

HOUSE BILL REPORT

ESSB 5992

As Reported by House Committee On: Transportation

Title: An act relating to modifying certain requirements for ferry vessel construction.

Brief Description: Modifying certain requirements for ferry vessel construction.

Sponsors: Senate Committee on Transportation (originally sponsored by Senators King, Hobbs, Fain, Liias, Litzow, Braun, Schoesler, Parlette, Warnick, Sheldon, Becker and Brown).

Brief History:

Committee Activity:

Transportation: 4/6/15, 4/7/15 [DPA].

Brief Summary of Engrossed Substitute Bill (As Amended by Committee)

- Requires the Washington State Department of Transportation to use design-build procurement in acquiring new ferry vessels.
- Requires the Washington State Ferries (WSF) to employ an independent representative to serve the WSF's interests during the design and construction of the first vessel in a new class of vessels.
- Requires contracts to be fixed-price contracts, but allows for a contingency in such a contract to accommodate change orders.
- Includes additional requirements regarding the design of vessels.
- Alters a requirement that ferry vessels be constructed within the State of Washington, allowing out-of-state construction in certain circumstances.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass as amended. Signed by 24 members: Representatives Clibborn, Chair; Farrell, Vice Chair; Fey, Vice Chair; Moscoso, Vice Chair; Orcutt, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Bergquist, Gregerson, Harmsworth, Hayes, Kochmar, McBride, Moeller, Morris, Ortiz-Self, Pike, Riccelli, Rodne, Sells, Takko, Tarleton, Wilson, Young and Zeiger.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 1 member: Representative Shea.

Staff: Andrew Russell (786-7143).

Background:

The Washington State Ferries (WSF) system is composed of 23 vessels, operating on 11 routes around the Puget Sound. In acquiring vessels for the system, the Washington State Department of Transportation (WSDOT) is authorized to use a design-build (DB) procurement process. This process consists of three phases: evaluation of proposers, preparation of technical proposals, and evaluation of bids and selection of the successful bidder.

To begin the DB process, the WSDOT must first issue a Request for Proposal (RFP) outlining the requirements of the project. These requirements include technical specifications of the vessel, estimated price range, information to be contained in any bid, and criteria used for selecting the successful bidder. Additionally, the RFP must require the vessel to be constructed within Washington and that all warranty work on the vessel also be performed within Washington.

Summary of Amended Bill:

The WSF must use a DB purchasing process for new auto vessels. During the DB process, the WSF must use an independent owners' representative as a third-party intermediary to serve as the WSF's primary advocate and communicator with the DB proposers, perform project quality oversight, manage change orders, and ensure the contract is adhered to. This representative must serve only during the development and construction of the first vessel constructed as part of a new class of vessels.

The WSF must use a fixed-price contract, which is defined as a contract that requires the contractor to deliver a project for a set price. Change orders may be allowed on a fixed-price contract, but should be used on a limited basis. To accommodate change orders, the WSF must identify up to 5 percent of the contract price as contingency funds in their legislative appropriation request; however, if the vessel is to be powered by liquefied natural gas, the WSF may identify up to a 10 percent contingency fund. Such contingency funds must be held in reserve until the WSDOT approves their expenditure.

New vessel contracts must include a requirement that all vessel design and drawings are complete and meet applicable U.S. Coast Guard standards prior to construction beginning. If initial bids on a new vessel are greater than 5 percent above the WSDOT engineers' estimate for the project, all bids must be rejected, and the WSDOT must issue a new request that is not subject to build-in-Washington requirements.

The definition of "life-cycle cost model" includes the full cost of the vessel over its lifespan and requires a probabilistic analysis on known unknowns. Options executed on existing contracts for new 144-car vessels are specifically excluded from the changes made to the DB

procurement process. Finally, an RCW section, which relates to the in-state construction of vessels with a capacity of less than 100 motor vehicles, is repealed.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill amends the definition of "life-cycle cost model," which was not amended in the engrossed substitute bill. The amended bill also limits the use of an independent owner's representative to only development and construction of the first vessel constructed as part of a new class of vessels, while the engrossed substitute bill would have required such a representative during the design and construction of any new vessel. The amended bill allows a contingency fund of 10 percent of the contract price for vehicles powered by liquefied natural gas, while the engrossed substitute bill would have required only a 5 percent contingency. Additionally, the amended bill requires the WSDOT to approve expenditures from the contingency, instead of the Office of Financial Management (OFM), as required in the engrossed substitute. Finally, the amended bill removes a section that applied provisions of the bill to only new project contracts identified as Connecting Washington projects.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect on July 1, 2015. The bill is also contingent upon the enactment of Engrossed Substitute Senate Bill 5987, concerning transportation revenue, by June 30, 2015.

Staff Summary of Public Testimony:

(In support) The Tacoma-Pierce County Chamber of Commerce fully supports the package and each of the reform bills as they came out of the Senate. It is about remaining globally competitive and creating family-wage jobs. The Association of Washington Business supports a transportation package and the reform bills that are a part of it.

(With concerns) It is important that a third-party owner's representative has knowledge and experience that is relevant to the WSF system. An owner's representative is not a good investment for the construction of every vessel, it should be limited to only vessels in a new class. Giving the OFM approval authority for change orders is a concern as the OFM lacks the necessary specific experience. Contingency funds have been managed well, and the limitation on these funds for new types of vessels, such as one powered by liquefied natural gas, could be a problem.

(Opposed) None.

Persons Testifying: (In support) Tom Pierson, Tacoma-Pierce County Chamber of Commerce; and Mike Ennis, Association of Washington Business.

(With concerns) Lynne Griffith, Washington State Department of Transportation.

Persons Signed In To Testify But Not Testifying: None.