

**ESSB 5992 - S AMD 489**

By Senators King, Hobbs

ADOPTED 6/28/2015

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 47.60.005 and 2008 c 124 s 1 are each amended to  
4 read as follows:

5 The definitions in this section apply throughout this chapter  
6 unless the context clearly requires otherwise.

7 (1) "Adaptive management" means a systematic process for  
8 continually improving management policies and practices by learning  
9 from the outcomes of operational programs.

10 (2) "Capital plan" means the state ferry system plan developed by  
11 the department as described in RCW 47.06.050(2), reviewed by the  
12 commission, and reported to the transportation committees of the  
13 legislature by the (~~commission~~) department.

14 (3) "Capital project" has the same meaning as used in budget  
15 instructions developed by the office of financial management.

16 (4) "Commission" means the transportation commission created in  
17 RCW 47.01.051.

18 (5) "Improvement project" has the same meaning as in the budget  
19 instructions developed by the office of financial management. If the  
20 budget instructions do not define improvement project, then it has  
21 the same meaning as "program project" in the budget instructions. If  
22 a project meets both the improvement project and preservation project  
23 definitions in this section it must be defined as an improvement  
24 project. New vessel acquisitions must be defined as improvement  
25 projects.

26 (6) "Life-cycle cost model" means that portion of a capital asset  
27 inventory system which, among other things, is used to estimate  
28 future preservation needs.

29 (7) "Maintenance cost" has the same meaning as used in budget  
30 instructions developed by the office of financial management.

31 (8) "Preservation project" has the same meaning as used in budget  
32 instructions developed by the office of financial management.

1 (9) "Route" means all ferry sailings from one location to  
2 another, such as the Seattle to Bainbridge route or the Port Townsend  
3 to Keystone route.

4 (10) "Sailing" means an individual ferry sailing for a specific  
5 route, such as the 5:00 p.m. sailing from Seattle to Bremerton.

6 (11) "Travel shed" means one or more ferry routes with distinct  
7 characteristics as determined by the department.

8 (12) "Fixed price contract" means a contract that requires the  
9 contractor to deliver a specified project for a set price. Change  
10 orders on fixed price contracts are allowable but should be used on a  
11 very limited basis.

12 (13) "Life-cycle cost analysis" means an analysis of the full net  
13 present value cost of constructing and operating a vessel over its  
14 life span, including capital costs, financing costs, operation and  
15 maintenance costs, decommissioning costs, and variable costs  
16 including fuel.

17 **Sec. 2.** RCW 47.60.010 and 2008 c 122 s 20 are each amended to  
18 read as follows:

19 The department is authorized to acquire by lease, charter,  
20 contract, purchase, condemnation, or construction, and partly by any  
21 or all of such means, and to thereafter operate, improve, and extend,  
22 a system of ferries on and crossing Puget Sound and any of its  
23 tributary waters and connections thereof, and connecting with the  
24 public streets and highways in the state. However, any new vessel  
25 planning, construction, purchase, analysis, or design work must be  
26 consistent with RCW 47.60.810. The system of ferries shall include  
27 such boats, vessels, wharves, docks, approaches, landings,  
28 franchises, licenses, and appurtenances as shall be determined by the  
29 department to be necessary or desirable for efficient operation of  
30 the ferry system and best serve the public. Subject to RCW 47.56.820,  
31 the department may in like manner acquire by purchase, condemnation,  
32 or construction and include in the ferry system such toll bridges,  
33 approaches, and connecting roadways as may be deemed by the  
34 department advantageous in channeling traffic to points served by the  
35 ferry system. In addition to the powers of acquisition granted by  
36 this section, the department is empowered to enter into any  
37 contracts, agreements, or leases with any person, firm, or  
38 corporation and to thereby provide, on such terms and conditions as

1 it shall determine, for the operation of any ferry or ferries or  
2 system thereof, whether acquired by the department or not.

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

9 **Sec. 3.** RCW 47.60.810 and 2001 c 226 s 4 are each amended to  
10 read as follows:

11 (1) The department (~~((may purchase new auto ferries through))~~)  
12 shall use ((of)) a modified request for proposals process when  
13 purchasing new auto ferries, except for new 144-auto ferries  
14 purchased through an option on a contract executed before the  
15 effective date of this section, whereby the prevailing shipbuilder  
16 and the department engage in a design and build partnership for the  
17 design and construction of the auto ferries. The process consists of  
18 the three phases described in subsection ((+2)) (3) of this section.

19 (2) Throughout the three phases described in subsection (3) of  
20 this section, the department shall employ an independent owner's  
21 representative to serve as a third-party intermediary between the  
22 department and the proposers, and subsequently the successful  
23 proposer. However, this representative shall serve only during the  
24 development and construction of the first vessel constructed as part  
25 of a new class of vessels developed after the effective date of this  
26 section. The independent owner's representative shall:

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

29 (b) Perform project quality oversight;

30 (c) Manage any change order requests;

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

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

36 (3) The definitions in this subsection apply throughout RCW  
37 47.60.812 through 47.60.822.

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

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

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

6 **Sec. 4.** RCW 47.60.814 and 2001 c 226 s 6 are each amended to  
7 read as follows:

8 (1) Subject to legislative appropriation for the procurement of  
9 vessels, the department shall issue a request for proposals to  
10 interested parties that must include, at least, the following:

11 ~~((1))~~ (a) Solicitation of a proposal to participate in a design  
12 and build partnership with the department to design and construct the  
13 auto ferries;

14 ~~((2))~~ (b) Instructions on the prequalification process and  
15 procedures;

16 ~~((3))~~ (c) A description of the modified request for proposals  
17 process. Under this process, the department may modify any component  
18 of the request for proposals, including the outline specifications,  
19 by addendum at any time before the submittal of bids in phase three;

20 ~~((4))~~ (d) A description of the design and build partnership  
21 process to be used for procurement of the vessels;

22 ~~((5))~~ (e) Outline specifications that provide the requirements  
23 for the vessels including, but not limited to, items such as length,  
24 beam, displacement, speed, propulsion requirements, capacities for  
25 autos and passengers, passenger space characteristics, and crew size.  
26 The department will produce notional line drawings depicting hull  
27 geometry that will interface with Washington state ferries terminal  
28 facilities. Notional lines may be modified in phase two, subject to  
29 approval by the department;

30 ~~((6))~~ (f) Instructions for the development of technical  
31 proposals in phase two, and information regarding confidentiality of  
32 technical proposals;

33 ~~((7))~~ (g) The vessel delivery schedule, identification of the  
34 port on Puget Sound where delivery must take place, and the location  
35 where acceptance trials must be held;

36 ~~((8))~~ (h) The estimated price range for the contract;

37 ~~((9))~~ (i) Notification that the contract will be a fixed price  
38 contract;

1       (j) The form and amount of the required bid deposit and contract  
2 security;

3       ~~((+10))~~ (k) A copy of the contract that will be signed by the  
4 successful proposer;

5       ~~((+11))~~ (l) The date by which proposals in phase one must be  
6 received by the department in order to be considered;

7       ~~((+12))~~ (m) A description of information to be submitted in the  
8 proposals in phase one concerning each proposer's qualifications,  
9 capabilities, and experience;

10       ~~((+13))~~ (n) A statement of the maximum number of proposers that  
11 may be selected in phase one for development of technical proposals  
12 in phase two;

13       ~~((+14))~~ (o) Criteria that will be used for the phase one  
14 selection of proposers to participate in the phase two development of  
15 technical proposals;

16       ~~((+15))~~ (p) A description of the process that will be used for  
17 the phase three submittal and evaluation of bids, award of the  
18 contract, and postaward administrative activities;

19       ~~((+16))~~ (q) A requirement that the contractor comply with all  
20 applicable laws, rules, and regulations including but not limited to  
21 those pertaining to the environment, worker health and safety, and  
22 prevailing wages;

23       ~~((+17))~~ (r) A requirement that the vessels be constructed within  
24 the boundaries of the state of Washington except that equipment  
25 furnished by the state and components, products, and systems that are  
26 standard manufactured items are not subject to the in-state  
27 requirement under this subsection (1)(r). For the purposes of this  
28 subsection (1)(r), "constructed" means the fabrication, by the  
29 joining together by welding or fastening of all steel parts from  
30 which the total vessel is constructed, including, but not limited to,  
31 all shell frames, longitudinals, bulkheads, webs, piping runs, wire  
32 ways, and ducting. "Constructed" also means the installation of all  
33 components and systems, including, but not limited to, equipment and  
34 machinery, castings, electrical, electronics, deck covering, lining,  
35 paint, and joiner work required by the contract. "Constructed" also  
36 means the interconnection of all equipment, machinery, and services,  
37 such as piping, wiring, and ducting; ~~((and~~

38       ~~(+18))~~ (s) A requirement that all vessel design specifications  
39 and drawings must be complete and, when applicable, meet United  
40 States coast guard standards before vessel construction begins; and

1       (t) A requirement that all warranty work on the vessel must be  
2 performed within the boundaries of the state of Washington, insofar  
3 as practical.

4       (2) The department shall not issue a request for proposals for  
5 the procurement of vessels, except on a contract executed before the  
6 effective date of this section, without specific authorization to do  
7 so from the legislature. After receiving such specific authorization,  
8 any request for proposals issued by the department must comply with  
9 section 5 of this act.

10       NEW SECTION.   **Sec. 5.** A new section is added to chapter 47.60  
11 RCW to read as follows:

12       (1) The Washington state institute for public policy must conduct  
13 a cost-benefit analysis of the state's ferry vessel procurement  
14 practices. This analysis must (a) compare in-state construction to  
15 construction at shipyards across the United States, (b) identify  
16 barriers to receiving three or more in-state bids to a request for  
17 proposals, and (c) recommend policies to encourage three or more in-  
18 state bidders to respond to a request for proposals. This analysis  
19 must be provided to the governor, the transportation committees of  
20 the legislature, and the department by December 1, 2016.

21       (2) In developing its engineer's estimate to procure a ferry  
22 vessel, the department must identify significant project cost  
23 drivers, including materials, labor, overhead, delivery, and profit.

24       (3) After July 1, 2017, if all responses to the initial request  
25 for proposals under RCW 47.60.814 are greater than five percent above  
26 the department's engineer's estimate for the project, the department  
27 must reject all proposals and issue a subsequent request for proposal  
28 that is not subject to RCW 47.60.814(1)(r).

29       **Sec. 6.** RCW 47.60.820 and 2001 c 226 s 9 are each amended to  
30 read as follows:

31       Phase three consists of the submittal and evaluation of bids and  
32 the award of the contract to the successful proposer for the final  
33 design and construction of the auto ferries, as follows:

34       (1) The department shall request bids for detailed design and  
35 construction of the vessels after completion of the review of  
36 technical proposals in phase two. The department will review detailed  
37 design drawings in phase three for conformity with the technical  
38 proposals submitted in phase two. In no case may the department's

1 review replace the builder's responsibility to deliver a product  
2 meeting the phase two technical proposal. The department may only  
3 consider bids from selected proposers that have qualified to bid by  
4 submitting technical proposals that have been approved by the  
5 department.

6 (2) Each qualified proposer must submit its total bid price for  
7 all vessels, including certification that the bid is based upon its  
8 approved technical proposal and the request for proposals.

9 (3) Bids constitute an offer and remain open for ninety days from  
10 the date of the bid opening. A deposit in cash, certified check,  
11 cashier's check, or surety bond in an amount specified in the request  
12 for proposals must accompany each bid and no bid may be considered  
13 unless the deposit is enclosed.

14 (4) The department shall evaluate the submitted bids. Upon  
15 completing the bid evaluation, the department may select the  
16 responsive and responsible proposer that offers the lowest total  
17 fixed price bid (~~(price)~~) for all vessels.

18 (5) The department may waive informalities in the proposal and  
19 bid process, accept a bid from the lowest responsive and responsible  
20 proposer, reject any or all bids, republish, and revise or cancel the  
21 request for proposals to serve the best interests of the department.

22 (6) The department may:

23 (a) Award the contract to the proposer that has been selected as  
24 the responsive and responsible proposer that has submitted the lowest  
25 total fixed price bid (~~(price)~~);

26 (b) If a contract cannot be signed with the apparent successful  
27 proposer, award the contract to the next lowest responsive and  
28 responsible proposer; or

29 (c) If necessary, repeat this procedure with each responsive and  
30 responsible proposer in order of rank until the list of those  
31 proposers has been exhausted.

32 (7) If the department awards a contract to a proposer under this  
33 section, and the proposer fails to enter into the contract and  
34 furnish satisfactory contract security as required by chapter 39.08  
35 RCW within twenty days from the date of award, its deposit is  
36 forfeited to the state and will be deposited by the state treasurer  
37 to the credit of the Puget Sound capital construction account. Upon  
38 the execution of a ferry design and construction contract all  
39 proposal deposits will be returned.

1 (8) The department may provide an honorarium to reimburse each  
2 unsuccessful phase three proposer for a portion of its technical  
3 proposal preparation costs at a preset, fixed amount to be specified  
4 in the request for proposals. If the department rejects all bids, the  
5 department may provide the honoraria to all phase three proposers  
6 that submitted bids.

7 (9)(a) To accommodate change orders on a fixed price contract,  
8 the department shall request that the legislative appropriation for  
9 any auto ferry construction project include a contingency in the  
10 following amounts:

11 (i) For the first vessel in any class of vessels designed to be  
12 powered by liquefied natural gas, the contingency may be no more than  
13 ten percent of the contract price;

14 (ii) For all other vessels, the contingency may be no more than  
15 five percent of the contract price.

16 (b) The contingency required by this subsection (9) must be  
17 identified in the funding request to the legislature and held in  
18 reserve until the office of financial management approves the  
19 expenditure.

20 **Sec. 7.** RCW 47.56.030 and 2008 c 122 s 8 are each amended to  
21 read as follows:

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

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

28 (b) The transportation commission shall determine and establish  
29 the tolls and charges thereon.

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

35 (d) The department shall utilize and administer toll collection  
36 systems that are simple, unified, and interoperable. To the extent  
37 practicable, the department shall avoid the use of toll booths. The  
38 department shall set the statewide standards and protocols for all



1 toll facilities within the state, including those authorized by local  
2 authorities.

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

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

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

21 (f) Any new vessel planning, construction, purchase, analysis, or  
22 design work must be consistent with RCW 47.60.810.

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

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

38 (b) When purchases are made through a formal request for  
39 proposals solicitation the contract shall be awarded to the  
40 responsible proposer whose competitive sealed proposal is determined

1 in writing to be the most advantageous to the state taking into  
2 consideration price and other evaluation factors set forth in the  
3 request for proposals. No significant factors may be used in  
4 evaluating a proposal that are not specified in the request for  
5 proposals. Factors that may be considered in evaluating proposals  
6 include but are not limited to: Price; maintainability; reliability;  
7 commonality; performance levels; life cycle cost if applicable under  
8 this section; cost of transportation or delivery; delivery schedule  
9 offered; installation cost; cost of spare parts; availability of  
10 parts and service offered; and the following:

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

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

15 (iii) Whether the proposer can perform the contract within the  
16 time specified;

17 (iv) The quality of performance of previous contracts or  
18 services;

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

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

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

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

1        NEW SECTION.        **Sec. 8.**        RCW 47.56.780 (New ferry vessel  
2 construction for service on routes that require a vessel that carries  
3 no more than one hundred motor vehicles—How constructed—Warranty  
4 work) and 2008 c 4 s 2 are each repealed.

5        NEW SECTION.        **Sec. 9.**        This act is necessary for the immediate  
6 preservation of the public peace, health, or safety, or support of  
7 the state government and its existing public institutions, and takes  
8 effect immediately."

**ESSB 5992 - S AMD 489**

By Senators King, Hobbs

**ADOPTED 6/28/2015**

9        On page 1, line 2 of the title, after "construction;" strike the  
10 remainder of the title and insert "amending RCW 47.60.005, 47.60.010,  
11 47.60.810, 47.60.814, 47.60.820, and 47.56.030; adding a new section  
12 to chapter 47.60 RCW; repealing RCW 47.56.780; and declaring an  
13 emergency."

EFFECT: A definition of life-cycle cost analysis is added. The department of transportation's (DOT) use of an independent owner's representative is limited to only the development and construction of the first vessel in a class. The contingency amount for vessels powered by liquefied natural gas is increased to ten percent of the contract price, but only for the first vessel in a class. The DOT may not issue a request for proposals (RFP) for vessels without specific authorization from the legislature. A study of the state's ferry vessel procurement practices by the Washington state institute for public policy is added, with a report due to the legislature by December 1, 2016. Specific requirements of the DOT's engineer's estimate are added. Language requiring the DOT to reject all bids and issue a subsequent RFP that is not subject to build in Washington requirements does not apply until after July 1, 2017. A section that applied provisions of the bill to only new project contracts identified as connecting Washington projects and a section that made the bill contingent upon the passage of ESSB 5987 are both removed. Changes the effective date from July 1, 2015, to immediately upon the governor's signature.

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