

HOUSE BILL REPORT

HB 2391

As Reported by House Committee On:
Local Government

Title: An act relating to county ferries.

Brief Description: Concerning county ferries.

Sponsors: Representatives Leavitt, Lekanoff, Ramel, Bronoske, Eslick and Timmons.

Brief History:

Committee Activity:

Local Government: 1/24/24, 1/26/24 [DPS].

Brief Summary of Substitute Bill

- Provides that county ferry maintenance is exempt from public works bidding requirements.
- Allows indefinite-quantity contracts to be used for county ferry repair and maintenance.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Duerr, Chair; Alvarado, Vice Chair; Goehner, Ranking Minority Member; Jacobsen, Assistant Ranking Minority Member; Berg, Griffey and Riccelli.

Staff: Kellen Wright (786-7134).

Background:

Counties may construct, purchase, condemn, operate, and maintain ferries or wharves, and the related boats, grounds, roads, approaches, and landings, at any unfordable stream, lake,

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estuary, or bay that is within the county, bordering the county, between portions of the county, or between the county and another county. The ferry is controlled by the county commissioners, who may determine whether the use of the ferry or wharf is free or requires the payment of a toll. A county that operates a ferry must prepare a 14-year capital improvement plan covering all of the major elements of the ferry system.

Public work includes any construction, alteration, repair, or improvements that are paid for by a government entity other than a special purpose district involved in diking, drainage, irrigation, or the reclamation or development of waste or underdeveloped lands. Public work does not, however, include ordinary maintenance, though laws requiring the payment of prevailing wages do apply to maintenance.

With some exceptions, contracts involving public works generally have to be awarded to the lowest responsible bidder for the contract. Emergency contracts, single-source contracts, and purchases involving special facilities or market conditions are all exempted from competitive bidding requirements. Depending on the contracting entity and the value of the project, less stringent bidding processes may also be available, including the use of small works rosters or other less formal bidding procedures.

A surety bond is an agreement by a third party (the surety) to pay compensation to one party in a contract (the obligee) if the other party (the principal) fails to perform under the contract. A performance bond is a surety bond generally issued by an insurance company or bank (the surety) to guarantee that a contractor (the principal) will satisfy the terms of the contract. If the contractor fails to perform, the other party to the contract (the obligee) may move against the bond for compensation up to the amount of the bond.

Summary of Substitute Bill:

Beginning July 1, 2024, maintenance for county ferries is exempt from contracting requirements applicable to public works. Maintenance, including inspections and repairs required by the United States Coast Guard, may utilize an indefinite-quantity contract. This contract can be used by the county itself or in conjunction with other counties that operate county ferries.

An indefinite-quantity contract is a contract for the repair and maintenance of a ferry vessel that provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period. The term of such a contract cannot exceed 10 years. The limits in the contract may either be a number of units for supplies, or a monetary limit for services. The county contracting officer should establish a reasonable maximum quantity based on market research, an examination of similar recent contracts, or other rational bases.

Under the contract, the county places orders for individual requirements. The contract must require that the county order, and the contractor deliver, a minimum quantity of supplies or

services. This minimum must be more than a nominal amount, but should not exceed the amount the county is likely to order. The contractor must furnish additional quantities as ordered, up to the maximum provided for in the contract. The performance bond required for the contract must be calculated using the minimum quantity.

Substitute Bill Compared to Original Bill:

The substitute bill:

- provides that county ferry maintenance is exempt from the requirements of chapter 39.04 RCW for contracting compliance purposes, rather than providing that such maintenance is considered ordinary maintenance;
- specifies that the maintenance for which an indefinite-quantity contract can be used includes inspections and repairs required by Coast Guard regulations to renew the annual certificate of inspection of a county;
- limits the duration of an indefinite-quantity contract to a maximum of 10 years; and
- provides that performance bonds, rather than retainage requirements, will be based on the minimum guaranteed quantities included in an indefinite-quantity contract.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on July 1, 2024.

Staff Summary of Public Testimony:

(In support) This bill is a result of work between Whatcom, Wahkiakum, Skagit, and Pierce counties to try and make the ferry service more efficient. Ferries are breaking down across counties and there needs to be a way to get them efficiently back into operation. An aging ferry fleet needs constant attention to be kept safe, and periodic drydocking is required. This bill will allow repairs to be done quickly and efficiently, and will save the counties money which is important because ferries are subsidized through county road funds. Flexibility with maintenance contracts will allow a quicker response to issues that would otherwise have interrupted ferry service. Residents will be better supported if the counties have flexibility to schedule regular drydock time. Drydocking space is very limited and specialty work requires a long lead time. Currently, ferry maintenance is considered a public work, which hampers the ability to get out of drydock quickly. The ferries need to be kept running because there are large impacts when a ferry is not able to run. The only access to Anderson Island is by ferry or private boat. Recently, the ferry was out of commission and residents had to rely on a fire department boat to be able to make essential trips to shore.

(Opposed) None.

Persons Testifying: Representative Mari Leavitt, prime sponsor; Jani Hitchen, Pierce County Council; Jen Tetatzin, Pierce County; and Paul Jewell, Washington State Association of Counties.

Persons Signed In To Testify But Not Testifying: None.