

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2863

Chapter 181, Laws of 1994

53rd Legislature
1994 Regular Session

JUMBO FERRY PROPULSION SYSTEM ACQUISITION

EFFECTIVE DATE: 3/30/94

Passed by the House March 5, 1994
Yeas 89 Nays 4

BRIAN EBERSOLE

**Speaker of the
House of Representatives**

Passed by the Senate February 26, 1994
Yeas 33 Nays 15

JOEL PRITCHARD

President of the Senate

Approved March 30, 1994

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Marilyn Showalter, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2863** as passed by the House of Representatives and the Senate on the dates hereon set forth.

MARILYN SHOWALTER

Chief Clerk

FILED

March 30, 1994 - 1:31 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2863

AS AMENDED BY THE SENATE

Passed Legislature - 1994 Regular Session

State of Washington 53rd Legislature 1994 Regular Session

By House Committee on Transportation (originally sponsored by Representatives Zellinsky, R. Meyers and Schmidt)

Read first time 02/08/94.

1 AN ACT Relating to the jumbo ferry vessel propulsion system; adding
2 a new section to chapter 47.60 RCW; creating new sections; and
3 declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** The legislature finds and declares that:

6 A 1991 legislative study, conducted by Booz.Allen, Hamilton and M.
7 Rosenblatt and Son, examining the Washington State Ferries' management
8 of its vessel refurbishment and construction program, resulted in
9 recommendations for improvements and changes in the vessel
10 refurbishment and construction program. These legislatively adopted
11 recommendations encourage and support input by Washington State
12 Ferries' engineers in the development of refurbishment and new
13 construction project requirements.

14 The recommendations of the Booz.Allen study have been applied to
15 the construction of the Jumbo Class Mark II ferries through the
16 appointment of a Jumbo Class Mark II Steering Committee comprised of
17 current state ferry engineers responsible for the design, operation,
18 and maintenance of state ferry vessels.

1 The Steering Committee, in carrying out the recommendations of the
2 Booz. Allen study, has determined that the procedure for the
3 procurement of equipment, parts, and supplies for the Jumbo Class Mark
4 II ferry vessels authorized by RCW 47.60.770 through 47.60.778, must
5 take into consideration, in addition to life-cycle cost criteria,
6 criteria that are essential to the operation of a public mass
7 transportation system responsive to the needs of Washington State
8 Ferries' users, and that assess the reliability, maintainability, and
9 performance of equipment, parts, and supplies to be installed in the
10 Jumbo Mark II ferries.

11 The construction of the new Jumbo Class Mark II ferry vessels
12 authorized by RCW 47.60.770 through 47.60.778 is critical to the
13 welfare of the state and any delay in the immediate construction of the
14 ferries will result in severe hardship and economic loss to the state
15 and its citizens. Recognizing these findings, it is the intent of the
16 legislature that the vessel construction should not be delayed further
17 because of the acquisition of a propulsion system, or any component of
18 it, for the ferries, and to authorize the department of transportation
19 to acquire all components of a complete propulsion system as soon as
20 possible so that planned construction of the Jumbo Class Mark II ferry
21 vessels can proceed immediately.

22 The purpose of this chapter is to authorize the use, by the
23 department, of supplemental, alternative contracting procedures for the
24 procurement of a propulsion system, and the components thereof, for the
25 Jumbo Class Mark II ferries; and to prescribe appropriate requirements
26 and criteria to ensure that contracting procedures for such procurement
27 serve the public interest.

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

30 (1) The department may enter into a contract for the acquisition of
31 the propulsion system, or any component of it, including diesel engines
32 and spare parts, for installation into one or more of the three Jumbo
33 Class Mark II ferry vessels authorized under this chapter. This
34 authorization does not limit the department from obtaining and
35 installing the propulsion system, or any component of it, as incidental
36 to the overall vessel construction contract authorized under RCW
37 47.60.770 through 47.60.778, nor from proceeding to complete an

1 existing contract for acquisition of the propulsion system or any
2 component of it.

3 (2) Acquisition of a propulsion system, or any component of it, for
4 the Jumbo Class Mark II ferries by the department under this section is
5 exempt from chapter 43.19 RCW.

6 (3) Whenever the department decides to enter into an acquisition
7 contract under this section it shall publish a notice of its intent to
8 negotiate such a contract once a week for at least two consecutive
9 weeks in one trade newspaper and one other newspaper, both of general
10 circulation in the state. The notice must contain, but is not limited
11 to, the following information:

12 (a) The identity of the propulsion system or components to be
13 acquired and the proposed delivery dates for the propulsion system or
14 components;

15 (b) An address and telephone number that may be used to obtain the
16 request for proposal.

17 (4) The department shall send to any firm that requests it, a
18 request for proposal outlining the design and construction requirements
19 for the propulsion system, including any desired components. The
20 request for proposal must include, but is not limited to, the following
21 information:

22 (a) The proposed delivery date for each propulsion system or
23 desired component and the location where delivery will be taken;

24 (b) The form and formula for contract security;

25 (c) A copy of the proposed contract;

26 (d) The date by which proposals must be received by the department
27 in order to be considered; and

28 (e) A statement that any proposal submitted constitutes an offer
29 and must remain open until ninety days after the deadline for
30 submitting proposals, together with an explanation of the requirement
31 that all proposals submitted must be accompanied by a deposit in the
32 amount of five percent of the proposed cost.

33 (5) The department shall evaluate all timely proposals received
34 for: (a) Compliance with the requirements specified in the request for
35 proposal; and (b) suitability of each firm's proposal by applying
36 appropriate criteria to be developed by the department: (i) To assess
37 the ability of the firm to expeditiously and satisfactorily perform and
38 (ii) to accomplish an acquisition that is most advantageous to the
39 department. A portion of the technical requirements addressed in the

1 request for proposal shall include, but is not limited to, user
2 verifications of manufacturer's reliability claims; the quality of
3 engine maintenance documentation; and engine compatibility with ship
4 design.

5 (6) The criteria to select the most advantageous diesel engine
6 under subsection (5)(b)(ii) shall consist of life-cycle cost factors
7 weighted at forty-five percent; and operational factors weighted as
8 follows: reliability at twenty percent, maintainability at twenty
9 percent, and engine performance at fifteen percent. For purposes of
10 this subsection, the life-cycle cost factors shall consist of the costs
11 for engine acquisition and warranty, spare parts acquisition and
12 inventory, fuel efficiency and lubricating oil consumption, and
13 commonality. The fuel efficiency and lubricating oil consumption life-
14 cycle cost factors shall receive not less than twenty percent of the
15 total evaluation weighting and shall be evaluated under a format
16 similar to that employed in the 1992 M.V. Tyee engine replacement
17 contract. The reliability factors shall consist of the length of
18 service and reliability record in comparable uses, and mean time
19 between overhauls. The mean time between overhauls evaluation shall be
20 based upon the manufacturer's required hours between change of wear
21 components. The maintainability factors shall consist of spare parts
22 availability, the usual time anticipated to perform typical repair
23 functions, and the quality of factory training programs for ferry
24 system maintenance staff. The performance factors shall consist of
25 load change responsiveness, and air quality of exhaust and engine room
26 emissions.

27 (7) Upon concluding its evaluation, the department shall:

28 (a) Select the firm presenting the proposal most advantageous to
29 the department, taking into consideration compliance with the
30 requirements stated in the request for proposal, and the criteria
31 developed by the department, and rank the remaining firms in order of
32 preference, judging them by the same standards; or

33 (b) Reject all proposals as not in compliance with the requirements
34 contained in the request for proposals.

35 (8) The department shall immediately notify those firms that were
36 not selected as the firm presenting the most advantageous proposal of
37 the department's decision. The department's decision is conclusive
38 unless an aggrieved firm appeals the decision to the superior court of
39 Thurston county within five days after receiving notice of the

1 department's final decision. The appeal shall be heard summarily
2 within ten days after it is taken and on five days' notice to the
3 department. The court shall hear the appeal on the administrative
4 record that was before the department. The court may affirm the
5 decision of the department, or it may reverse the decision if it
6 determines the action of the department is arbitrary or capricious.

7 (9) Upon selecting the firm that has presented the most
8 advantageous proposal and ranking the remaining firms in order of
9 preference, the department shall:

10 (a) Negotiate a contract with the firm presenting the most
11 advantageous proposal; or

12 (b) If a final agreement satisfactory to the department cannot be
13 negotiated with the firm presenting the most advantageous proposal, the
14 department may then negotiate with the firm ranked next highest in
15 order of preference. If necessary, the department may repeat this
16 procedure and negotiate with each firm in order of rank until the list
17 of firms has been exhausted.

18 (10) Proposals submitted by firms under this section constitute an
19 offer and must remain open for ninety days. When submitted, each
20 proposal must be accompanied by a deposit in cash, certified check,
21 cashier's check, or surety bond in the amount equal to five percent of
22 the amount of the proposed contract price, and the department may not
23 consider a proposal that has no deposit enclosed with it. If the
24 department awards a contract to a firm under the procedure set forth in
25 this section and the firm fails to enter into the contract and furnish
26 the required contract security within twenty days, exclusive of the day
27 of the award, its deposit shall be forfeited to the state and deposited
28 by the state treasurer to the credit of the Puget Sound capital
29 construction account. Upon the execution of a contract all proposal
30 deposits shall be returned.

31 NEW SECTION. **Sec. 3.** The department of transportation, the
32 department of general administration, and the office of financial
33 management, in consultation with the legislative transportation
34 committee, shall conduct a systematic review of acquisition authorities
35 established under chapters 43.19, 47.56, and 47.60 RCW, and the
36 consequent impact on the operation of Washington state ferries as a
37 public mass transportation system. The results of this review,
38 including any proposed legislation, shall be reported to the governor

1 and the house of representatives and senate transportation committees
2 on or before January 1, 1995.

3 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of the
5 state government and its existing public institutions, and shall take
6 effect immediately.

Passed the House March 5, 1994.

Passed the Senate February 26, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.