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HOUSE BILL 2026

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State of Washington

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2009 Regular Session

By Representatives Sequist, Smith, Bailey, Angel, Morris, Van De Wege, Appleton, Haigh, Finn, Roberts, Rolfes, Cody, and Carlyle

Read first time 02/06/09. Referred to Committee on Transportation.

1 AN ACT Relating to directing the use of design-build and  
2 commercial, off-the-shelf procurement methods by the Washington state  
3 ferry system; amending RCW 47.56.030; adding new sections to chapter  
4 47.60 RCW; and creating new sections.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the current  
7 procurement practices of the Washington state ferry system frequently  
8 involve extensive in-house design efforts, often supported by extensive  
9 outside consulting services. The legislature notes that this practice  
10 has extended to the design and procurement of ferries, terminal  
11 facilities, and some operating and management support systems involving  
12 information technologies. The legislature further notes that these  
13 procurement practices have, in several cases, resulted in the  
14 expenditure of many millions of dollars without resulting in successful  
15 deliveries to the ferry system. The legislature further finds that  
16 industry has abandoned these kinds of in-house practices in favor of  
17 design-build procurement strategies for major capital acquisitions and  
18 commercial, off-the-shelf procurement strategies for ancillary systems  
19 that rely on rapidly evolving technologies. Finally, the legislature

1 finds that a severe economic and budgetary crisis imposes an imperative  
2 to adopt immediately new and much more economical procurement  
3 practices. Therefore, the legislature intends to restructure the  
4 duties of the Washington state ferries to reflect best procurement  
5 practices in the marine industry.

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

8 The Washington state ferries shall:

9 (1) Immediately cease all in-house design and construction activity  
10 and all associated consulting contracting. With the prior concurrence  
11 of the legislature, the secretary of transportation may, on a case-by-  
12 case basis, authorize any individual procurement programs that are in  
13 progress, as of the effective date of this section, to proceed to their  
14 earliest practicable conclusion;

15 (2) Continue an in-house ferry maintenance engineering effort by  
16 staff tasked to manage routine and emergent ferry maintenance work  
17 performed by on-board crews, the intermediate-level staff at the Eagle  
18 Harbor facility, and by contract to depot-level, commercial ship repair  
19 vendors. Service life extension projects by which older ferry vessels  
20 receive a comprehensive refit are specifically excluded from this in-  
21 house maintenance provision. These complex modernization projects must  
22 be authorized by the legislature and managed through the design-build  
23 process;

24 (3) Immediately develop and rapidly implement a revised procurement  
25 method as described in section 3 of this act;

26 (4) Immediately reorganize itself and associated department offices  
27 to comport with the revised procurement strategies. The department  
28 shall propose to the legislature by December 1, 2009, a revised  
29 organization and staffing plan that must include the following  
30 features:

31 (a) A sole focus by Washington state ferries headquarters on the  
32 management and maintenance of the existing ferry system;

33 (b) The relocation of the ferry maintenance engineering staff to  
34 and functional integration with the Eagle Harbor maintenance  
35 organization; and

36 (c) The establishment within department headquarters of a very  
37 small staff charged with coordinating ferry system requirements and

1 procurements within the state's overall transportation investments  
2 management process and in accordance with the design-build and  
3 commercial, off-the-shelf strategies established in section 3 of this  
4 act.

5 NEW SECTION. **Sec. 3.** A new section is added to chapter 47.60 RCW  
6 to read as follows:

7 (1) The department shall propose a procedure and implementing  
8 legislation for the use of design-build and commercial, off-the-shelf  
9 procurement strategies to the legislature by December 1, 2009. To  
10 assure that the proposal reflects current industry best practices, the  
11 department shall convene a marine commercial procurement strategies  
12 advisory group comprising of: Representatives of the marine  
13 architecture, shipbuilding, and information technology industries;  
14 members of the general public drawn from ferry system riders and ferry-  
15 using local industries; and experts drawn from other department design-  
16 build programs.

17 (2) The procedure proposed to implement the commercial procurement  
18 strategy under this section must:

19 (a) Be consistent with current maritime industry and high  
20 technology industry best procurement practices;

21 (b) Be consistent with current industry and regulatory safety and  
22 construction standards. For ferry vessels, these standards must be  
23 current American bureau of shipbuilding and United States coast guard  
24 standards and other environmental regulations;

25 (c) Provide, for ferry vessel and terminal procurements and major  
26 modernizations, a design-build-to-target-price procedure for developing  
27 ferry system procurement requirements, setting a target price, and  
28 soliciting competitive bids;

29 (d) Provide a commercial, off-the-shelf process for the procurement  
30 of operating and management support systems other than ferry vessels or  
31 terminals;

32 (e) Avoid the inclusion of government-furnished equipment  
33 provisions in procurement solicitations unless the secretary of  
34 transportation, with the governor's concurrence, specifically  
35 authorizes that bidding invitation feature;

36 (f) Specify an owner's representative or construction manager form  
37 of contract management with the construction manager to be included in

1 the proposal development process and that the construction manager  
2 coordinate all construction oversight and inspection using American  
3 bureau of shipbuilding standards and United States coast guard  
4 inspection procedures;

- 5 (g) Use a best value evaluation process of submitted bids;
- 6 (h) Provide for the appropriate reimbursement of the reasonable  
7 engineering and proposal development costs incurred by qualified,  
8 performing, but nonwinning bidders; and
- 9 (i) Allow full legislative oversight.

10 **Sec. 4.** RCW 47.56.030 and 2008 c 122 s 8 are each amended to read  
11 as follows:

- 12 (1) Except as permitted under chapter 47.29 or 47.46 RCW:
  - 13 (a) Unless otherwise delegated, and subject to RCW 47.56.820, the  
14 department of transportation shall have full ~~((charge—of))~~  
15 responsibility for the planning, analysis, and construction of all toll  
16 bridges and other toll facilities including the Washington state  
17 ferries, and the operation and maintenance thereof.
  - 18 (b) The transportation commission shall determine and establish the  
19 tolls and charges thereon.
  - 20 (c) Unless otherwise delegated, and subject to RCW 47.56.820, the  
21 department shall have full charge of planning, analysis, and design of  
22 all toll facilities. The department may conduct the planning,  
23 analysis, and design of toll facilities as necessary to support the  
24 legislature's consideration of toll authorization.
  - 25 (d) The department shall utilize and administer toll collection  
26 systems that are simple, unified, and interoperable. To the extent  
27 practicable, the department shall avoid the use of toll booths. The  
28 department shall set the statewide standards and protocols for all toll  
29 facilities within the state, including those authorized by local  
30 authorities.
  - 31 (e) Except as provided in ~~((this))~~ (f) and (g) of this subsection,  
32 the department shall proceed with the construction of such toll bridges  
33 and other facilities and the approaches thereto by contract in the  
34 manner of state highway construction immediately upon there being made  
35 available funds for such work and shall prosecute such work to  
36 completion as rapidly as practicable.

1       (f) The department shall use the design-build-to-target-price  
2 procedure developed in section 3 of this act for all ferry vessel and  
3 terminal preservation and construction projects, except when the  
4 project is minor and under ten million dollars in scope. The  
5 department shall use the commercial, off-the-shelf procurement  
6 procedures developed in section 3 of this act for all other  
7 procurements that are more than one hundred thousand dollars.

8       (g) The department is authorized to negotiate contracts for any  
9 amount without bid under ~~((e))~~ (g)(i) and (ii) of this subsection:

10       (i) Emergency contracts, in order to make repairs to ferries or  
11 ferry terminal facilities or removal of such facilities whenever  
12 continued use of ferries or ferry terminal facilities constitutes a  
13 real or immediate danger to the traveling public or precludes prudent  
14 use of such ferries or facilities; and

15       (ii) Single source contracts for vessel dry dockings, when there is  
16 clearly and legitimately only one available bidder to conduct dry dock-  
17 related work for a specific class or classes of vessels. The contracts  
18 may be entered into for a single vessel dry docking or for multiple  
19 vessel dry dockings for a period not to exceed two years.

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

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

35       (b) When purchases are made through a formal request for proposals  
36 solicitation the contract shall be awarded to the responsible proposer  
37 whose competitive sealed proposal is determined in writing to be the  
38 most advantageous to the state taking into consideration price and

1 other evaluation factors set forth in the request for proposals. No  
2 significant factors may be used in evaluating a proposal that are not  
3 specified in the request for proposals. Factors that may be considered  
4 in evaluating proposals include but are not limited to: Price;  
5 maintainability; reliability; commonality; performance levels; life  
6 cycle cost if applicable under this section; cost of transportation or  
7 delivery; delivery schedule offered; installation cost; cost of spare  
8 parts; availability of parts and service offered; and the following:

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

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

13 (iii) Whether the proposer can perform the contract within the time  
14 specified;

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

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

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

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

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

1        NEW SECTION.   **Sec. 5.**   This act may be known and cited as the ferry  
2   procurement modernization act of 2009.

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