

**SSB 5992 - S AMD 56**

By Senators King, Liiias, Fain, Hobbs

ADOPTED 2/27/2015

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 asset  
27 inventory system which, among other things, is used to estimate  
28 future preservation needs.

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

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

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

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

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

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

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

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

36 The authority of the department to sell and lease back any state  
37 ferry, for federal tax purposes only, as authorized by 26 U.S.C.,  
38 Sec. 168(f)(8) is confirmed. Legal title and all incidents of legal  
39 title to any ferry sold and leased back (except for the federal tax

1 benefits attributable to the ownership thereof) shall remain in the  
2 state of Washington.

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

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

13 (2) Throughout the three phases described in subsection (3) of  
14 this section, the department shall employ an independent owners  
15 representative to serve as a third-party intermediary between the  
16 department and the proposers, and subsequently the successful  
17 proposer. The independent owners representative shall:

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

20 (b) Perform project quality oversight;

21 (c) Manage any change order requests;

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

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

27 (3) The definitions in this subsection apply throughout RCW  
28 47.60.812 through 47.60.822.

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

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

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

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

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

4 (1) Solicitation of a proposal to participate in a design and  
5 build partnership with the department to design and construct the  
6 auto ferries;

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

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

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

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

22 (6) Instructions for the development of technical proposals in  
23 phase two, and information regarding confidentiality of technical  
24 proposals;

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

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

29 (9) Notification that the contract will be a fixed price  
30 contract;

31 (10) The form and amount of the required bid deposit and contract  
32 security;

33 ~~((+10))~~ (11) A copy of the contract that will be signed by the  
34 successful proposer;

35 ~~((+11))~~ (12) The date by which proposals in phase one must be  
36 received by the department in order to be considered;

37 ~~((+12))~~ (13) A description of information to be submitted in the  
38 proposals in phase one concerning each proposer's qualifications,  
39 capabilities, and experience;

1        ~~((13))~~ (14) A statement of the maximum number of proposers that  
2 may be selected in phase one for development of technical proposals  
3 in phase two;

4        ~~((14))~~ (15) Criteria that will be used for the phase one  
5 selection of proposers to participate in the phase two development of  
6 technical proposals;

7        ~~((15))~~ (16) A description of the process that will be used for  
8 the phase three submittal and evaluation of bids, award of the  
9 contract, and postaward administrative activities;

10       ~~((16))~~ (17) A requirement that the contractor comply with all  
11 applicable laws, rules, and regulations including but not limited to  
12 those pertaining to the environment, worker health and safety, and  
13 prevailing wages;

14       ~~((17))~~ (18) A requirement that the vessels be constructed  
15 within the boundaries of the state of Washington except that  
16 equipment furnished by the state and components, products, and  
17 systems that are standard manufactured items are not subject to the  
18 in-state requirement under this subsection. For the purposes of this  
19 subsection, "constructed" means the fabrication, by the joining  
20 together by welding or fastening of all steel parts from which the  
21 total vessel is constructed, including, but not limited to, all shell  
22 frames, longitudinals, bulkheads, webs, piping runs, wire ways, and  
23 ducting. "Constructed" also means the installation of all components  
24 and systems, including, but not limited to, equipment and machinery,  
25 castings, electrical, electronics, deck covering, lining, paint, and  
26 joiner work required by the contract. "Constructed" also means the  
27 interconnection of all equipment, machinery, and services, such as  
28 piping, wiring, and ducting; ~~((and~~

29       ~~(+18))~~ (19) A requirement that all vessel design specifications  
30 and drawings must be complete and, when applicable, meet United  
31 States coast guard standards before vessel construction begins; and

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

35       NEW SECTION. Sec. 5. A new section is added to chapter 47.60  
36 RCW to read as follows:

37       If all responses to the initial request for proposals under RCW  
38 47.60.814 are greater than five percent above the department's  
39 engineer's estimate for the project, the department must reject all

1 proposals and issue a subsequent request for proposal that is not  
2 subject to RCW 47.60.814(18).

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

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

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

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

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

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

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

34 (6) The department may:

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

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

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

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

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

21 (9) To accommodate change orders on a fixed price contract, the  
22 department shall request that the legislative appropriation for any  
23 auto ferry construction project include up to, but no more than, a  
24 five percent price contingency. This contingency must be identified  
25 in the funding request to the legislature and held in reserve until  
26 the office of financial management approves the expenditure.

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

29 (1) Except as permitted under chapter 47.29 or 47.46 RCW:

30 (a) Unless otherwise delegated, and subject to RCW 47.56.820, the  
31 department of transportation shall have full charge of the planning,  
32 analysis, and construction of all toll bridges and other toll  
33 facilities including the Washington state ferries, and the operation  
34 and maintenance thereof.

35 (b) The transportation commission shall determine and establish  
36 the tolls and charges thereon.

37 (c) Unless otherwise delegated, and subject to RCW 47.56.820, the  
38 department shall have full charge of planning, analysis, and design  
39 of all toll facilities. The department may conduct the planning,

1 analysis, and design of toll facilities as necessary to support the  
2 legislature's consideration of toll authorization.

3 (d) The department shall utilize and administer toll collection  
4 systems that are simple, unified, and interoperable. To the extent  
5 practicable, the department shall avoid the use of toll booths. The  
6 department shall set the statewide standards and protocols for all  
7 toll facilities within the state, including those authorized by local  
8 authorities.

9 (e) Except as provided in this section, the department shall  
10 proceed with the construction of such toll bridges and other  
11 facilities and the approaches thereto by contract in the manner of  
12 state highway construction immediately upon there being made  
13 available funds for such work and shall prosecute such work to  
14 completion as rapidly as practicable. The department is authorized to  
15 negotiate contracts for any amount without bid under (e)(i) and (ii)  
16 of this subsection:

17 (i) Emergency contracts, in order to make repairs to ferries or  
18 ferry terminal facilities or removal of such facilities whenever  
19 continued use of ferries or ferry terminal facilities constitutes a  
20 real or immediate danger to the traveling public or precludes prudent  
21 use of such ferries or facilities; and

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

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

29 (2) The department shall proceed with the procurement of  
30 materials, supplies, services, and equipment needed for the support,  
31 maintenance, and use of a ferry, ferry terminal, or other facility  
32 operated by Washington state ferries, in accordance with chapter  
33 43.19 RCW except as follows:

34 (a) When the secretary of the department of transportation  
35 determines in writing that the use of invitation for bid is either  
36 not practicable or not advantageous to the state and it may be  
37 necessary to make competitive evaluations, including technical or  
38 performance evaluations among acceptable proposals to complete the  
39 contract award, a contract may be entered into by use of a  
40 competitive sealed proposals method, and a formal request for



1 proposals solicitation. Such formal request for proposals  
2 solicitation shall include a functional description of the needs and  
3 requirements of the state and the significant factors.

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

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

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

21 (iii) Whether the proposer can perform the contract within the  
22 time specified;

23 (iv) The quality of performance of previous contracts or  
24 services;

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

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

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

33 (c) When purchases are made through a request for proposal  
34 process, proposals received shall be evaluated based on the  
35 evaluation factors set forth in the request for proposal. When  
36 issuing a request for proposal for the procurement of propulsion  
37 equipment or systems that include an engine, the request for proposal  
38 must specify the use of a life cycle cost analysis that includes an  
39 evaluation of fuel efficiency. When a life cycle cost analysis is  
40 used, the life cycle cost of a proposal shall be given at least the

1 same relative importance as the initial price element specified in  
2 the request of proposal documents. The department may reject any and  
3 all proposals received. If the proposals are not rejected, the award  
4 shall be made to the proposer whose proposal is most advantageous to  
5 the department, considering price and the other evaluation factors  
6 set forth in the request for proposal.

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

11 NEW SECTION. **Sec. 9.** The provisions of this act apply to new  
12 project contracts identified as connecting Washington projects and  
13 supported by revenues generated under chapter ... (Substitute Senate  
14 Bill No. 5987), Laws of 2015.

15 NEW SECTION. **Sec. 10.** This act is necessary for the immediate  
16 preservation of the public peace, health, or safety, or support of  
17 the state government and its existing public institutions, and takes  
18 effect July 1, 2015.

19 NEW SECTION. **Sec. 11.** This act takes effect only if chapter ...  
20 (Senate Bill No. ... (S-1301/15)), Laws of 2015 is enacted by June  
21 30, 2015."

**SSB 5992 - S AMD 56**

By Senators King, Liias, Fain, Hobbs

**ADOPTED 2/27/2015**

22 On page 1, line 2 of the title, after "construction;" strike the  
23 remainder of the title and insert "amending RCW 47.60.005, 47.60.010,  
24 47.60.810, 47.60.814, 47.60.820, and 47.56.030; adding a new section  
25 to chapter 47.60 RCW; creating a new section; repealing RCW  
26 47.56.780; providing an effective date; providing a contingent  
27 effective date; and declaring an emergency."

EFFECT: Clarifies that the provisions of this act apply to new project contracts funded by SSB 5987.

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