

# HOUSE BILL REPORT

## 2ESSB 5992

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As of Second Reading

**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 Second Engrossed Substitute Bill**

- 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.

**Staff:** Andrew Russell (786-7143).

**Background:**

The Washington State Ferries (WSF) system is composed of 24 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.

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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.*

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.

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## **Summary of Second Engrossed Substitute Bill:**

### Vessel Procurement

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.

In developing its engineer's estimate, the WSDOT must identify significant project cost drivers, including materials, labor, overhead, delivery, and profit. 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.

### Procurement Contracts

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 Office of Financial Management approves their expenditure. Additionally, 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.

### Other Provisions

The Washington State Institute for Public Policy is directed to do a cost-benefit analysis of the state's ferry vessel procurement practices. This analysis must be provided to the Governor, Transportation Committees of the Legislature, and the WSDOT by December 1, 2016. The WSDOT may not issue an RFP for the procurement of vessels without specific authorization from the Legislature. 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.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Second Engrossed Substitute Bill:** The bill contains an emergency clause and takes effect immediately.

**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.