
SENATE BILL 5499

State of Washington

61st Legislature

2009 Regular Session

By Senators Jarrett, Swecker, Haugen, Marr, and Shin; by request of Department of Transportation

Read first time 01/23/09. Referred to Committee on Transportation.

1 AN ACT Relating to bond amounts for department of transportation
2 highway contracts; amending RCW 39.08.030; and providing an expiration
3 date.

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

5 **Sec. 1.** RCW 39.08.030 and 2007 c 218 s 89 are each amended to read
6 as follows:

7 (1) The bond mentioned in RCW 39.08.010 shall be in an amount equal
8 to the full contract price agreed to be paid for such work or
9 improvement, except under subsections (2) and (3) of this section, and
10 shall be to the state of Washington, except as otherwise provided in
11 RCW 39.08.100, and except in cases of cities and towns, in which cases
12 such municipalities may by general ordinance fix and determine the
13 amount of such bond and to whom such bond shall run: PROVIDED, The
14 same shall not be for a less amount than twenty-five percent of the
15 contract price of any such improvement, and may designate that the same
16 shall be payable to such city, and not to the state of Washington, and
17 all such persons mentioned in RCW 39.08.010 shall have a right of
18 action in his, her, or their own name or names on such bond for work
19 done by such laborers or mechanics, and for materials furnished or

1 provisions and goods supplied and furnished in the prosecution of such
2 work, or the making of such improvements: PROVIDED, That such persons
3 shall not have any right of action on such bond for any sum whatever,
4 unless within thirty days from and after the completion of the contract
5 with an acceptance of the work by the affirmative action of the board,
6 council, commission, trustees, officer, or body acting for the state,
7 county or municipality, or other public body, city, town or district,
8 the laborer, mechanic or subcontractor, or material supplier, or person
9 claiming to have supplied materials, provisions or goods for the
10 prosecution of such work, or the making of such improvement, shall
11 present to and file with such board, council, commission, trustees or
12 body acting for the state, county or municipality, or other public
13 body, city, town or district, a notice in writing in substance as
14 follows:

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

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

27 (here to be signed)

28 Such notice shall be signed by the person or corporation making the
29 claim or giving the notice, and said notice, after being presented and
30 filed, shall be a public record open to inspection by any person, and
31 in any suit or action brought against such surety or sureties by any
32 such person or corporation to recover for any of the items hereinbefore
33 specified, the claimant shall be entitled to recover in addition to all
34 other costs, attorney's fees in such sum as the court shall adjudge
35 reasonable: PROVIDED, HOWEVER, That no attorney's fees shall be
36 allowed in any suit or action brought or instituted before the
37 expiration of thirty days following the date of filing of the notice

1 hereinbefore mentioned: PROVIDED FURTHER, That any city may avail
2 itself of the provisions of RCW 39.08.010 through 39.08.030,
3 notwithstanding any charter provisions in conflict herewith: AND
4 PROVIDED FURTHER, That any city or town may impose any other or further
5 conditions and obligations in such bond as may be deemed necessary for
6 its proper protection in the fulfillment of the terms of the contract
7 secured thereby, and not in conflict herewith.

8 (2) Under the job order contracting procedure described in RCW
9 (~~39.10.130~~) 39.10.420, bonds will be in an amount not less than the
10 dollar value of all open work orders.

11 (3)(a) On highway construction contracts administered by the
12 department of transportation with an estimated contract price of two
13 hundred fifty million dollars or more, the department may authorize
14 bonds in an amount less than the full contract price of the project.
15 If a bond less than the full contract price is authorized by the
16 department, the bond must be in the form of a performance bond and a
17 separate payment bond. The department shall fix the amount of the
18 performance bond on a contract-by-contract basis to adequately protect
19 one hundred percent of the state's exposure to loss. The amount of the
20 performance bond must not be less than two hundred fifty million
21 dollars. The payment bond must be in an amount fixed by the department
22 but must not be less than the amount of the performance bond. The
23 secretary of transportation must approve each performance bond and
24 payment bond authorized to be less than the full contract price of a
25 project. All the requirements of this chapter apply respectively to
26 the individual performance and payment bonds to the same extent as if
27 the two bonds were a single combined performance and payment bond. The
28 performance bond is solely for the protection of the department. The
29 payment bond is solely for the protection of laborers, mechanics,
30 subcontractors, and suppliers mentioned in RCW 39.08.010.

31 (b) The department shall develop risk assessment guidelines and
32 gain approval of these guidelines from the office of financial
33 management before implementing (a) of this subsection. The guidelines
34 must include a clear process for how the department measures the
35 state's exposure to loss and how the performance bond amount,
36 determined under (a) of this subsection, adequately protects one
37 hundred percent of the state's exposure to loss.

1 (c) The department shall report to the house of representatives and
2 senate transportation committees by December 1, 2012: Each project
3 where the department authorized bonds that were less than the full
4 contract price; the difference between the project amount and the bond
5 requirements; the number of bidders on the project; and other
6 information that documents the effects of the reduced bond amounts on
7 the project.

8 NEW SECTION. **Sec. 2.** This act expires June 30, 2016.

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