

# FINAL BILL REPORT

## SHB 1635

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### PARTIAL VETO

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**Brief Description:** Purchasing jumbo ferries.

By House Committee on Transportation (originally sponsored by Representatives Zellinsky, Schmidt, King, Ballard, Dorn, Sehlin, Heavey, Kremen, Brough, Sheldon, Wood, Jones, Jacobsen, J. Kohl, R. Johnson, Karahalios, Holm, Scott, Orr, Kessler, Pruitt, R. Fisher, Wang, Springer, Quall, Conway, Anderson, Shin, Veloria, Leonard, Campbell, R. Meyers, Ballasiotes, Vance, Foreman, Patterson, Valle, Johanson, Miller, Chandler, G. Fisher, Roland, Linville and Cothorn).

House Committee on Transportation  
Senate Committee on Transportation

**Background:** Due to current and projected demands for transportation across Puget Sound, Washington State has decided to construct three new jumbo ferries (218 cars, 2,500 passengers) beginning in the 1993-95 Biennium. The 1991-93 transportation budget contained \$1.1 million for the design of a jumbo class ferry. Total cost of construction for the three ferries is estimated to be approximately \$216 million. The new jumbo ferries will be financed in part with \$210 million generated from bond sales authorized by the 1992 Legislature. From the bond authorization, the Legislature has appropriated \$10 million for long-lead time propulsion equipment. For jumbo vessel construction, \$112 million is appropriated for the 1993-95 Biennium. Repayment of the bonds will be made from motor vehicle excise tax and motor vehicle fuel tax. Under the design and construction schedule established by the Department of Transportation (DOT), delivery of the first vessel could occur in late 1995.

Current law governing public contracting procedures establishes a competitive comprehensive bidding process which awards contracts to the lowest qualified bidder. In the last decade, the number of shipyards in Puget Sound qualified to bid on and perform major overhauls on state ferries and new construction has decreased. The decline of the shipyard industry is due to a combination of economic pressures and state regulatory requirements. During the 1992 Legislative Session and interim, the DOT ferry labor unions and local shipyard representatives examined ways to increase the possibility of in-state construction of the

proposed jumbo ferries and improve and enhance competition among Washington yards.

**Summary:** Upon legislative authorization to purchase one or more jumbo ferry vessels, the Department of Transportation (DOT) is required to publish notice of its intent in at least one state trade paper and one other paper of general circulation. The notice must contain information about (1) the number of vessels to be constructed and the proposed delivery date for each vessel; (2) bidder prequalification requirements; and (3) an address and telephone number to obtain the bid package.

The DOT is required to send to any requesting firm its bidding documents specifying the criteria for the jumbo ferry vessels. Bid documents must include information on: (1) solicitation of a bid to deliver vessels that are constructed according to DOT plans and specifications; (2) a requirement that the bids submitted include one bid for the construction of three vessels; (3) the amount and form of the required contract security; (4) a copy of the vessel construction contract; (5) the final date for receiving bids; (6) a requirement that the contractor comply with applicable state laws, rules and regulations; (7) a requirement that vessels, excluding equipment provided by the state and components, products and systems that are standard manufactured items, be constructed within state boundaries and that all warranty work be performed within the state, insofar as practicable; and (8) a list of all equipment to be furnished by the state.

All proposals remain open for 90 days and must be accompanied by a bid deposit in the amount of 5 percent of the bid amount.

The DOT engineer's estimate of the cost to build the ferries must address the specific and unique costs of building the new vessels in the state of Washington.

The DOT, upon concluding its evaluation of the bid proposals, may select the firm submitting the lowest responsible bid, reject all bids not in compliance with the bid document requirements, or reject all bids.

If on the first bid, the lowest responsible bid exceeds by more than 5 percent the engineer's estimate, the department is required to request the Legislative Transportation Committee (LTC) to perform within 60 days after the bid opening, an independent review of the engineer's estimate to determine its appropriateness. The LTC must consult with experts familiar with developing bid estimates for ferry construction in the Pacific Northwest.

The LTC can, as a result of the review, confirm the engineer's estimate or revise it to reflect appropriate and current information. If the engineer's estimate should be adjusted, the department must evaluate the lowest responsible bid against the revised estimate. If the lowest responsible bid does not exceed the revised engineer's estimate by 5 percent, the department will negotiate a contract with the successful bidder. However, if the lowest responsible bid does exceed the confirmed or revised estimate by more than 5 percent, the department must solicit new bids, continuing to observe the requirement that construction of the vessels be within state boundaries. If the lowest responsible bid again exceeds the confirmed or revised estimate by more than 5 percent, the department is directed to rebid the project, eliminating the in-state construction requirement.

Upon selecting the lowest responsible bidder and ranking the remaining firms in preferential order, the DOT must sign a contract with the firm presenting the lowest responsible bid. If agreement cannot be reached, the DOT may contract with the firm ranked next lowest bidder and, if necessary, may repeat this procedure until the list of firms is exhausted. If a contract is awarded and the selected firm fails to enter into a contract or furnish satisfactory contract security, its bid deposit is forfeited and deposited in the Puget Sound capital construction account.

Firms that are not selected must be notified immediately. The DOT's selection is conclusive unless appealed within five days after notice of the final decision. An appeal must be heard within 10 days and on five days notice to the DOT. Appeals are heard on the administrative record. The court may affirm the DOT's decision or reverse the decision if it finds the action of the department was arbitrary or capricious.

**Votes on Final Passage:**

House	98	0	
Senate	42	6	(Senate amended)
House	97	0	(House concurred)

**Effective:** May 18, 1993

**Partial Veto Summary:** The authority granted the Legislative Transportation Committee to review and, if necessary, revise the engineer's estimate is eliminated on the basis that it contravenes the principle of separation of power between the executive and legislative branches.