

# SENATE BILL REPORT

## ESHB 2161

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As of Second Reading

**Title:** An act relating to concerning ferry vessel procurement.

**Brief Description:** Concerning ferry vessel procurement.

**Sponsors:** House Committee on Transportation (originally sponsored by Representatives Fey and Fitzgibbon).

**Brief History:** Passed House: 4/25/19, 60-37.

**Committee Activity:** The bill was not heard in a Senate committee.

### Brief Summary of Engrossed First Substitute Bill

- Authorizes the Washington State Department of Transportation to modify an existing option contract executed prior to July 6, 2015, to allow for the purchase of up to five additional 144-auto ferry vessels, for a total of nine 144-auto ferry vessels, including the four Olympic-class vessels already delivered.
- Creates the Small Business Enforceable Goals Program to increase small business participation in ferry vessel procurement.
- Limits the use of vessel replacement surcharges to the construction or purchase of ferry vessels and debt service authorized for the construction or purchase of ferry vessels.
- Requires a modification to an existing option contract for each additional ferry.
- Requires the Transportation Commission to impose an additional vessel replacement surcharge beginning May 1, 2020, in an amount sufficient to fund one 144-auto ferry, taking into account revenue from increases to vehicle transaction service fees.

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*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.*

**Background:** The Washington State Ferries (WSF) system is composed of 23 vessels, operating on 11 routes around Puget Sound. In acquiring vessels for the system, the Washington State Department of Transportation (DOT) is authorized to use a design-build (DB) procurement process. This process consists of three phases: (1) evaluation of proposers; (2) preparation of technical proposals; and (3) evaluation of bids and selection of the successful bidder.

In 2018 WSF accepted the fourth 144-car vessel in a series of new vessels procured under a DB process. The original contract was signed on December 13, 2007. Contract options for the four vessels were executed in 2011, 2012, 2014, and 2015. For each contract option, wages paid under the contract were updated to reflect current rates of prevailing wage. The contract will expire as of June 30, 2019.

The DB process was amended in 2015 to require:

- legislative approval before issuing a new request for proposal for new vessels;
- an independent owners' representative as a third-party intermediary during the development and construction of the first vessel in a new class;
- a fixed-price contract; and
- a provision that if initial bids on a new contract are greater than 5 percent over the engineers' estimate, all bids must be rejected and a new request for proposals issued, which would not be subject to build-in-Washington requirements.

The 2015 changes to the procurement law do not apply to a class of vessels developed before July 6, 2015.

Ferry fares and pricing policies are set by the Washington State Transportation Commission (Commission). In 2011 the Legislature directed the Commission to impose a 25-cent vessel replacement surcharge on every one-way and round-trip ferry fare sold, including multiride and monthly pass fares.

The Capital Vessel Replacement Account is an appropriated account created in the Motor Vehicle Fund—restricted to highway purposes. Revenues to the account include the capital vessel replacement surcharge and service fees collected by the state and county auditors on transactions including, but not limited to, changes to vehicle titles and vehicle registration renewals. Expenditures from the account are for the construction or purchase of ferry vessels and to pay the principal and interest on bonds authorized for the construction or purchase of ferry vessels. Excess fund balance in the account may be used for ferry terminal construction and preservation.

**Summary of Bill:** DOT may modify an existing option contract executed prior to July 6, 2015, to allow for the purchase of up to five additional 144-auto ferry vessels, for a total of nine 144-auto ferry vessels, including the four Olympic-class vessels already delivered. DOT must execute a new modification to an existing option contract for each of the additional five ferries.

To increase small business participation in ferry vessel procurement, DOT's Office of Equal Opportunity is directed to develop and monitor a Small Business Enforceable Goals Program for ferry vessel contracts.

Beginning May 1, 2020, the Commission shall impose an additional vessel replacement surcharge in an amount sufficient to fund 25-year debt service on one 144-auto vessel, taking into account funds provided by increases to vehicle transaction service fees enacted in the 2019 legislative session. The use of vessel replacement surcharges is limited to the construction or purchase of ferry vessels and debt service authorized for the construction or purchase of ferry vessels.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on April 25, 2019.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.