

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5499

61st Legislature
2009 Regular Session

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

President of the Senate

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

Speaker of the House of Representatives

Approved

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.

Secretary

FILED

**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 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.

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

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