

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1635**

Chapter 493, Laws of 1993

(partial veto)

53rd Legislature  
1993 Regular Session

JUMBO FERRY CONSTRUCTION

EFFECTIVE DATE: 5/18/93

Passed by the House April 20, 1993  
Yeas 97 Nays 0

BRIAN EBERSOLE  
**Speaker of the  
House of Representatives**

Passed by the Senate April 6, 1993  
Yeas 42 Nays 6

JOEL PRITCHARD  
**President of the Senate**

Approved May 18, 1993, with the  
exception of section 3, which is  
vetoed.

MIKE LOWRY  
**Governor of the State of Washington**

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1635** as passed by the House of Representatives and the Senate on the dates hereon set forth.

ALAN THOMPSON  
**Chief Clerk**

FILED

May 18, 1993 - 9:52 a.m.

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 1635**

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AS AMENDED BY THE SENATE

Passed Legislature - 1993 Regular Session

**State of Washington                      53rd Legislature                      1993 Regular Session**

**By** House Committee on Transportation (originally sponsored by Representatives Zellinsky, Schmidt, King, Ballard, Dorn, Sehlin, Heavey, Kremen, Brough, Sheldon, Wood, Jones, Jacobsen, J. Kohl, R. Johnson, Karahalios, Holm, Scott, Orr, Kessler, Pruitt, R. Fisher, Wang, Springer, Quall, Conway, Anderson, Shin, Voloria, Leonard, Campbell, R. Meyers, Ballasiotes, Vance, Foreman, Patterson, Valle, Johanson, Miller, Chandler, G. Fisher, Roland, Linville and Cothorn)

Read first time 03/08/93.

1            AN ACT Relating to jumbo ferry construction; adding new sections to  
2 chapter 47.60 RCW; and declaring an emergency.

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

4            NEW SECTION.    **Sec. 1.** Whenever the department is authorized to  
5 construct one or more new jumbo ferry vessels under this chapter, it  
6 shall publish a notice of its intent once a week for at least two  
7 consecutive weeks in at least one trade paper and one other paper, both  
8 of general circulation in the state. The notice shall contain, but not  
9 be limited to, the following information:

10            (1) The number of jumbo ferry vessels to be constructed and the  
11 proposed delivery date for each vessel;

12            (2) A short summary of the requirements for prequalification of  
13 bidders including a statement that prequalification is a prerequisite  
14 to consideration by the department of any bid, and a statement that the  
15 bidder shall submit its bid for the vessel in compliance with the plans  
16 and specifications supplied by the state; and

17            (3) An address and telephone number that may be used to obtain the  
18 bid package.

1        NEW SECTION.    **Sec. 2.**    The department shall send to any firm that  
2 requests it bidding documents specifying the criteria for the jumbo  
3 ferry vessels. The bid documents shall include, but not be limited to,  
4 the following information:

5        (1) Solicitation of a bid to deliver to the department vessels that  
6 are constructed as specified by the plans and specifications provided  
7 by the department;

8        (2) A requirement that bids submitted should include one bid for  
9 the construction of three vessels;

10       (3) The proposed delivery date for each vessel, the port on Puget  
11 Sound where delivery will be taken, and the location where acceptance  
12 sea trials will be held;

13       (4) The amount and form of required contract security under RCW  
14 39.08.100;

15       (5) A copy of the vessel construction contract that will be signed  
16 by the successful bidder;

17       (6) The date by which bids for ferry vessel construction must be  
18 received by the department in order to be considered;

19       (7) A requirement that the contractor comply with all applicable  
20 laws, rules, and regulations including, but not limited to those  
21 pertaining to the environment, worker health and safety, and prevailing  
22 wages;

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

1 (9) A requirement that all warranty work on the vessel be performed  
2 within the boundaries of the state of Washington, insofar as  
3 practicable;

4 (10) A statement that any bid submitted constitutes an offer and  
5 remains open until ninety days after the deadline for submitting bids,  
6 unless the firm submitting it withdraws it by formal written notice  
7 that is received by the department before the date and time specified  
8 for opening of the bids, together with an explanation of the  
9 requirement that all bids submitted be accompanied by a bid deposit in  
10 the amount of five percent of the bid amount; and

11 (11) A listing of all equipment to be furnished by the state.

12 *\*NEW SECTION. Sec. 3. If the lowest responsible bid exceeds by*  
13 *more than five percent the engineer's estimate of the cost to construct*  
14 *the vessels in the state of Washington, the department shall request*  
15 *the legislative transportation committee to perform and complete within*  
16 *sixty days after the bid opening, an independent review of the*  
17 *engineer's estimate and the bidding results to determine the*  
18 *appropriateness of the original engineer's estimate. In performing the*  
19 *independent review, the legislative transportation committee shall*  
20 *consult with persons not bidding on the construction of new jumbo ferry*  
21 *vessels in the state of Washington and who have experience in maritime*  
22 *bidding, ferry construction bid estimating, and are familiar with*  
23 *shipbuilding costs in the Pacific Northwest. If the legislative*  
24 *transportation committee confirms the original engineer's estimate it*  
25 *becomes the confirmed estimate. If the legislative transportation*  
26 *committee's review determines that the engineer's estimate should be*  
27 *adjusted to reflect appropriate and current information, the department*  
28 *shall evaluate the lowest responsible bid against the revised*  
29 *engineer's estimate. If the lowest responsible bid does not exceed the*  
30 *revised engineer's estimate by more than five percent, the department*  
31 *shall follow the procedures established under sections 4 through 6 of*  
32 *this act. If the lowest responsible bid exceeds by more than five*  
33 *percent the confirmed or revised engineer's estimate, the department*  
34 *shall solicit new bids, retaining the in-state requirement established*  
35 *in section 2(8) of this act. If the lowest responsible bid again*  
36 *exceeds the confirmed or revised engineer's estimate by more than five*

1 *percent, the department shall rebid the project, eliminating the in-*  
2 *state requirement.*

3 *\*Sec. 3 was vetoed, see message at end of chapter.*

4 NEW SECTION. **Sec. 4.** (1) Upon concluding its evaluation, the  
5 department may:

6 (a) Select the firm submitting the lowest responsible bid for the  
7 construction of new jumbo ferries, taking into consideration the  
8 requirements stated in the bid documents and rank the remaining firms,  
9 judging them by the same standards;

10 (b) Reject all bids not in compliance with the requirements  
11 contained in the bid documents;

12 (c) Reject all bids.

13 (2) The department shall immediately notify those firms that were  
14 not selected as the firm presenting the lowest responsible bid. The  
15 department's selection is conclusive unless appeal from it is taken by  
16 an aggrieved firm to the superior court of Thurston county within five  
17 days after receiving notice of the department's final decision. The  
18 appeal shall be heard summarily within ten days after it is taken and  
19 on five days' notice to the department. The court shall hear any  
20 appeal on the administrative record that was before the department.  
21 The court may affirm the decision of the department, or it may reverse  
22 the decision if it determines the action of the department was  
23 arbitrary or capricious.

24 NEW SECTION. **Sec. 5.** (1) Upon selecting the firm that has  
25 submitted the lowest responsible bid for the construction of new jumbo  
26 ferries, and ranking the remaining firms in order of preference, the  
27 department shall:

28 (a) Sign a contract with the firm presenting the lowest responsible  
29 bid; or

30 (b) If a final agreement satisfactory to the department cannot be  
31 signed with the firm presenting the lowest responsible bid, the  
32 department may sign a contract with the firm ranked next lowest bidder.  
33 If necessary, the department may repeat this procedure with each firm  
34 in order until the list of firms has been exhausted, or reject all  
35 bids.

36 (2) In developing a contract for the construction of ferry vessels,  
37 the department may, subject to the provisions of RCW 39.25.020,

1 authorize the use of foreign-made materials and components, products,  
2 and systems that are standard manufactured items in the construction of  
3 ferries in order to minimize costs.

4 NEW SECTION. **Sec. 6.** Bids submitted by firms under this section  
5 constitute an offer and shall remain open for ninety days. When  
6 submitted, each bid shall be accompanied by a deposit in cash,  
7 certified check, cashier's check, or surety bond in an amount equal to  
8 five percent of the bid amount, and no bid may be considered unless the  
9 deposit is enclosed. If the department awards a contract to a firm and  
10 the firm fails to enter into a contract or fails to furnish a  
11 satisfactory contract security as required by RCW 39.08.100, its  
12 deposit shall be forfeited to the state and be deposited by the state  
13 treasurer to the credit of the Puget Sound capital construction  
14 account. Upon the execution of a ferry construction contract for the  
15 construction of new jumbo ferries, all bid deposits shall be returned.

16 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act are each  
17 added to chapter 47.60 RCW.

18 NEW SECTION. **Sec. 8.** This act is necessary for the immediate  
19 preservation of the public peace, health, or safety, or support of the  
20 state government and its existing public institutions, and shall take  
21 effect immediately.

Passed the House April 20, 1993.

Passed the Senate April 6, 1993.

Approved by the Governor May 18, 1993, with the exception of  
certain items which were vetoed.

Filed in Office of Secretary of State May 18, 1993.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to section 3,  
3 Substitute House Bill No. 1635 entitled:

4 "AN ACT Relating to jumbo ferry construction."

5 This bill requires that the new jumbo ferry vessels be constructed  
6 within the state of Washington. I support the concept of in-state  
7 preference for the construction of these ferries. Section 3 of  
8 Substitute House Bill No. 1635 outlines a procedure if the contractor's  
9 bids come in significantly higher than the engineer's original cost  
10 estimates. The Legislative Transportation Committee (LTC) is granted  
11 authority to review and, if necessary, revise the engineer's estimate  
12 for appropriateness and accuracy. This LTC oversight of an executive  
13 branch function is in direct conflict with the principle of separation  
14 of powers between the Executive and Legislative branches.

1 Conformance to bid standards is the responsibility of the Secretary  
2 of Transportation and the Transportation Commission, not the LTC. If  
3 additional independent oversight of the agency's bidding procedures is  
4 needed, then current law does not prevent the Department of  
5 Transportation from taking advantage of contracting expertise in the  
6 Office of Financial Management.

7 This partial veto eliminates the formal LTC third party review  
8 process, but the in-state preference is protected. The Department of  
9 Transportation retains it's ability to control contract costs through  
10 accepted procedures in current law, while the time honored principle of  
11 separation of powers is maintained.

12 With the exception of section 3, Substitute House Bill No. 1635 is  
13 approved."