

ESSB 5992 - H COMM AMD

By Committee on Transportation

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 47.60.005 and 2008 c 124 s 1 are each amended to  
4 read as follows:

5 The definitions in this section apply throughout this chapter  
6 unless the context clearly requires otherwise.

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

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

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

16 (4) "Commission" means the transportation commission created in  
17 RCW 47.01.051.

18 (5) "Improvement project" has the same meaning as in the budget  
19 instructions developed by the office of financial management. If the  
20 budget instructions do not define improvement project, then it has  
21 the same meaning as "program project" in the budget instructions. If  
22 a project meets both the improvement project and preservation project  
23 definitions in this section it must be defined as an improvement  
24 project. New vessel acquisitions must be defined as improvement  
25 projects.

26 (6) "Life-cycle cost model" means (~~that portion of a capital~~  
27 ~~asset inventory system which, among other things, is used to estimate~~  
28 ~~future preservation needs~~) the full cost over the life span of the  
29 vessel, including purchase price, installation costs, operating  
30 costs, maintenance and projected upgrade costs to meet safety  
31 standards, and decommissioning costs at the end of the vessel's  
32 service life. The analysis must include probabilistic analysis on  
33 known unknowns including, but not limited to, fuel costs, labor  
34 costs, and changing safety regulations.

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

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

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

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

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

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

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

18 The department is authorized to acquire by lease, charter,  
19 contract, purchase, condemnation, or construction, and partly by any  
20 or all of such means, and to thereafter operate, improve, and extend,  
21 a system of ferries on and crossing Puget Sound and any of its  
22 tributary waters and connections thereof, and connecting with the  
23 public streets and highways in the state. However, any new vessel  
24 planning, construction, purchase, analysis, or design work must be  
25 consistent with RCW 47.60.810. The system of ferries shall include  
26 such boats, vessels, wharves, docks, approaches, landings,  
27 franchises, licenses, and appurtenances as shall be determined by the  
28 department to be necessary or desirable for efficient operation of  
29 the ferry system and best serve the public. Subject to RCW 47.56.820,  
30 the department may in like manner acquire by purchase, condemnation,  
31 or construction and include in the ferry system such toll bridges,  
32 approaches, and connecting roadways as may be deemed by the  
33 department advantageous in channeling traffic to points served by the  
34 ferry system. In addition to the powers of acquisition granted by  
35 this section, the department is empowered to enter into any  
36 contracts, agreements, or leases with any person, firm, or  
37 corporation and to thereby provide, on such terms and conditions as  
38 it shall determine, for the operation of any ferry or ferries or  
39 system thereof, whether acquired by the department or not.

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

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

9 (1) The department (~~(may purchase new auto ferries through)~~)  
10 shall use ((of)) a modified request for proposals process when  
11 purchasing new auto ferries, except for new 144-auto ferries  
12 purchased through an option on a contract executed before the  
13 effective date of this section, whereby the prevailing shipbuilder  
14 and the department engage in a design and build partnership for the  
15 design and construction of the auto ferries. The process consists of  
16 the three phases described in subsection ((+2)) (3) of this section.

17 (2) Throughout the three phases described in subsection (3) of  
18 this section, the department shall employ an independent owners  
19 representative to serve as a third-party intermediary between the  
20 department and the proposers, and subsequently the successful  
21 proposer. However, this representative shall serve only during the  
22 development and construction of the first vessel constructed as part  
23 of a new class of vessels developed after the effective date of this  
24 section. The independent owners representative shall:

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

27 (b) Perform project quality oversight;

28 (c) Manage any change order requests;

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

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

34 (3) The definitions in this subsection apply throughout RCW  
35 47.60.812 through 47.60.822.

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

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

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

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

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

9 (1) Solicitation of a proposal to participate in a design and  
10 build partnership with the department to design and construct the  
11 auto ferries;

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

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

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

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

27 (6) Instructions for the development of technical proposals in  
28 phase two, and information regarding confidentiality of technical  
29 proposals;

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

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

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

36 (10) The form and amount of the required bid deposit and contract  
37 security;

38 ~~((+10))~~ (11) A copy of the contract that will be signed by the  
39 successful proposer;

1        ~~((11))~~ (12) The date by which proposals in phase one must be  
2 received by the department in order to be considered;

3        ~~((12))~~ (13) A description of information to be submitted in the  
4 proposals in phase one concerning each proposer's qualifications,  
5 capabilities, and experience;

6        ~~((13))~~ (14) A statement of the maximum number of proposers that  
7 may be selected in phase one for development of technical proposals  
8 in phase two;

9        ~~((14))~~ (15) Criteria that will be used for the phase one  
10 selection of proposers to participate in the phase two development of  
11 technical proposals;

12        ~~((15))~~ (16) A description of the process that will be used for  
13 the phase three submittal and evaluation of bids, award of the  
14 contract, and postaward administrative activities;

15        ~~((16))~~ (17) A requirement that the contractor comply with all  
16 applicable laws, rules, and regulations including but not limited to  
17 those pertaining to the environment, worker health and safety, and  
18 prevailing wages;

19        ~~((17))~~ (18) A requirement that the vessels be constructed  
20 within the boundaries of the state of Washington except that  
21 equipment furnished by the state and components, products, and  
22 systems that are standard manufactured items are not subject to the  
23 in-state requirement under this subsection. For the purposes of this  
24 subsection, "constructed" means the fabrication, by the joining  
25 together by welding or fastening of all steel parts from which the  
26 total vessel is constructed, including, but not limited to, all shell  
27 frames, longitudinals, bulkheads, webs, piping runs, wire ways, and  
28 ducting. "Constructed" also means the installation of all components  
29 and systems, including, but not limited to, equipment and machinery,  
30 castings, electrical, electronics, deck covering, lining, paint, and  
31 joiner work required by the contract. "Constructed" also means the  
32 interconnection of all equipment, machinery, and services, such as  
33 piping, wiring, and ducting; ~~((and~~

34        ~~(18))~~ (19) A requirement that all vessel design specifications  
35 and drawings must be complete and, when applicable, meet United  
36 States coast guard standards before vessel construction begins; and

37        (20) A requirement that all warranty work on the vessel must be  
38 performed within the boundaries of the state of Washington, insofar  
39 as practical.

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

3        If all responses to the initial request for proposals under RCW  
4    47.60.814 are greater than five percent above the department's  
5    engineer's estimate for the project, the department must reject all  
6    proposals and issue a subsequent request for proposal that is not  
7    subject to RCW 47.60.814(18).

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

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

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

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

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

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

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

39       (6) The department may:

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

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

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

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

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

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

28 (i) For vessels designed to be powered by liquefied natural gas,  
29 the contingency may be no more than ten percent of the contract  
30 price;

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

33 (b) The contingency required by this subsection (9) must be  
34 identified in the funding request to the legislature and held in  
35 reserve until the department of transportation approves the  
36 expenditure.

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

39 (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  
7 the 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  
10 of 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  
17 toll 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  
21 facilities and the approaches thereto by contract in the manner of  
22 state highway construction immediately upon there being made  
23 available funds for such work and shall prosecute such work to  
24 completion as rapidly as practicable. The department is authorized to  
25 negotiate contracts for any amount without bid under (e)(i) and (ii)  
26 of this subsection:

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

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

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

39 (2) The department shall proceed with the procurement of  
40 materials, supplies, services, and equipment needed for the support,

1 maintenance, and use of a ferry, ferry terminal, or other facility  
2 operated by Washington state ferries, in accordance with chapter  
3 43.19 RCW except as follows:

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

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

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

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

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

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

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

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

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

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

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

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

25 NEW SECTION. **Sec. 10.** This act takes effect only if chapter ...  
26 (Engrossed Substitute Senate Bill No. 5987), Laws of 2015 is enacted  
27 by June 30, 2015."

28 Correct the title.

EFFECT: (1) Changes the definition of "life-cycle cost model" to  
specify certain factors that must be considered.

(2) Limits the requirement for the department of transportation  
to employ an independent owner's representative to only the  
development and construction of the first vessel constructed as part  
of a new class of vessels developed after the effective date of the  
act.

(3) Increases the contingency amount for vessels designed to be  
powered by liquefied natural gas from five percent of the contract  
price to ten percent of the contract price.

(4) Removes the requirement that the office of financial management approves expenditures from the contingency fund and requires instead that the department of transportation approve such expenditures.

(5) Removes a section that applied provisions of the bill to only new project contracts identified as connecting Washington projects.

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