

CERTIFICATION OF ENROLLMENT

**ENGROSSED HOUSE BILL 1846**

68th Legislature  
2023 Regular Session

Passed by the House April 18, 2023  
Yeas 94 Nays 3

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**Speaker of the House of  
Representatives**

Passed by the Senate April 14, 2023  
Yeas 47 Nays 0

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 1846** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**ENGROSSED HOUSE BILL 1846**

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AS AMENDED BY THE SENATE

Passed Legislature - 2023 Regular Session

**State of Washington                      68th Legislature                      2023 Regular Session**

**By** Representatives Fey, Barkis, Lekanoff, Ramel, Hutchins, Tharinger,  
and Caldier

Read first time 03/17/23. Referred to Committee on Transportation.

1            AN ACT Relating to addressing vessel procurement at the  
2 Washington state ferries; amending RCW 47.60.810, 47.60.835,  
3 47.60.010, and 47.56.030; adding a new section to chapter 47.60 RCW;  
4 creating a new section; and declaring an emergency.

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

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

15            Washington state values strong environmental and workplace  
16 standards, including surface water management, and the legislature  
17 intends that any contracts awarded through the vessel procurement  
18 process align with these values.

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

1 (1) (a) The department shall contract for the acquisition of up to  
2 five new hybrid diesel-electric ferry vessels that can carry up to  
3 144 vehicles, using a one or two contract procurement approach to  
4 potentially accelerate vessel delivery.

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

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

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

13 (iii) Accelerate the proposed delivery schedule; or

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

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

21 (b) The contract or contracts may employ the following  
22 procurement methods:

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

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

27 (iii) Lease with an option to buy in accordance with RCW  
28 47.60.010. The terms of any plan to pursue a lease with an option to  
29 buy agreement must be approved by the governor and appropriate  
30 committees of the legislature and are subject to the availability of  
31 amounts appropriated for this specific purpose.

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

35 (d) The department must award a credit of 13 percent of the bid  
36 price for bid proposals for vessels constructed in the state of  
37 Washington, which must be adjusted to reflect the proportion of the  
38 construction of the vessels that occurs within the state. This credit  
39 represents the:

1 (i) Amount of economic and revenue loss to the state of  
2 Washington from constructing vessels outside the state of Washington,  
3 as indicated by the Washington institute for public policy study  
4 regarding Washington state ferry vessel procurement dated December  
5 2016; and

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

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

12 (f) The department must require that contractors meet the  
13 requirements of chapter 90.48 RCW regarding water pollution control  
14 or other state law or federal law equivalents, where such equivalents  
15 exist.

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

19 (4) Contractors located in the state of Washington must meet the  
20 requirements of RCW 47.60.835, the small business enterprise  
21 enforceable goals program.

22 (5) The department shall employ third-party experts that report  
23 to the Washington state ferries to serve as a supplementary resource.  
24 The third-party experts contracted by the Washington state ferries  
25 shall:

26 (a) Perform project quality oversight and report to the  
27 transportation committees of the legislature and the office of  
28 financial management on a semiannual basis on project schedule,  
29 risks, and project budget;

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

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

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

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

37 (1) ~~((The))~~ Except as otherwise provided in section 2 of this  
38 act, the department shall use a modified request for proposals  
39 process when purchasing new auto ferries, except for new 144-auto

1 ferries purchased through an option on a contract executed before  
2 July 6, 2015, whereby the prevailing shipbuilder and the department  
3 engage in a design and build partnership for the design and  
4 construction of the auto ferries. The process consists of the three  
5 phases described in subsection (3) of this section.

6 (2) Throughout the three phases described in subsection (3) of  
7 this section, the department shall employ an independent owner's  
8 representative to serve as a third-party intermediary between the  
9 department and the proposers, and subsequently the successful  
10 proposer. However, this representative shall serve only during the  
11 development and construction of the first vessel constructed as part  
12 of a new class of vessels developed after July 6, 2015. The  
13 independent owner's representative shall:

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

16 (b) Perform project quality oversight;

17 (c) Manage any change order requests;

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

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

23 (3) The definitions in this subsection apply throughout RCW  
24 47.60.812 through 47.60.822.

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

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

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

32 (4) The department may modify an existing option contract  
33 executed prior to July 6, 2015, to allow for the purchase of up to  
34 five additional 144-auto ferries, for a total of nine 144-auto  
35 ferries. The department must execute a new modification to an  
36 existing option contract for each of the additional five ferries.

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

1           (1) (~~To increase small business participation in ferry vessel~~  
2 ~~procurement~~) In the absence of federal funding and the applicability  
3 of the disadvantaged business enterprise program, to increase race  
4 and gender-neutral participation of small and diverse businesses in  
5 ferry procurement, the Washington state department of  
6 transportation's office of equal opportunity and civil rights shall  
7 develop and monitor a state small business enterprise enforceable  
8 goals program. Pursuant to this program, the office shall establish  
9 contract goals for ferry vessel procurement. The contract goal is  
10 defined as a percentage of the contract award amount that the prime  
11 contractor must meet by subcontracting with small business  
12 enterprises. The enforceable goal for all ferry vessel procurement  
13 contracts will be set by the office. Prime contractors unable to meet  
14 the enforceable (~~goal~~) goals must submit evidence of good faith  
15 efforts to meet the contract (~~goal~~) goals to the small business  
16 enterprise enforceable goals program. The department, in  
17 collaboration with the office of equal opportunities and civil rights  
18 will develop contractual remedies should the contractor not make good  
19 faith efforts.

20           (2) Small business enterprises intending to benefit from the  
21 small business enterprise enforceable goals program established in  
22 subsection (1) of this section must meet the definition of "small  
23 business" in RCW 39.26.010 and must be certified as a "small business  
24 enterprise" by the Washington state office of minority and women's  
25 business enterprises. Prime contractors will enter all subcontractor  
26 payments into the office's diversity management and compliance  
27 system. The office of equal opportunity and civil rights shall  
28 monitor program performance.

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

31           The department is authorized to acquire by lease, charter,  
32 contract, purchase, condemnation, or construction, and partly by any  
33 or all of such means, and to thereafter operate, improve, and extend,  
34 a system of ferries on and crossing Puget Sound and any of its  
35 tributary waters and connections thereof, and connecting with the  
36 public streets and highways in the state. However, any new vessel  
37 planning, construction, purchase, analysis, or design work must be  
38 consistent with RCW 47.60.810, except as otherwise provided in  
39 section 2 of this act. The system of ferries shall include such

1 boats, vessels, wharves, docks, approaches, landings, franchises,  
2 licenses, and appurtenances as shall be determined by the department  
3 to be necessary or desirable for efficient operation of the ferry  
4 system and best serve the public. Subject to RCW 47.56.820, the  
5 department may in like manner acquire by purchase, condemnation, or  
6 construction and include in the ferry system such toll bridges,  
7 approaches, and connecting roadways as may be deemed by the  
8 department advantageous in channeling traffic to points served by the  
9 ferry system. In addition to the powers of acquisition granted by  
10 this section, the department is empowered to enter into any  
11 contracts, agreements, or leases with any person, firm, or  
12 corporation and to thereby provide, on such terms and conditions as  
13 it shall determine, for the operation of any ferry or ferries or  
14 system thereof, whether acquired by the department or not.

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

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

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

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

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

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

36 (d) The department shall utilize and administer toll collection  
37 systems that are simple, unified, and interoperable. To the extent  
38 practicable, the department shall avoid the use of toll booths. The  
39 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, except as  
23 otherwise provided in section 2 of this act.

24 (2) The department shall proceed with the procurement of  
25 materials, supplies, services, and equipment needed for the support,  
26 maintenance, and use of a ferry, ferry terminal, or other facility  
27 operated by Washington state ferries, in accordance with chapter  
28 43.19 RCW except as follows:

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

39 (b) When purchases are made through a formal request for  
40 proposals solicitation the contract shall be awarded to the



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

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

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

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

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

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

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

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

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

1 the department, considering price and the other evaluation factors  
2 set forth in the request for proposal.

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

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