HOUSE BILL REPORT
SSB 5499

As Passed House:
April 25, 2009

Title: An act relating to bond amounts for department of transportation highway contracts.

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 History:
Committee Activity:
Transportation: 3/23/09, 3/24/09 [DP].
Floor Activity
Passed House: 4/25/09, 92-2.

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.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass. Signed by 27 members: Representatives Clibborn, Chair; Liias, Vice Chair; Roach, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Armstrong, Campbell, Cox, Driscoll, Eddy, Ericksen, Finn, Herrera, Johnson, Klippert, Kristiansen, Moeller, Morris, Rolfes, Sells, Shea, Simpson, Springer, Takko, Upthegrove, Wallace, Williams and Wood.

Staff: Mark Matteson (786-7145)

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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 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 Washington State Department of Transportation (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 (OFM) must approve the guidelines before the Department may authorize contractors to provide surety bonds at less than the full price of a contract. The OFM must approve analysis conducted by the Department when the Department intends to authorize a bond at less than the full price of the contract. The Governor must also review and approve any such 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.

Staff Summary of Public Testimony:

(In support) This bill enables the Department to build megaprojects, several of which are scheduled to begin in the next couple of years, including the State Route 520 corridor, Interstate 90 at Snoqualmie Pass, and the Alaskan Way Viaduct tunnel. This would only affect projects going forward and not anything already let to contract. The gist of the bill is that it addresses the lack of a surety bond market for megaprojects. There are not sureties that will sell bonds that exceed $500 million. This bill will allow contractors to provide surety bonds at less than the price of the contract on contracts exceeding $250 million in value, while at the same time covering 100 percent of the state exposure to risk. You have to remember that on large contracts like these the potential exposure of the state does not come close to the full value of the contract, since the contract disbursements are done incrementally as the work is completed. This bill also requires a separate performance bond and a payment bond.

The Association of Washington Business believes this is a necessary bill that will increase competition and thus save the state money.

This bill has been vetted and is supported by contractors and the surety companies.

(Opposed) None.

Persons Testifying: Bob Dyer, Washington State Department of Transportation; Amber Carter, Association of Washington Business; and Duke Schaub, Associated General Contractors of Washington.

Persons Signed In To Testify But Not Testifying: None.