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ENGROSSED SUBSTITUTE HOUSE BILL 2161

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State of Washington

66th Legislature

2019 Regular Session

By House Transportation (originally sponsored by Representatives Fey and Fitzgibbon)

READ FIRST TIME 04/09/19.

1 AN ACT Relating to concerning ferry vessel procurement; amending  
2 RCW 47.60.810 and 47.60.315; and adding a new section to chapter  
3 47.60 RCW.

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

5 **Sec. 1.** RCW 47.60.810 and 2015 3rd sp.s. c 14 s 3 are each  
6 amended to read as follows:

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

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

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

3 (b) Perform project quality oversight;

4 (c) Manage any change order requests;

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

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

10 (3) The definitions in this subsection apply throughout RCW  
11 47.60.812 through 47.60.822.

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

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

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

19 (4) The department may modify an existing option contract  
20 executed prior to July 6, 2015, to allow for the purchase of up to  
21 five additional 144-auto ferries, for a total of nine 144-auto  
22 ferries. The department must execute a new modification to an  
23 existing option contract for each of the additional five ferries.

24 NEW SECTION. Sec. 2. A new section is added to chapter 47.60  
25 RCW to read as follows:

26 (1) To increase small business participation in ferry vessel  
27 procurement, the Washington state department of transportation's  
28 office of equal opportunity shall develop and monitor a state small  
29 business enterprise enforceable goals program. Pursuant to this  
30 program, the office shall establish contract goals for ferry vessel  
31 procurement. The contract goal is defined as a percentage of the  
32 contract award amount that the prime contractor must meet by  
33 subcontracting with small business enterprises. The enforceable goal  
34 for all ferry vessel procurement contracts will be set by the office.  
35 Prime contractors unable to meet the enforceable goal must submit  
36 evidence of good faith efforts to meet the contract goal to the small  
37 business enterprise enforceable goals program.

38 (2) Small business enterprises intending to benefit from the  
39 small business enterprise enforceable goals program established in

1 subsection (1) of this section must meet the definition of "small  
2 business" in RCW 39.26.010. Prime contractors will enter all  
3 subcontractor payments into the office's diversity management and  
4 compliance system. The office of equal opportunity shall monitor  
5 program performance.

6 **Sec. 3.** RCW 47.60.315 and 2011 1st sp.s. c 16 s 3 are each  
7 amended to read as follows:

8 (1) The commission shall adopt fares and pricing policies by  
9 rule, under chapter 34.05 RCW, according to the following schedule:

10 (a) Each year the department shall provide the commission a  
11 report of its review of fares and pricing policies, with  
12 recommendations for the revision of fares and pricing policies for  
13 the ensuing year;

14 (b) By September 1st of each year, beginning in 2008, the  
15 commission shall adopt by rule fares and pricing policies for the  
16 ensuing year.

17 (2) The commission may adopt by rule fares that are effective for  
18 more or less than one year for the purposes of transitioning to the  
19 fare schedule in subsection (1) of this section.

20 (3) The commission may increase ferry fares included in the  
21 schedule of charges adopted under this section by a percentage that  
22 exceeds the fiscal growth factor.

23 (4) The chief executive officer of the ferry system may authorize  
24 the use of promotional, discounted, and special event fares to the  
25 general public and commercial enterprises for the purpose of  
26 maximizing capacity use and the revenues collected by the ferry  
27 system. The department shall report to the commission a summary of  
28 the promotional, discounted, and special event fares offered during  
29 each fiscal year and the financial results from these activities.

30 (5) Fare revenues and other revenues deposited in the Puget Sound  
31 ferry operations account created in RCW 47.60.530 may not be used to  
32 support the Puget Sound capital construction account created in RCW  
33 47.60.505, unless the support for capital is separately identified in  
34 the fare.

35 (6) The commission may not raise fares until the fare rules  
36 contain pricing policies developed under RCW 47.60.290, or September  
37 1, 2009, whichever is later.

38 (7) The commission shall impose a vessel replacement surcharge of  
39 twenty-five cents on every one-way and round-trip ferry fare sold,

1 including multiride and monthly pass fares. This surcharge must be  
2 clearly indicated to ferry passengers and drivers and, if possible,  
3 on the fare media itself.

4 (8) Beginning May 1, 2020, the commission shall impose an  
5 additional vessel replacement surcharge in an amount sufficient to  
6 fund twenty-five year debt service on one 144-auto hybrid vessel  
7 taking into account funds provided in chapter . . . (HB 1789), Laws  
8 of 2019 or chapter . . . (SSB 5419), Laws of 2019. The department of  
9 transportation shall provide to the commission vessel and debt  
10 service cost estimates. Information on vessels constructed or  
11 purchased with revenue from the surcharges must be publicly posted  
12 including, but not limited to, the commission web site.

13 (9) The vessel replacement surcharges imposed in this section may  
14 only be used for the construction or purchase of ferry vessels and to  
15 pay the principal and interest on bonds authorized for the  
16 construction or purchase of new ferry vessels.

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