

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 1846

Chapter 429, Laws of 2023

(partial veto)

68th Legislature
2023 Regular Session

STATE FERRIES—VESSEL PROCUREMENT

EFFECTIVE DATE: May 11, 2023

Passed by the House April 18, 2023
Yeas 94 Nays 3

LAURIE JINKINS

**Speaker of the House of
Representatives**

Passed by the Senate April 14, 2023
Yeas 47 Nays 0

DENNY HECK

President of the Senate

Approved May 11, 2023 9:56 AM with
the exception of section 1, which is
vetoed.

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the
House of Representatives of the
State of Washington, do hereby
certify that the attached is
ENGROSSED HOUSE BILL 1846 as passed
by the House of Representatives and
the Senate on the dates hereon set
forth.

BERNARD DEAN

Chief Clerk

FILED

May 15, 2023

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 1846

AS AMENDED BY THE SENATE

Passed Legislature - 2023 Regular Session

State of Washington **68th Legislature** **2023 Regular Session**

By Representatives Fey, Barkis, Lekanoff, Ramel, Hutchins, Tharinger,
and Caldier

Read first time 03/17/23. Referred to Committee on Transportation.

1 AN ACT Relating to addressing vessel procurement at the
2 Washington state ferries; amending RCW 47.60.810, 47.60.835,
3 47.60.010, and 47.56.030; adding a new section to chapter 47.60 RCW;
4 creating a new section; and declaring an emergency.

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

6 ***NEW SECTION.** **Sec. 1.** ***Washington's marine highways provide***
7 ***vital transportation links between communities. Citizens, businesses,***
8 ***and visitors depend on the state's ferry system to provide safe,***
9 ***dependable auto and passenger service in order to conduct daily life***
10 ***and commerce activities. To maintain the integrity of this vital***
11 ***transportation link and to preserve the everyday conduct of***
12 ***individual and commercial activities, the state must act immediately***
13 ***to procure new hybrid-electric vessels in a timely and efficient***
14 ***manner.***

15 ***Washington state values strong environmental and workplace***
16 ***standards, including surface water management, and the legislature***
17 ***intends that any contracts awarded through the vessel procurement***
18 ***process align with these values.***

****Sec. 1 was vetoed. See message at end of chapter.***

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 47.60

2 RCW to read as follows:

3 (1) (a) The department shall contract for the acquisition of up to
4 five new hybrid diesel-electric ferry vessels that can carry up to
5 144 vehicles, using a one or two contract procurement approach to
6 potentially accelerate vessel delivery.

7 (b) The Washington state ferries shall make available the design
8 for the 144 vehicle hybrid electric Olympic class vessel to potential
9 bidders. Incentives may be awarded by the department to bidders who
10 offer design modifications that:

11 (i) Lower the minimum number of crew needed to staff the vessel
12 in accordance with United States coast guard requirements;

13 (ii) Incorporate materials, technologies, or other features that
14 lower life-cycle maintenance and operations costs;

15 (iii) Accelerate the proposed delivery schedule; or

16 (iv) Make other improvements determined to be beneficial by the
17 department. The Washington state ferries may allow for exceptions of
18 the 144 vehicle capacity of the vessel design in cases where
19 efficiencies outlined in (b) (i) or (ii) of this subsection are met.

20 (2) (a) The contract or contracts must be for a minimum of two
21 vessels, with options for up to five vessels in total, and are exempt
22 from the requirements set forth in RCW 47.60.810 through 47.60.824.

23 (b) The contract or contracts may employ the following
24 procurement methods:

25 (i) Design-build procedure as authorized under chapter 39.10 RCW;

26 (ii) Design-bid-build as authorized under chapter 39.04 RCW or an
27 equivalent process allowed in statute as determined by the
28 department; or

29 (iii) Lease with an option to buy in accordance with RCW
30 47.60.010. The terms of any plan to pursue a lease with an option to
31 buy agreement must be approved by the governor and appropriate
32 committees of the legislature and are subject to the availability of
33 amounts appropriated for this specific purpose.

34 (c) To the extent possible, the department shall establish and
35 apply evaluation criteria beyond low price to meet best value
36 objectives.

37 (d) The department must award a credit of 13 percent of the bid
38 price for bid proposals for vessels constructed in the state of
39 Washington, which must be adjusted to reflect the proportion of the

1 construction of the vessels that occurs within the state. This credit
2 represents the:

3 (i) Amount of economic and revenue loss to the state of
4 Washington from constructing vessels outside the state of Washington,
5 as indicated by the Washington institute for public policy study
6 regarding Washington state ferry vessel procurement dated December
7 2016; and

8 (ii) Additional costs of transport, potential delay, and owner
9 oversight incurred for construction at shipyards located outside the
10 state of Washington.

11 (e) The department must require that contractors meet the
12 requirements of RCW 39.04.320 regarding apprenticeships or other
13 state law or federal law equivalents, where such equivalents exist.

14 (f) The department must require that contractors meet the
15 requirements of chapter 90.48 RCW regarding water pollution control
16 or other state law or federal law equivalents, where such equivalents
17 exist.

18 (3) For contracts eligible for the use of federal funds,
19 contractors must comply with federal disadvantaged business
20 enterprise targets as outlined by the federal agency awarding funds.

21 (4) Contractors located in the state of Washington must meet the
22 requirements of RCW 47.60.835, the small business enterprise
23 enforceable goals program.

24 (5) The department shall employ third-party experts that report
25 to the Washington state ferries to serve as a supplementary resource.
26 The third-party experts contracted by the Washington state ferries
27 shall:

28 (a) Perform project quality oversight and report to the
29 transportation committees of the legislature and the office of
30 financial management on a semiannual basis on project schedule,
31 risks, and project budget;

32 (b) Assist with the management of change order requests;

33 (c) Advise on contract and technical matters; and

34 (d) Possess knowledge of and experience with inland waterways,
35 Puget Sound vessel operations, the propulsion system of the new
36 vessels, and Washington state ferries operations.

37 **Sec. 3.** RCW 47.60.810 and 2019 c 431 s 1 are each amended to
38 read as follows:

1 (1) (~~The~~) Except as otherwise provided in section 2 of this
2 act, the department shall use a modified request for proposals
3 process when purchasing new auto ferries, except for new 144-auto
4 ferries purchased through an option on a contract executed before
5 July 6, 2015, whereby the prevailing shipbuilder and the department
6 engage in a design and build partnership for the design and
7 construction of the auto ferries. The process consists of the three
8 phases described in subsection (3) of this section.

9 (2) Throughout the three phases described in subsection (3) of
10 this section, the department shall employ an independent owner's
11 representative to serve as a third-party intermediary between the
12 department and the proposers, and subsequently the successful
13 proposer. However, this representative shall serve only during the
14 development and construction of the first vessel constructed as part
15 of a new class of vessels developed after July 6, 2015. The
16 independent owner's representative shall:

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

19 (b) Perform project quality oversight;

20 (c) Manage any change order requests;

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

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

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

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

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

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

35 (4) The department may modify an existing option contract
36 executed prior to July 6, 2015, to allow for the purchase of up to
37 five additional 144-auto ferries, for a total of nine 144-auto
38 ferries. The department must execute a new modification to an
39 existing option contract for each of the additional five ferries.

1 **Sec. 4.** RCW 47.60.835 and 2019 c 431 s 2 are each amended to
2 read as follows:

3 (1) ~~((To increase small business participation in ferry vessel~~
4 ~~procurement))~~ In the absence of federal funding and the applicability
5 of the disadvantaged business enterprise program, to increase race
6 and gender-neutral participation of small and diverse businesses in
7 ferry procurement, the Washington state department of
8 transportation's office of equal opportunity and civil rights shall
9 develop and monitor a state small business enterprise enforceable
10 goals program. Pursuant to this program, the office shall establish
11 contract goals for ferry vessel procurement. The contract goal is
12 defined as a percentage of the contract award amount that the prime
13 contractor must meet by subcontracting with small business
14 enterprises. The enforceable goal for all ferry vessel procurement
15 contracts will be set by the office. Prime contractors unable to meet
16 the enforceable ~~((goal))~~ goals must submit evidence of good faith
17 efforts to meet the contract ~~((goal))~~ goals to the small business
18 enterprise enforceable goals program. The department, in
19 collaboration with the office of equal opportunities and civil rights
20 will develop contractual remedies should the contractor not make good
21 faith efforts.

22 (2) Small business enterprises intending to benefit from the
23 small business enterprise enforceable goals program established in
24 subsection (1) of this section must meet the definition of "small
25 business" in RCW 39.26.010 and must be certified as a "small business
26 enterprise" by the Washington state office of minority and women's
27 business enterprises. Prime contractors will enter all subcontractor
28 payments into the office's diversity management and compliance
29 system. The office of equal opportunity and civil rights shall
30 monitor program performance.

31 **Sec. 5.** RCW 47.60.010 and 2015 3rd sp.s. c 14 s 2 are each
32 amended to read as follows:

33 The department is authorized to acquire by lease, charter,
34 contract, purchase, condemnation, or construction, and partly by any
35 or all of such means, and to thereafter operate, improve, and extend,
36 a system of ferries on and crossing Puget Sound and any of its
37 tributary waters and connections thereof, and connecting with the
38 public streets and highways in the state. However, any new vessel
39 planning, construction, purchase, analysis, or design work must be

1 consistent with RCW 47.60.810, except as otherwise provided in
2 section 2 of this act. The system of ferries shall include such
3 boats, vessels, wharves, docks, approaches, landings, franchises,
4 licenses, and appurtenances as shall be determined by the department
5 to be necessary or desirable for efficient operation of the ferry
6 system and best serve the public. Subject to RCW 47.56.820, the
7 department may in like manner acquire by purchase, condemnation, or
8 construction and include in the ferry system such toll bridges,
9 approaches, and connecting roadways as may be deemed by the
10 department advantageous in channeling traffic to points served by the
11 ferry system. In addition to the powers of acquisition granted by
12 this section, the department is empowered to enter into any
13 contracts, agreements, or leases with any person, firm, or
14 corporation and to thereby provide, on such terms and conditions as
15 it shall determine, for the operation of any ferry or ferries or
16 system thereof, whether acquired by the department or not.

17 The authority of the department to sell and lease back any state
18 ferry, for federal tax purposes only, as authorized by 26 U.S.C.,
19 Sec. 168(f)(8) is confirmed. Legal title and all incidents of legal
20 title to any ferry sold and leased back (except for the federal tax
21 benefits attributable to the ownership thereof) shall remain in the
22 state of Washington.

23 **Sec. 6.** RCW 47.56.030 and 2015 3rd sp.s. c 14 s 7 are each
24 amended to read as follows:

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

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

31 (b) The transportation commission shall determine and establish
32 the tolls and charges thereon.

33 (c) Unless otherwise delegated, and subject to RCW 47.56.820, the
34 department shall have full charge of planning, analysis, and design
35 of all toll facilities. The department may conduct the planning,
36 analysis, and design of toll facilities as necessary to support the
37 legislature's consideration of toll authorization.

38 (d) The department shall utilize and administer toll collection
39 systems that are simple, unified, and interoperable. To the extent

1 practicable, the department shall avoid the use of toll booths. The
2 department shall set the statewide standards and protocols for all
3 toll facilities within the state, including those authorized by local
4 authorities.

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

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

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

23 (f) Any new vessel planning, construction, purchase, analysis, or
24 design work must be consistent with RCW 47.60.810, except as
25 otherwise provided in section 2 of this act.

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

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

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

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

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

18 (iii) Whether the proposer can perform the contract within the
19 time specified;

20 (iv) The quality of performance of previous contracts or
21 services;

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

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

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

30 (c) When purchases are made through a request for proposal
31 process, proposals received shall be evaluated based on the
32 evaluation factors set forth in the request for proposal. When
33 issuing a request for proposal for the procurement of propulsion
34 equipment or systems that include an engine, the request for proposal
35 must specify the use of a life-cycle cost analysis that includes an
36 evaluation of fuel efficiency. When a life-cycle cost analysis is
37 used, the life-cycle cost of a proposal shall be given at least the
38 same relative importance as the initial price element specified in
39 the request of proposal documents. The department may reject any and
40 all proposals received. If the proposals are not rejected, the award

1 shall be made to the proposer whose proposal is most advantageous to
2 the department, considering price and the other evaluation factors
3 set forth in the request for proposal.

4 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
5 preservation of the public peace, health, or safety, or support of
6 the state government and its existing public institutions, and takes
7 effect immediately.

Passed by the House April 18, 2023.

Passed by the Senate April 14, 2023.

Approved by the Governor May 11, 2023, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State May 15, 2023.

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

"I am returning herewith, without my approval as to Section 1,
Engrossed House Bill No. 1846 entitled:

"AN ACT Relating to addressing vessel procurement at the
Washington state ferries."

Section 1 is an intent section that expresses the environmental and
labor values of our state. The bill includes a 13 percent in-state
credit which is designed to reflect the environmental and labor
values of our state in the procurement process. As a result, Section
1 is not necessary.

For these reasons I have vetoed Section 1 of Engrossed House Bill No.
1846.

With the exception of Section 1, Engrossed House Bill No. 1846 is
approved."

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