

# SENATE BILL REPORT

## SHB 1502

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As Passed Senate, April 11, 2021

**Title:** An act relating to the procurement and design of electric ferries by counties.

**Brief Description:** Concerning the procurement and design of electric ferries by counties.

**Sponsors:** House Committee on Transportation (originally sponsored by Representatives Wylie, Griffey, Ramel, Paul, Lekanoff, Berry, Ortiz-Self, Hackney, Harris-Talley and Pollet).

**Brief History:** Passed House: 2/26/21, 93-3.

**Committee Activity:** Transportation: 3/15/21, 3/30/21 [DP].

**Floor Activity:** Passed Senate: 4/11/21, 48-0.

### Brief Summary of Bill

- Permits counties to use additional competitive bidding procedures for procurement and design of electric ferries, including considering best value criteria in determining the lowest responsive and responsible bidder.
- Exempts from public disclosure trade secrets or other proprietary information submitted by a bidder in connection with electric ferry procurement if the bidder specifically states in writing the reason for protection from disclosure and the county agrees such protection is necessary.
- Permits a county procuring an electric ferry to identify specific equipment and vendors without allowing substitutions, when such equipment selections will reduce cost and performance risk.
- Allows a county to designate a public works department as the lead agency for the design and procurement of electric ferries as an alternative to the purchasing department.
- Requires the Washington State Department of Transportation's Office of

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Equal Opportunity to establish contract goals for county electric ferry vessel procurement in order to increase small business participation in ferry vessel procurement.

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## SENATE COMMITTEE ON TRANSPORTATION

**Majority Report:** Do pass.

Signed by Senators Hobbs, Chair; Saldaña, Vice Chair; King, Ranking Member; Cleveland, Das, Fortunato, Hawkins, Lovelett, Nguyen, Nobles, Padden, Randall, Sheldon, Wilson, C. and Wilson, J.

**Staff:** Daniel Masterson (786-7454)

**Background:** Public Contracting and Bidder Responsibility. Public agencies, including counties, are required to contract on a competitive basis for public works and award the contract to the lowest responsible bidder. Before the award of a public works contract, a bidder must meet responsibility criteria to qualify to be awarded a public works project. The bidder must:

- be a registered contractor;
- have a current state Unified Business Identifier number;
- have applicable industrial insurance coverage, an Employment Security Department number, and a state excise tax registration number;
- not be disqualified from bidding due to previous noncompliance with registration or prevailing wage requirements;
- not have been found out of compliance with apprenticeship utilization requirements, if subject to those requirements;
- have received training on prevailing wage requirements; and
- have no findings of violation of wage payment laws in the previous three years.

The awarding agency or jurisdiction may adopt supplemental criteria for determining bidder responsibility. The supplemental criteria, the basis for evaluation against that criteria, and deadlines for appeal must be provided in the invitation to bid or bidding documents.

Approval for Alternative Contracting Procedures. Public agencies, including local jurisdictions, are required to have the approval of the Capital Project Advisory Review Board before pursuing the alternative contracting procedures known as design-build and general contractor/construction manager, which allow selection of a contractor based on factors other than low bid.

Public Disclosure Exemption for Certain Contracting Information. The Public Records Act requires state and local agencies to make their written records available to the public for inspection and copying upon request unless the information fits into one of the various

specific exemptions under the act. Financial information supplied in a bid or proposal for state ferry or highway construction or as part of alternative public contracting procedures is exempt from disclosure.

**Summary of Bill:** Bidding Procedures for Procurement and Design of Electric Ferries. Counties are permitted to use additional competitive bidding procedures for procurement and design of electric ferries as specified in the bill.

After bids are submitted, a county may:

- reject all bids and rebid or cancel the competitive solicitation;
- request best and final offers from responsive and responsible bidders;
- award the purchase or contract to the lowest responsive and responsible bidder;
- award one or more contracts from a competitive solicitation; and
- enter into negotiations with the lowest responsive bidder to determine if a bid may be improved, but not use this negotiation opportunity to permit a bidder to change a nonresponsive bid into a responsive bid.

The determination of a responsible bidder must consider:

- the ability, capacity, and skill of the bidder to perform the contract or provide the service required;
- the character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- the bidder's ability to perform the contract within the time specified;
- the quality of performance on previous contracts;
- compliance by the bidder with laws relating to the contract or services;
- any bidder violations of wage payment in the last three years; and
- other information which may have bearing on the decision to award the contract.

Due to the unique aspects of electric ferry design and the importance of well-integrated ship and shore equipment, the county may consider best value criteria in determining the lowest responsive and responsible bidder including:

- the needs of the county as specified in the solicitation documents;
- diverse contractor participation;
- competitive pricing, economies, and efficiencies;
- human health and environmental impacts;
- appropriate weighting of cost and non-cost considerations;
- life-cycle costs;
- project manager capabilities, including subcontractor management;
- proposed approach to overall project plan, including integration, acceptance, and testing; and
- demonstrated contractor and subcontractor technical knowledge and capabilities to meet technical elements of the design specified in the bid documents.

The bid solicitation must clearly set forth the requirements and criteria the contract will

apply in evaluating bid submissions.

Where critical equipment selections can be made to reduce cost and performance risk, the solicitation may identify specific equipment and vendors, without allowing substitutions.

A county may designate a public works department as the lead agency for design and procurement of electric ferries as an alternative to a purchasing department.

Public Disclosure Exemption. Trade secrets or other proprietary information submitted by a bidder in connection with electric ferry design and procurement are exempt from public disclosure if the bidder specifically states in writing the reason for protection from disclosure and identifies the data to be protected and the county agrees such protection is necessary. All documents are exempt from disclosure until the bid award is made or the selection process is terminated.

Small Business Contract Goals. To increase small business participation in ferry vessel procurement, the Washington State Department of Transportation's Office of Equal Opportunity must establish contract goals for county electric ferry vessel procurement. The contract goal is defined as a percentage of the contract award amount the prime contractor must meet by subcontracting with small business enterprises. Small business enterprises intending to benefit from the program must have 50 or fewer employees or gross revenues less than \$7 million, or be certified by the Office of Minority and Women's Business Enterprises.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: Many people do not know that counties are an arm of the state. They do things that the state tells them to, and they cannot do things unless the state tells them they can. There are four counties in the state that operate ferries and the state partners with them in a variety of ways. Skagit County will be contracting for construction of an electric ferry. They are going to have to build a docking station. They cannot build on the specific methods and best practices that the state has found out about unless we pass this bill. It is time-sensitive and important to allow them to go forward and do the right thing. The House amended the bill to make sure that there are goals set for minority and women-owned businesses.

Skagit County has been planning for some time to replace its ferry with an electric ferry. The project is scheduled to go to add this fall. It is important to pass this bill this year. The

public records request language is lifted from other state laws, so there is nothing new there. You will receive a letter of support from the Skagit County commissioners.

CON: This bill exists because electric vessel technology is so new that there are too few vendors to support a competitive bid process. By granting extra protections to trade secrets, this bill reinforces an uncompetitive market. This bill increases cost and risk in absolute terms by letting counties pursue the costliest and riskiest technologies for critical infrastructure. The designer of the Skagit County ferry found that, relative to a simple diesel ferry, an electric ferry would be less functional in emergencies, half as reliable overall, significantly riskier to build, and much more expensive over its lifecycle. This bill incentivizes ineffective CO2 abatement projects. If the lifecycle cost premium for an electric Guemes ferry were spent on green power, it would eliminate 11 times more CO2, after accounting for a diesel ferry's emissions. Whatcom County may use this bill to acquire a hybrid ferry. The designer of the Skagit County ferry found a hybrid ferry would emit 13 percent more CO2 than a simple diesel ferry would.

**Persons Testifying:** PRO: Representative Sharon Wylie, Prime Sponsor; Jeanne Cushman, Skagit County.

CON: Brent Morrison.

**Persons Signed In To Testify But Not Testifying:** No one.