

HOUSE BILL REPORT

ESHB 2759

As Passed House:
February 17, 2014

Title: An act relating to modifying certain requirements for ferry vessel construction.

Brief Description: Modifying certain requirements for ferry vessel construction.

Sponsors: House Committee on Transportation (originally sponsored by Representatives Seaquist, Smith, Young, Ryu and Muri).

Brief History:

Committee Activity:

Transportation: 2/10/14 [DPS].

Floor Activity:

Passed House: 2/17/14, 97-0.

Brief Summary of 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, in certain circumstances, to serve the WSF's interests during the procurement process.
- Requires contracts to be fixed-price contracts, and 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.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 27 members: Representatives Clibborn, Chair; Farrell, Vice Chair; Fey, Vice Chair; Moscoso, Vice Chair; Orcutt, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Overstreet, Assistant Ranking Minority Member; Bergquist,

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Fitzgibbon, Freeman, Habib, Hayes, Klippert, Kochmar, Moeller, Morris, Muri, Ortiz-Self, Pike, Riccelli, Rodne, Ryu, Sells, Takko, Tarleton, Walkinshaw and Zeiger.

Minority Report: Do not pass. Signed by 2 members: Representatives Shea and Young.

Staff: Andrew Russell (786-7143).

Background:

The Washington State Ferries (WSF) system is composed of 22 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.

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 the State of Washington and that all warranty work on the vessel also be performed within the State of Washington.

Summary of Engrossed Substitute Bill:

Washington is required to use a DB process in acquiring new vessels. During the DB procurement process, unless the Office of Financial Management (OFM) authorizes the WSDOT to use a direct owners' representative, the WSDOT must use an independent representative to serve as an intermediary between the WSDOT and proposers. This representative must serve as the WSDOT's advocate and communicator, provide project oversight, manage change-order requests, and ensure that the contract is adhered to.

A ferry vessel procurement RFP must notify bidders that the contract will be a fixed-price contract that delivers the best life-cycle value. Additionally, "best life-cycle value" is added to the criteria to be considered in selecting the bid. Certain design specifications must be approved by the United States Coast Guard before construction begins. Such design specifications must also comply with relevant standards promulgated by the American Bureau of Shipping. Additionally, the WSDOT must maintain a minimum of two vessels in the ferry fleet that comply with the International Convention for the Safety of Life at Sea.

Fixed-price contracts must also include a contingency fund to accommodate change orders during the construction contract. This fund may be up to 5 percent of the total cost of the vessel, but the OFM must approve any expenditure greater than \$250,000. At the end of the project, any remaining contingency fund may be shared with the contractor if the project is completed under the original budget and delivered on time.

Finally, vessels procured by the WSF need not be constructed within Washington. Instead, initial RFPs must require the vessel to be built in Washington; however, if the RFP responses

are greater than 5 percent above the WSDOT's cost estimate, the WSDOT may issue a subsequent RFP without this requirement when it is in the state's financial interests to do so.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Our ferry fleet is large, undersized, and outdated; we need to get started building new ferries. This reform bill includes ideas from local shipbuilders, encouraging us to build vessels the same way a commercial vessel is built. The urgent need to build ships is only becoming more compelling, but we need to reform ferry construction. This bill is similar to the Senate bill, but it adds a concept of "best life-cycle value," and it retains the state apprenticeship program. This bill means that the ferry system would no longer be in the business of designing and building ferries. These changes are important because we are paying too much for our ferries; this is an important step forward.

(With concerns) Removing the requirement to build in Washington and the loss of apprenticeship opportunities is problematic. Shipbuilders in Washington have proven capable of building high-quality ferries.

(Other) The WSDOT supports most of the provisions in this bill. In fact, the WSDOT is using many of these concepts in their current vessel construction. Both vessels under construction right now are DB projects with only a few change orders. The WSDOT also supports looking at the full life cycle of the vessel. Nevertheless, some parts of this bill will increase costs requiring a third-party contractor, and requiring vessels to meet the Safety of Life at Sea requirements, which the Coast Guard only requires for vessels that sail internationally. The approval of change orders on a timely basis is necessary to keep vessels on schedule, so the OFM shouldn't have to approve every change order.

(Opposed) Washington is highly trade dependent, and we need to support our shipyards to help our aerospace and agricultural sectors. If we do not, shippers will not use our state, avoiding a risk that a ship will be unable to be fixed if it breaks down. If we are going to send construction work out of state, how are we going to enforce environmental regulations that apply to in-state shipyards? Apprenticeship and prevailing wage requirements would also not apply to shipyards out of state. Washington tax dollars should remain in Washington. Ferries in Washington are different from those in other ferry systems. We support some provisions of this bill, but a third-party manager may not be worth the cost. Requiring Safety of life at Sea standards is likely overkill.

Eliminating the build-in-Washington program is troubling because this program employs people, develops a capable workforce, and creates a positive economic impact on the state. Build-in-Washington stabilizes the otherwise cyclical ship-building industry. Build-in-

Washington works as designed and provides tangible products used in the state without exporting jobs or sacrificing environmental standards.

Ferry construction jobs mean a lot to Whidbey Island's economy. Examining reforms to ensure taxpayers are getting the best value for their money is a positive thing. The current build-in-Washington requirement has positive environmental impacts. Washington's clean shipyards should be rewarded.

Persons Testifying: (In support) Representative Seaquist, prime sponsor.

(With concerns) Terry Tilton, Northwest Carpenters.

(Other) David Moseley, Washington State Department of Transportation.

(Opposed) Gordon Baxter, Puget Sound Metal Trades Council, International Union of Masters, Mates, and Pilots, and Inlandboatmen's Union; Fred Kiga, Vigor Industrial; and Matt Nichols, Nichols Brothers Boat Builders.

Persons Signed In To Testify But Not Testifying: None.