

**Chapter 39.08 RCW
CONTRACTOR'S BOND**

Sections

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Public officer requiring bond or insurance from particular insurer, agent or broker, procuring bond or insurance, violations: RCW 48.30.270.

RCW 39.08.010 Bond required—Conditions—Retention of contract amount in lieu of bond. (1)(a) Whenever any board, council, commission, trustees, or body acting for the state or any county or municipality or any public body must contract with any person or corporation to do any work for the state, county, or municipality, or other public body, city, town, or district, such board, council, commission, trustees, or body must require the person or persons with whom such contract is made to make, execute, and deliver to such board, council, commission, trustees, or body a good and sufficient bond, with a surety company as surety, conditioned that such person or persons must:

(i) Faithfully perform all the provisions of such contract;

(ii) Pay all laborers, mechanics, and subcontractors and material suppliers, and all persons who supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work; and

(iii) Pay the taxes, increases, and penalties incurred on the project under Titles 50, 51, and 82 RCW on: (A) Projects referred to in RCW 60.28.011(1)(b); and/or (B) projects for which the bond is conditioned on the payment of such taxes, increases, and penalties.

(b) The bond, in cases of cities and towns, must be filed with the clerk or comptroller thereof, and any person or persons performing such services or furnishing material to any subcontractor has the same right under the provisions of such bond as if such work, services, or material was furnished to the original contractor.

(2) The provisions of RCW 39.08.010 through 39.08.030 do not apply to any money loaned or advanced to any such contractor, subcontractor, or other person in the performance of any such work.

(3) On contracts of one hundred fifty thousand dollars or less, at the option of the contractor or the general contractor/construction manager as defined in RCW 39.10.210, the respective public entity may, in lieu of the bond, retain ten percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the department of revenue, the employment security department, and the department of labor and industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later. The recovery of unpaid wages and benefits must be

the first priority for any actions filed against retainage held by a state agency or authorized local government.

(4) For contracts of one hundred fifty thousand dollars or less, the public entity may accept a full payment and performance bond from an individual surety or sureties.

(5) The surety must agree to be bound by the laws of the state of Washington and subjected to the jurisdiction of the state of Washington. [2017 c 75 § 1; 2013 c 113 § 2. Prior: 2007 c 218 § 88; 2007 c 210 § 3; 1989 c 145 § 1; 1982 c 98 § 5; 1975 1st ex.s. c 278 § 23; 1967 c 70 § 2; 1915 c 28 § 1; 1909 c 207 § 1; RRS § 1159; prior: 1897 c 44 § 1; 1888 p 15 § 1.]

Intent—Finding—2007 c 218: See note following RCW 41.08.020.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

State highway construction and maintenance, bond and surety requirements: Chapter 47.28 RCW.

RCW 39.08.015 Liability for failure to take bond. If any board of county commissioners of any county, or mayor and common council of any incorporated city or town, or tribunal transacting the business of any municipal corporation shall fail to take such bond as herein required, such county, incorporated city or town, or other municipal corporation, shall be liable to the persons mentioned in RCW 39.08.010, to the full extent and for the full amount of all such debts so contracted by such contractor. [1909 c 207 § 2; RRS § 1160. Prior: 1888 p 15 § 2. Formerly RCW 39.08.070.]

RCW 39.08.030 Conditions of bond—Notice of claim—Action on bond—Attorneys' fees. (1)(a) The bond mentioned in RCW 39.08.010 must be in an amount equal to the full contract price agreed to be paid for such work or improvement, except under subsection (2) of this section, and must be to the state of Washington, except as otherwise provided in RCW 39.08.100, and except in cases of cities, towns, public transportation benefit areas, passenger-only ferry service districts, and water-sewer districts, in which cases such municipalities may by general ordinance or resolution fix and determine the amount of such bond and to whom such bond runs. However, the same may not be for a less amount than twenty-five percent of the contract price of any such improvement for cities, towns, public transportation benefit areas, and passenger-only ferry service districts, and not less than the full contract price of any such improvement for water-sewer districts, and may designate that the same must be payable to such city, town, water-sewer district, public transportation benefit area, or passenger-only ferry service district, and not to the state of Washington, and all such persons mentioned in RCW 39.08.010 have a right of action in his, her, or their own name or names on such bond for work done by such laborers or mechanics, and for materials furnished or provisions and goods supplied and furnished in the prosecution of such work, or the making of such improvements, and the state has a right of action for the collection of taxes, increases, and penalties specified in RCW 39.08.010: PROVIDED, That, except for the state with respect to claims

for taxes, increases, and penalties specified in RCW 39.08.010, such persons do not have any right of action on such bond for any sum whatever, unless within thirty days from and after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer, or body acting for the state, county or municipality, or other public body, city, town or district, the laborer, mechanic or subcontractor, or material supplier, or person claiming to have supplied materials, provisions or goods for the prosecution of such work, or the making of such improvement, must present to and file with such board, council, commission, trustees or body acting for the state, county or municipality, or other public body, city, town or district, a notice in writing in substance as follows:

To (here insert the name of the state, county or municipality or other public body, city, town or district):

Notice is hereby given that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or material supplier, or person claiming to have furnished labor, materials or provisions for or upon such contract or work) has a claim in the sum of dollars (here insert the amount) against the bond taken from (here insert the name of the principal and surety or sureties upon such bond) for the work of (here insert a brief mention or description of the work concerning which said bond was taken).

(here to be signed)

(b) Such notice must be signed by the person or corporation making the claim or giving the notice, and the notice, after being presented and filed, is a public record open to inspection by any person, and in any suit or action brought against such surety or sureties by any such person or corporation to recover for any of the items specified in this section, the claimant is entitled to recover in addition to all other costs, attorneys' fees in such sum as the court adjudges reasonable. However, attorneys' fees are not allowed in any suit or action brought or instituted before the expiration of thirty days following the date of filing of the notice as provided in this section. However, any city may avail itself of the provisions of RCW 39.08.010 through 39.08.030, notwithstanding any charter provisions in conflict with this section. Moreover, any city or town may impose any other or further conditions and obligations in such bond as may be deemed necessary for its proper protection in the fulfillment of the terms of the contract secured thereby, and not in conflict with this section. The thirty-day notice requirement under this subsection does not apply to claims made by the state for taxes, increases, and penalties specified in RCW 39.08.010.

(2) Under the job order contracting procedure described in RCW 39.10.420, bonds will be in an amount not less than the dollar value of all open work orders.

(3) Where retainage is not withheld pursuant to RCW 60.28.011(1)(b), upon final acceptance of the public works project, the state, county, municipality, or other public body must within thirty days notify the department of revenue, the employment security department, and the department of labor and industries of the completion of contracts over thirty-five thousand dollars. [2018 c 89 § 1. Prior: 2013 c 113 § 4; (2013 c 113 § 3 expired June 30, 2016); 2013 c 28 § 2; (2013 c 28 § 1 expired June 30, 2016); (2009 c 473 § 1 expired June 30, 2016); 2007 c 218 § 89; 2003 c 301 § 4; 1989 c 58 §

1; 1977 ex.s. c 166 § 4; 1915 c 28 § 2; 1909 c 207 § 3; RRS § 1161; prior: 1899 c 105 § 1; 1888 p 16 § 3. Formerly RCW 39.08.030 through 39.08.060.]

Effective date—2018 c 89: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 15, 2018]." [2018 c 89 § 3.]

Effective date—2013 c 113 § 4: "Section 4 of this act takes effect June 30, 2016." [2013 c 113 § 10.]

Expiration date—2013 c 113 § 3: "Section 3 of this act expires June 30, 2016." [2013 c 113 § 9.]

Effective date—2013 c 28 § 2: "Section 2 of this act takes effect June 30, 2016." [2013 c 28 § 4.]

Expiration date—2013 c 28 § 1: "Section 1 of this act expires June 30, 2016." [2013 c 28 § 3.]

Expiration date—2009 c 473: "This act expires June 30, 2016." [2009 c 473 § 3.]

Intent—Finding—2007 c 218: See note following RCW 41.08.020.

Severability—1977 ex.s. c 166: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to the other persons or circumstances is not affected." [1977 ex.s. c 166 § 9.]

RCW 39.08.065 Notice to contractor condition to suit on bond when supplies are furnished to subcontractor. Every person, firm, or corporation furnishing materials, supplies, or provisions to be used in the construction, performance, carrying on, prosecution, or doing of any work for the state, or any county, city, town, district, municipality, or other public body, shall, not later than ten days after the date of the first delivery of such materials, supplies, or provisions to any subcontractor or agent of any person, firm, or corporation having a subcontract for the construction, performance, carrying on, prosecution, or doing of such work, deliver or mail to the contractor a notice in writing stating in substance and effect that such person, firm, or corporation has commenced to deliver materials, supplies, or provisions for use thereon, with the name of the subcontractor or agent ordering or to whom the same is furnished and that such contractor and his or her bond will be held for the payment of the same, and no suit or action shall be maintained in any court against the contractor or his or her bond to recover for such material, supplies, or provisions or any part thereof unless the provisions of this section have been complied with. [2011 c 336 § 804; 1915 c 167 § 1; RRS § 1159-1. Formerly RCW 39.08.020.]

RCW 39.08.100 Marine vessel construction—Security in lieu of bond. On contracts for construction, maintenance, or repair of a marine vessel, the department of transportation, a public transportation benefit area, a passenger-only ferry service district, or any county may permit, subject to specified format and conditions, the substitution of one or more of the following alternate forms of security in lieu of all or part of the bond: Certified check, replacement bond, cashier's check, treasury bills, an irrevocable bank letter of credit, assignment of a savings account, or other liquid assets specifically approved by the secretary of transportation, county engineer, or equivalent for a public transportation benefit area or a passenger-only ferry service district, for their respective projects. The secretary of transportation, county engineer, or equivalent for a public transportation benefit area or a passenger-only ferry service district, respectively, shall predetermine and include in the special provisions of the bid package the amount of this alternative form of security or bond, or a combination of the two, on a case-by-case basis, in an amount adequate to protect one hundred percent of the state's or county's exposure to loss. Assets used as an alternative form of security shall not be used to secure the bond. By October 1, 1989, the department shall develop and adopt rules under chapter 34.05 RCW that establish the procedures for determining the state's exposure to loss on contracts for construction, maintenance, or repair of a marine vessel. Prior to awarding any contract limiting security to the county's, public transportation benefit area's, or passenger-only ferry service district's exposure to loss, the governing board of the county or agency shall develop and adopt an ordinance or resolution that establishes the procedure for determining the county's or agency's exposure to loss on contracts for construction, maintenance, or repair of a marine vessel. [2018 c 89 § 2; 2005 c 101 § 1; 1989 c 58 § 2.]

Effective date—2018 c 89: See note following RCW 39.08.030.

Effective date—2005 c 101: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 20, 2005]." [2005 c 101 § 2.]