

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 5499**

Chapter 473, Laws of 2009

(partial veto)

61st Legislature  
2009 Regular Session

HIGHWAY CONSTRUCTION CONTRACTS--BOND AMOUNTS

EFFECTIVE DATE: 07/26/09

Passed by the Senate April 26, 2009  
YEAS 38 NAYS 9

BRAD OWEN

\_\_\_\_\_  
**President of the Senate**

Passed by the House April 25, 2009  
YEAS 92 NAYS 2

FRANK CHOPP

\_\_\_\_\_  
**Speaker of the House of Representatives**

Approved May 13, 2009, 4:38 p.m., with  
the exception of Section 2 which is  
vetoed.

CHRISTINE GREGOIRE

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Thomas Hoemann, Secretary of  
the Senate of the State of  
Washington, do hereby certify that  
the attached is **SUBSTITUTE SENATE  
BILL 5499** as passed by the Senate  
and the House of Representatives  
on the dates hereon set forth.

THOMAS HOEMANN

\_\_\_\_\_  
**Secretary**

FILED

May 18, 2009

**Secretary of State  
State of Washington**

---

**SUBSTITUTE SENATE BILL 5499**

---

AS AMENDED BY THE HOUSE

Passed Legislature - 2009 Regular Session

**State of Washington                      61st Legislature                      2009 Regular Session**

**By** Senate Transportation (originally sponsored by Senators Jarrett, Swecker, Haugen, Marr, and Shin; by request of Department of Transportation)

READ FIRST TIME 02/19/09.

1            AN ACT Relating to bond amounts for department of transportation  
2 highway contracts; amending RCW 39.08.030; adding a new section to  
3 chapter 39.08 RCW; and providing an expiration 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

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

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

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

36 (b) The department shall develop risk assessment guidelines and  
37 gain approval of these guidelines from the office of financial  
38 management before implementing (a) of this subsection. The guidelines

1 must include a clear process for how the department measures the  
2 state's exposure to loss and how the performance bond amount,  
3 determined under (a) of this subsection, adequately protects one  
4 hundred percent of the state's exposure to loss.

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

12 ***\*NEW SECTION. Sec. 2. A new section is added to chapter 39.08 RCW***  
13 ***to read as follows:***

14 ***In consultation with the director of the office of financial***  
15 ***management and the secretary of the department of transportation, the***  
16 ***governor shall approve any contract and bond amount authorized with***  
17 ***respect to contracts in which the department intends to authorize bonds***  
18 ***under RCW 39.08.030 in an amount less than the full contract price of***  
19 ***the contract.***

***\*Sec. 2 was vetoed. See message at end of chapter.***

20 ***NEW SECTION. Sec. 3. This act expires June 30, 2016.***

Passed by the Senate April 26, 2009.

Passed by the House April 25, 2009.

Approved by the Governor May 13, 2009, with the exception of  
certain items that were vetoed.

Filed in Office of Secretary of State May 18, 2009.

Note: Governor's explanation of partial veto is as follows:

"I am returning, without my approval as to Section 2, Substitute  
Senate Bill 5499 entitled:

"AN ACT Relating to bond amounts for department of transportation  
highway contracts."

Section 2 of this bill requires the Governor to approve any contracts  
in which the Washington State Department of Transportation intends to  
authorize bonds in an amount less than the full contract price of the  
contract.

Section 1 of the bill requires the Office of Financial Management to  
approve risk guidelines developed by the Department of Transportation  
prior to authorizing bonds in an amount less than the full price of  
the contract. Section 1 also requires the Office of Financial  
Management to review and approve the decision of the Secretary of  
Transportation to authorize a bond in an amount less than the full  
price of the contract prior to proceeding with the contract. Approval  
from the Office of Financial Management of the risk guidelines, as  
well as review of pending contracts constitutes sufficient oversight

by the Governor's office of highway contract decisions. Requiring subsequent approval from the Governor is redundant and is not a necessary statutory requirement.

For these reasons, I have vetoed Section 2 of Substitute Senate Bill 5499.

With the exception of Section 2, Substitute Senate Bill 5499 is approved."