

2 **ESHB 2863** - S COMM AMD
3 By Committee on Transportation

4 ADOPTED 2/26/94

5 Strike everything after the enacting clause and insert the
6 following:

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

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

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

21 The Steering Committee, in carrying out the recommendations of the
22 Booz. Allen study, has determined that the procedure for the
23 procurement of equipment, parts, and supplies for the Jumbo Class Mark
24 II ferry vessels authorized by RCW 47.60.770 through 47.60.778, must
25 take into consideration, in addition to life-cycle cost criteria,
26 criteria that are essential to the operation of a public mass
27 transportation system responsive to the needs of Washington State
28 Ferries' users, and that assess the reliability, maintainability, and
29 performance of equipment, parts, and supplies to be installed in the
30 Jumbo Mark II ferries.

31 The construction of the new Jumbo Class Mark II ferry vessels
32 authorized by RCW 47.60.770 through 47.60.778 is critical to the
33 welfare of the state and any delay in the immediate construction of the
34 ferries will result in severe hardship and economic loss to the state
35 and its citizens. Recognizing these findings, it is the intent of the
36 legislature that the vessel construction should not be delayed further

1 because of the acquisition of a propulsion system, or any component of
2 it, for the ferries, and to authorize the department of transportation
3 to acquire all components of a complete propulsion system as soon as
4 possible so that planned construction of the Jumbo Class Mark II ferry
5 vessels can proceed immediately.

6 The purpose of this chapter is to authorize the use, by the
7 department, of supplemental, alternative contracting procedures for the
8 procurement of a propulsion system, and the components thereof, for the
9 Jumbo Class Mark II ferries; and to prescribe appropriate requirements
10 and criteria to ensure that contracting procedures for such procurement
11 serve the public interest.

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

14 (1) The department may enter into a contract for the acquisition of
15 the propulsion system, or any component of it, including diesel engines
16 and spare parts, for installation into one or more of the three Jumbo
17 Class Mark II ferry vessels authorized under this chapter. This
18 authorization does not limit the department from obtaining and
19 installing the propulsion system, or any component of it, as incidental
20 to the overall vessel construction contract authorized under RCW
21 47.60.770 through 47.60.778, nor from proceeding to complete an
22 existing contract for acquisition of the propulsion system or any
23 component of it.

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

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

33 (a) The identity of the propulsion system or components to be
34 acquired and the proposed delivery dates for the propulsion system or
35 components;

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

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

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

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

9 (c) A copy of the proposed contract;

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

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

17 (5) The department shall evaluate all timely proposals received
18 for: (a) Compliance with the requirements specified in the request for
19 proposal; and (b) suitability of each firm's proposal by applying
20 appropriate criteria to be developed by the department: (i) To assess
21 the ability of the firm to expeditiously and satisfactorily perform and
22 (ii) to accomplish an acquisition that is most advantageous to the
23 department. A portion of the technical requirements addressed in the
24 request for proposal shall include, but is not limited to, user
25 verifications of manufacturer's reliability claims; the quality of
26 engine maintenance documentation; and engine compatibility with ship
27 design.

28 (6) The criteria to select the most advantageous diesel engine
29 under subsection (5)(b)(ii) shall consist of life-cycle cost factors
30 weighted at forty-five percent; and operational factors weighted as
31 follows: reliability at twenty percent, maintainability at twenty
32 percent, and engine performance at fifteen percent. For purposes of
33 this subsection, the life-cycle cost factors shall consist of the costs
34 for engine acquisition and warranty, spare parts acquisition and
35 inventory, fuel efficiency and lubricating oil consumption, and
36 commonality. The fuel efficiency and lubricating oil consumption life-
37 cycle cost factors shall receive not less than twenty percent of the
38 total evaluation weighting and shall be evaluated under a format
39 similar to that employed in the 1992 M.V. Tyee engine replacement

1 contract. The reliability factors shall consist of the length of
2 service and reliability record in comparable uses, and mean time
3 between overhauls. The mean time between overhauls evaluation shall be
4 based upon the manufacturer's required hours between change of wear
5 components. The maintainability factors shall consist of spare parts
6 availability, the usual time anticipated to perform typical repair
7 functions, and the quality of factory training programs for ferry
8 system maintenance staff. The performance factors shall consist of
9 load change responsiveness, and air quality of exhaust and engine room
10 emissions.

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

12 (a) Select the firm presenting the proposal most advantageous to
13 the department, taking into consideration compliance with the
14 requirements stated in the request for proposal, and the criteria
15 developed by the department, and rank the remaining firms in order of
16 preference, judging them by the same standards; or

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

19 (8) The department shall immediately notify those firms that were
20 not selected as the firm presenting the most advantageous proposal of
21 the department's decision. The department's decision is conclusive
22 unless an aggrieved firm appeals the decision to the superior court of
23 Thurston county within five days after receiving notice of the
24 department's final decision. The appeal shall be heard summarily
25 within ten days after it is taken and on five days' notice to the
26 department. The court shall hear the appeal on the administrative
27 record that was before the department. The court may affirm the
28 decision of the department, or it may reverse the decision if it
29 determines the action of the department is arbitrary or capricious.

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

33 (a) Negotiate a contract with the firm presenting the most
34 advantageous proposal; or

35 (b) If a final agreement satisfactory to the department cannot be
36 negotiated with the firm presenting the most advantageous proposal, the
37 department may then negotiate with the firm ranked next highest in
38 order of preference. If necessary, the department may repeat this

1 procedure and negotiate with each firm in order of rank until the list
2 of firms has been exhausted.

3 (10) Proposals submitted by firms under this section constitute an
4 offer and must remain open for ninety days. When submitted, each
5 proposal must be accompanied by a deposit in cash, certified check,
6 cashier's check, or surety bond in the amount equal to five percent of
7 the amount of the proposed contract price, and the department may not
8 consider a proposal that has no deposit enclosed with it. If the
9 department awards a contract to a firm under the procedure set forth in
10 this section and the firm fails to enter into the contract and furnish
11 the required contract security within twenty days, exclusive of the day
12 of the award, its deposit shall be forfeited to the state and deposited
13 by the state treasurer to the credit of the Puget Sound capital
14 construction account. Upon the execution of a contract all proposal
15 deposits shall be returned.

16 NEW SECTION. **Sec. 3.** The department of transportation, the
17 department of general administration, and the office of financial
18 management, in consultation with the legislative transportation
19 committee, shall conduct a systematic review of acquisition authorities
20 established under chapters 43.19, 47.56, and 47.60 RCW, and the
21 consequent impact on the operation of Washington state ferries as a
22 public mass transportation system. The results of this review,
23 including any proposed legislation, shall be reported to the governor
24 and the house of representatives and senate transportation committees
25 on or before January 1, 1995.

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

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4 In line 1 of the title, after "system;" strike the remainder of the
5 title, and insert "adding a new section to chapter 47.60 RCW; creating
6 new sections; and declaring an emergency."

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