

**HB 1846 - H AMD 693**

By Representative Fey

**ADOPTED 04/11/2023**

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

3 "NEW SECTION. **Sec. 1.** Washington's marine highways provide  
4 vital transportation links between communities. Citizens, businesses,  
5 and visitors depend on the state's ferry system to provide safe,  
6 dependable auto and passenger service in order to conduct daily life  
7 and commerce activities. To maintain the integrity of this vital  
8 transportation link and to preserve the everyday conduct of  
9 individual and commercial activities, the state must act immediately  
10 to procure new hybrid-electric vessels in a timely and efficient  
11 manner.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 47.60  
13 RCW to read as follows:

14 (1) (a) The department shall contract for the acquisition of up to  
15 five new hybrid diesel-electric ferry vessels that can carry up to  
16 144 vehicles, using a one or two contract procurement approach to  
17 potentially accelerate vessel delivery.

18 (b) The Washington state ferries shall make available the design  
19 for the 144 vehicle hybrid electric Olympic class vessel to potential  
20 bidders. Incentives may be awarded by the department to bidders who  
21 offer design modifications that:

22 (i) Lower the minimum number of crew needed to staff the vessel  
23 in accordance with United States coast guard requirements;

24 (ii) Incorporate materials, technologies, or other features that  
25 lower life-cycle maintenance and operations costs;

26 (iii) Accelerate the proposed delivery schedule; or

27 (iv) Make other improvements determined to be beneficial by the  
28 department. The Washington state ferries may allow for exceptions of  
29 the 144 vehicle capacity of the vessel design in cases where  
30 efficiencies outlined in (b) (i) or (ii) of this subsection are met.

1 (2) (a) The contract or contracts must be for a minimum of two  
2 vessels, with options for up to five vessels in total, and are exempt  
3 from the requirements set forth in RCW 47.60.810 through 47.60.824.

4 (b) The contract or contracts may employ the following  
5 procurement methods:

6 (i) Design-build procedure as authorized under chapter 39.10 RCW;

7 (ii) Design-bid-build as authorized under chapter 39.04 RCW or an  
8 equivalent process allowed in statute as determined by the  
9 department; or

10 (iii) Lease with an option to buy in accordance with RCW  
11 47.60.010. The terms of any plan to pursue a lease with an option to  
12 buy agreement must be approved by the governor and appropriate  
13 committees of the legislature and are subject to the availability of  
14 amounts appropriated for this specific purpose.

15 (c) To the extent possible, the department shall establish and  
16 apply evaluation criteria beyond low price to meet best value  
17 objectives.

18 (d) The department must award a credit of 13 percent of the bid  
19 price for bid proposals for vessels constructed in the state of  
20 Washington, which must be adjusted to reflect the proportion of the  
21 construction of the vessels that occurs within the state. This credit  
22 represents the:

23 (i) Amount of economic and revenue loss to the state of  
24 Washington from constructing vessels outside the state of Washington,  
25 as indicated by the Washington institute for public policy study  
26 regarding Washington state ferry vessel procurement dated December  
27 2016; and

28 (ii) Additional costs of transport, potential delay, and owner  
29 oversight incurred for construction at shipyards located outside the  
30 state of Washington.

31 (e) The department must require that contractors meet the  
32 requirements of RCW 39.04.320 regarding apprenticeships or other  
33 state law or federal law equivalents, where such equivalents exist.

34 (f) The department must require that contractors meet the  
35 requirements of chapter 90.48 RCW regarding water pollution control  
36 or other state law or federal law equivalents, where such equivalents  
37 exist.

38 (3) For contracts eligible for the use of federal funds,  
39 contractors must comply with federal disadvantaged business  
40 enterprise targets as outlined by the federal agency awarding funds.

1 (4) Contractors located in the state of Washington must meet the  
2 requirements of RCW 47.60.835, the small business enterprise  
3 enforceable goals program.

4 (5) The department shall employ third-party experts that report  
5 to the Washington state ferries to serve as a supplementary resource.  
6 The third-party experts contracted by the Washington state ferries  
7 shall:

8 (a) Perform project quality oversight and report to the  
9 transportation committees of the legislature and the office of  
10 financial management on a semiannual basis on project schedule,  
11 risks, and project budget;

12 (b) Assist with the management of change order requests;

13 (c) Advise on contract and technical matters; and

14 (d) Possess knowledge of and experience with inland waterways,  
15 Puget Sound vessel operations, the propulsion system of the new  
16 vessels, and Washington state ferries operations.

17 **Sec. 3.** RCW 47.60.810 and 2019 c 431 s 1 are each amended to  
18 read as follows:

19 (1) (~~The~~) Except as otherwise provided in section 2 of this  
20 act, the department shall use a modified request for proposals  
21 process when purchasing new auto ferries, except for new 144-auto  
22 ferries purchased through an option on a contract executed before  
23 July 6, 2015, whereby the prevailing shipbuilder and the department  
24 engage in a design and build partnership for the design and  
25 construction of the auto ferries. The process consists of the three  
26 phases described in subsection (3) of this section.

27 (2) Throughout the three phases described in subsection (3) of  
28 this section, the department shall employ an independent owner's  
29 representative to serve as a third-party intermediary between the  
30 department and the proposers, and subsequently the successful  
31 proposer. However, this representative shall serve only during the  
32 development and construction of the first vessel constructed as part  
33 of a new class of vessels developed after July 6, 2015. The  
34 independent owner's representative shall:

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

37 (b) Perform project quality oversight;

38 (c) Manage any change order requests;

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

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

6 (3) The definitions in this subsection apply throughout RCW  
7 47.60.812 through 47.60.822.

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

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

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

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

20 **Sec. 4.** RCW 47.60.835 and 2019 c 431 s 2 are each amended to  
21 read as follows:

22 (1) ~~((To increase small business participation in ferry vessel~~  
23 ~~procurement)) In the absence of federal funding and the applicability  
24 of the disadvantaged business enterprise program, to increase race  
25 and gender-neutral participation of small and diverse businesses in  
26 ferry procurement, the Washington state department of  
27 transportation's office of equal opportunity and civil rights shall  
28 develop and monitor a state small business enterprise enforceable  
29 goals program. Pursuant to this program, the office shall establish  
30 contract goals for ferry vessel procurement. The contract goal is  
31 defined as a percentage of the contract award amount that the prime  
32 contractor must meet by subcontracting with small business  
33 enterprises. The enforceable goal for all ferry vessel procurement  
34 contracts will be set by the office. Prime contractors unable to meet  
35 the enforceable ~~((goal))~~ goals must submit evidence of good faith  
36 efforts to meet the contract ~~((goal))~~ goals to the small business  
37 enterprise enforceable goals program. The department, in  
38 collaboration with the office of equal opportunities and civil rights~~

1 will develop contractual remedies should the contractor not make good  
2 faith efforts.

3 (2) Small business enterprises intending to benefit from the  
4 small business enterprise enforceable goals program established in  
5 subsection (1) of this section must meet the definition of "small  
6 business" in RCW 39.26.010 and must be certified as a "small business  
7 enterprise" by the Washington state office of minority and women's  
8 business enterprises. Prime contractors will enter all subcontractor  
9 payments into the office's diversity management and compliance  
10 system. The office of equal opportunity and civil rights shall  
11 monitor program performance.

12 **Sec. 5.** RCW 47.60.010 and 2015 3rd sp.s. c 14 s 2 are each  
13 amended to read as follows:

14 The department is authorized to acquire by lease, charter,  
15 contract, purchase, condemnation, or construction, and partly by any  
16 or all of such means, and to thereafter operate, improve, and extend,  
17 a system of ferries on and crossing Puget Sound and any of its  
18 tributary waters and connections thereof, and connecting with the  
19 public streets and highways in the state. However, any new vessel  
20 planning, construction, purchase, analysis, or design work must be  
21 consistent with RCW 47.60.810, except as otherwise provided in  
22 section 2 of this act. The system of ferries shall include such  
23 boats, vessels, wharves, docks, approaches, landings, franchises,  
24 licenses, and appurtenances as shall be determined by the department  
25 to be necessary or desirable for efficient operation of the ferry  
26 system and best serve the public. Subject to RCW 47.56.820, the  
27 department may in like manner acquire by purchase, condemnation, or  
28 construction and include in the ferry system such toll bridges,  
29 approaches, and connecting roadways as may be deemed by the  
30 department advantageous in channeling traffic to points served by the  
31 ferry system. In addition to the powers of acquisition granted by  
32 this section, the department is empowered to enter into any  
33 contracts, agreements, or leases with any person, firm, or  
34 corporation and to thereby provide, on such terms and conditions as  
35 it shall determine, for the operation of any ferry or ferries or  
36 system thereof, whether acquired by the department or not.

37 The authority of the department to sell and lease back any state  
38 ferry, for federal tax purposes only, as authorized by 26 U.S.C.,  
39 Sec. 168(f)(8) is confirmed. Legal title and all incidents of legal

1 title to any ferry sold and leased back (except for the federal tax  
2 benefits attributable to the ownership thereof) shall remain in the  
3 state of Washington.

4 **Sec. 6.** RCW 47.56.030 and 2015 3rd sp.s. c 14 s 7 are each  
5 amended to read as follows:

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

7 (a) Unless otherwise delegated, and subject to RCW 47.56.820, the  
8 department of transportation shall have full charge of the planning,  
9 analysis, and construction of all toll bridges and other toll  
10 facilities including the Washington state ferries, and the operation  
11 and maintenance thereof.

12 (b) The transportation commission shall determine and establish  
13 the tolls and charges thereon.

14 (c) Unless otherwise delegated, and subject to RCW 47.56.820, the  
15 department shall have full charge of planning, analysis, and design  
16 of all toll facilities. The department may conduct the planning,  
17 analysis, and design of toll facilities as necessary to support the  
18 legislature's consideration of toll authorization.

19 (d) The department shall utilize and administer toll collection  
20 systems that are simple, unified, and interoperable. To the extent  
21 practicable, the department shall avoid the use of toll booths. The  
22 department shall set the statewide standards and protocols for all  
23 toll facilities within the state, including those authorized by local  
24 authorities.

25 (e) Except as provided in this section, the department shall  
26 proceed with the construction of such toll bridges and other  
27 facilities and the approaches thereto by contract in the manner of  
28 state highway construction immediately upon there being made  
29 available funds for such work and shall prosecute such work to  
30 completion as rapidly as practicable. The department is authorized to  
31 negotiate contracts for any amount without bid under (e)(i) and (ii)  
32 of this subsection:

33 (i) Emergency contracts, in order to make repairs to ferries or  
34 ferry terminal facilities or removal of such facilities whenever  
35 continued use of ferries or ferry terminal facilities constitutes a  
36 real or immediate danger to the traveling public or precludes prudent  
37 use of such ferries or facilities; and

38 (ii) Single source contracts for vessel dry dockings, when there  
39 is clearly and legitimately only one available bidder to conduct dry

1 dock-related work for a specific class or classes of vessels. The  
2 contracts may be entered into for a single vessel dry docking or for  
3 multiple vessel dry dockings for a period not to exceed two years.

4 (f) Any new vessel planning, construction, purchase, analysis, or  
5 design work must be consistent with RCW 47.60.810, except as  
6 otherwise provided in section 2 of this act.

7 (2) The department shall proceed with the procurement of  
8 materials, supplies, services, and equipment needed for the support,  
9 maintenance, and use of a ferry, ferry terminal, or other facility  
10 operated by Washington state ferries, in accordance with chapter  
11 43.19 RCW except as follows:

12 (a) When the secretary of the department of transportation  
13 determines in writing that the use of invitation for bid is either  
14 not practicable or not advantageous to the state and it may be  
15 necessary to make competitive evaluations, including technical or  
16 performance evaluations among acceptable proposals to complete the  
17 contract award, a contract may be entered into by use of a  
18 competitive sealed proposals method, and a formal request for  
19 proposals solicitation. Such formal request for proposals  
20 solicitation shall include a functional description of the needs and  
21 requirements of the state and the significant factors.

22 (b) When purchases are made through a formal request for  
23 proposals solicitation the contract shall be awarded to the  
24 responsible proposer whose competitive sealed proposal is determined  
25 in writing to be the most advantageous to the state taking into  
26 consideration price and other evaluation factors set forth in the  
27 request for proposals. No significant factors may be used in  
28 evaluating a proposal that are not specified in the request for  
29 proposals. Factors that may be considered in evaluating proposals  
30 include but are not limited to: Price; maintainability; reliability;  
31 commonality; performance levels; life-cycle cost if applicable under  
32 this section; cost of transportation or delivery; delivery schedule  
33 offered; installation cost; cost of spare parts; availability of  
34 parts and service offered; and the following:

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

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

39 (iii) Whether the proposer can perform the contract within the  
40 time specified;

1 (iv) The quality of performance of previous contracts or  
2 services;

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

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

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

11 (c) When purchases are made through a request for proposal  
12 process, proposals received shall be evaluated based on the  
13 evaluation factors set forth in the request for proposal. When  
14 issuing a request for proposal for the procurement of propulsion  
15 equipment or systems that include an engine, the request for proposal  
16 must specify the use of a life-cycle cost analysis that includes an  
17 evaluation of fuel efficiency. When a life-cycle cost analysis is  
18 used, the life-cycle cost of a proposal shall be given at least the  
19 same relative importance as the initial price element specified in  
20 the request of proposal documents. The department may reject any and  
21 all proposals received. If the proposals are not rejected, the award  
22 shall be made to the proposer whose proposal is most advantageous to  
23 the department, considering price and the other evaluation factors  
24 set forth in the request for proposal.

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

29 Correct the title.

EFFECT: (1) Limits the Washington State Department of  
Transportation (WSDOT) to establishing and applying evaluation  
criteria to meet best value objectives.

(2) Requires the WSDOT to establish a credit of 13 percent of the  
bid price for ferry vessels constructed in the State of Washington,  
which must be adjusted to reflect the proportion of the construction  
that occurs with the state.

(3) Declares that the credit represents the loss to the State of  
Washington from building vessels outside the state, as well as  
additional costs of transportation, potential delay, and owner  
oversight at shipyards located outside the state, as indicated by the



Washington institute for public policy study regarding Washington state ferry vessel procurement dated December 2016.

(4) Requires the WSDOT to require that contractors meet state apprenticeship requirements or other state or federal equivalents, where such equivalents exist.

(5) Requires the WSDOT to require that contractors meet state stormwater requirements or other state or federal equivalents, where such equivalents exist.

(6) Requires contractors located within the state to meet the requirements of the small business enterprise enforceable goals program and modifies that program to make it applicable when other programs do not apply. Also directs WSDOT to develop contractual remedies in the absence of good faith efforts by a contractor, and requires small businesses to be certified in order to benefit from the program.

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