Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Transportation Committee

SSB 5499

Brief Description: Concerning bond amounts for department of transportation highway contracts.

Sponsors: Senate Committee on Transportation (originally sponsored by Senators Jarrett, Swecker, Haugen, Marr and Shin; by request of Department of Transportation).

Brief Summary of Substitute Bill

- Authorizes the Washington State Department of Transportation (Department) to establish surety bond requirements at less than the full price of the contract for highway construction contracts costing $250 million or more.
- Requires separate performance and payment bonds if the Department authorizes a surety bond at less than the full price of the contract.

Hearing Date: 3/23/09

Staff: Mark Matteson (786-7145)

Background:

Since statehood, state law has required that private contractors of public entities provide a surety bond upon execution of the contract. A surety bond is a three-way contract in which a bonding company, or surety, agrees to guarantee the public entity that the contractor will perform its obligations under the contract and will make all payments to subcontractors, laborers, and suppliers. The bond covers both performance and payment. If the contractor defaults in the performance of the contract or fails to fully pay subcontractors, suppliers, and workers, the surety becomes liable to provide bond funds to complete the contract or pay unpaid subcontractors, suppliers, or workers. Under standard public works contracting procedures, the contractor must provide a bond for which the value is equal to the full contract price.

Based on recent activity in the surety market and on industry information, sureties do not generally sell bonds in which the value of the bond exceeds $500 million. On contracts that

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exceed the $500 million level, contractors may generally only obtain bonds at less than the full contract price and only in states where the law allows them to do so.

In a number of states, separate bonds are required for performance and for payment.

The Department indicates that the maximum risk at any given time on a highway construction project to which the state is exposed is about 30 percent of the contract amount.

Summary of Bill:

The Department is authorized to allow contractors to provide surety bonds at less than 100 percent of the price of contracts exceeding $250 million. If surety bonds at less than the full contract price are authorized, the contractor must provide both a performance bond and a payment bond. The Department must set the amount of the performance bond to adequately cover 100 percent of the state's exposure to loss but no less than $250 million. The payment bond must be set at no less than the performance bond amount. This authority expires at the end of fiscal year 2016.

The Department must develop risk assessment guidelines for the purposes of assessing the state's exposure to loss on highway construction contracts. The Office of Financial Management must approve the guidelines before the Department may authorize contractors to provide surety bonds at less than the full price of a contract.

The Department must report to the Legislature by December 2012 on any activity on contracts of $250 million or more in which surety bonds at less than 100 percent of contract price were provided.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.