation costs; and

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

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

20 **Sec. 7.** RCW 39.04.320 and 2009 c 197 s 1 are each amended to read
21 as follows:

22 (1)(a) Except as provided in (b) through (d) of this subsection,
23 from January 1, 2005, and thereafter, for all public works estimated to
24 cost one million dollars or more, all specifications shall require that
25 no less than fifteen percent of the labor hours be performed by
26 apprentices.

27 (b)(i) This section does not apply to new vessel construction
28 projects or to contracts advertised for bid before July 1, 2007, for
29 any public works by the department of transportation.

30 (ii) For contracts advertised for bid on or after July 1, 2007, and
31 before July 1, 2008, for all public works by the department of
32 transportation estimated to cost five million dollars or more, all
33 specifications shall require that no less than ten percent of the labor
34 hours be performed by apprentices.

35 (iii) For contracts advertised for bid on or after July 1, 2008,
36 and before July 1, 2009, for all public works by the department of

1 transportation estimated to cost three million dollars or more, all
2 specifications shall require that no less than twelve percent of the
3 labor hours be performed by apprentices.

4 (iv) For contracts advertised for bid on or after July 1, 2009, and
5 except for new vessel construction projects as described in (b)(v) of
6 this subsection, for all public works by the department of
7 transportation estimated to cost two million dollars or more, all
8 specifications shall require that no less than fifteen percent of the
9 labor hours be performed by apprentices.

10 (v) For contracts advertised for bid, or options executed on
11 existing contracts for additional vessels, on or after the effective
12 date of this section, for all public works by the department of
13 transportation for new vessel construction projects estimated to cost
14 two million dollars or more, all specifications shall require that no
15 less than five percent of the labor hours be performed by apprentices.

16 (c)(i) This section does not apply to contracts advertised for bid
17 before January 1, 2008, for any public works by a school district, or
18 to any project funded in whole or in part by bond issues approved
19 before July 1, 2007.

20 (ii) For contracts advertised for bid on or after January 1, 2008,
21 for all public works by a school district estimated to cost three
22 million dollars or more, all specifications shall require that no less
23 than ten percent of the labor hours be performed by apprentices.

24 (iii) For contracts advertised for bid on or after January 1, 2009,
25 for all public works by a school district estimated to cost two million
26 dollars or more, all specifications shall require that no less than
27 twelve percent of the labor hours be performed by apprentices.

28 (iv) For contracts advertised for bid on or after January 1, 2010,
29 for all public works by a school district estimated to cost one million
30 dollars or more, all specifications shall require that no less than
31 fifteen percent of the labor hours be performed by apprentices.

32 (d)(i) For contracts advertised for bid on or after January 1,
33 2010, for all public works by a four-year institution of higher
34 education estimated to cost three million dollars or more, all
35 specifications must require that no less than ten percent of the labor
36 hours be performed by apprentices.

37 (ii) For contracts advertised for bid on or after January 1, 2011,
38 for all public works by a four-year institution of higher education

1 estimated to cost two million dollars or more, all specifications must
2 require that no less than twelve percent of the labor hours be
3 performed by apprentices.

4 (iii) For contracts advertised for bid on or after January 1, 2012,
5 for all public works by a four-year institution of higher education
6 estimated to cost one million dollars or more, all specifications must
7 require that no less than fifteen percent of the labor hours be
8 performed by apprentices.

9 (2) Awarding entities may adjust the requirements of this section
10 for a specific project for the following reasons:

11 (a) The demonstrated lack of availability of apprentices in
12 specific geographic areas;

13 (b) A disproportionately high ratio of material costs to labor
14 hours, which does not make feasible the required minimum levels of
15 apprentice participation;

16 (c) Participating contractors have demonstrated a good faith effort
17 to comply with the requirements of RCW 39.04.300 and 39.04.310 and this
18 section; or

19 (d) Other criteria the awarding entity deems appropriate, which are
20 subject to review by the office of the governor.

21 (3) The secretary of the department of transportation shall adjust
22 the requirements of this section for a specific project for the
23 following reasons:

24 (a) The demonstrated lack of availability of apprentices in
25 specific geographic areas; or

26 (b) A disproportionately high ratio of material costs to labor
27 hours, which does not make feasible the required minimum levels of
28 apprentice participation.

29 (4) This section applies to public works contracts awarded by the
30 state, to public works contracts awarded by school districts, and to
31 public works contracts awarded by state four-year institutions of
32 higher education. However, this section does not apply to contracts
33 awarded by state agencies headed by a separately elected public
34 official.

35 (5)(a) The department of (~~general administration~~) enterprise
36 services must provide information and technical assistance to affected
37 agencies and collect the following data from affected agencies for each
38 project covered by this section:

- 1 (i) The name of each apprentice and apprentice registration number;
2 (ii) The name of each project;
3 (iii) The dollar value of each project;
4 (iv) The date of the contractor's notice to proceed;
5 (v) The number of apprentices and labor hours worked by them,
6 categorized by trade or craft;
7 (vi) The number of journey level workers and labor hours worked by
8 them, categorized by trade or craft; and
9 (vii) The number, type, and rationale for the exceptions granted
10 under subsection (2) of this section.

11 (b) The department of labor and industries shall assist the
12 department of (~~general administration~~) enterprise services in
13 providing information and technical assistance.

14 (6) The secretary of transportation shall establish an
15 apprenticeship utilization advisory committee, which shall include
16 statewide geographic representation and consist of equal numbers of
17 representatives of contractors and labor. The committee must include
18 at least one member representing contractor businesses with less than
19 thirty-five employees. The advisory committee shall meet regularly
20 with the secretary of transportation to discuss implementation of this
21 section by the department of transportation, including development of
22 the process to be used to adjust the requirements of this section for
23 a specific project. The committee shall provide a report to the
24 legislature by January 1, 2008, on the effects of the apprentice labor
25 requirement on transportation projects and on the availability of
26 apprentice labor and programs statewide.

27 (7) At the request of the senate labor, commerce, research and
28 development committee, the house of representatives commerce and labor
29 committee, or their successor committees, and the governor, the
30 department of (~~general administration~~) enterprise services and the
31 department of labor and industries shall compile and summarize the
32 agency data and provide a joint report to both committees. The report
33 shall include recommendations on modifications or improvements to the
34 apprentice utilization program and information on skill shortages in
35 each trade or craft.

36 NEW SECTION. **Sec. 8.** RCW 47.56.780 (New ferry vessel construction

1 for service on routes that require a vessel that carries no more than
2 one hundred motor vehicles--How constructed--Warranty work) and 2008 c
3 4 s 2 are each repealed.

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