H-3948.3

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**SUBSTITUTE HOUSE BILL 2317**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** House Transportation (originally sponsored by Representatives Appleton, Muri, Fey, Fitzgibbon, Tarleton, Griffey, and Young)

AN ACT Relating to contractor bonding requirements for public transportation benefit areas and passenger-only ferry service districts; amending RCW 39.08.100; reenacting and amending RCW 39.08.030; and declaring an emergency.

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

**Sec.**  RCW 39.08.030 and 2013 c 113 s 4 and 2013 c 28 s 2 are each reenacted and amended to read as follows:

(1)(a) The bond mentioned in RCW 39.08.010 must be in an amount equal to the full contract price agreed to be paid for such work or improvement, except under subsection (2) of this section, and must be to the state of Washington, except as otherwise provided in RCW 39.08.100, and except in cases of cities, towns, public transportation benefit areas, passenger-only ferry service districts, and water-sewer districts, in which cases such municipalities may by general ordinance or resolution fix and determine the amount of such bond and to whom such bond runs. However, the same may not be for a less amount than twenty-five percent of the contract price of any such improvement for cities ((~~and~~)), towns, public transportation benefit areas, and passenger-only ferry service districts, and not less than the full contract price of any such improvement for water-sewer districts, and may designate that the same must be payable to such city, town, ((~~or~~)) water-sewer district, public transportation benefit area, or passenger-only ferry service district, and not to the state of Washington, and all such persons mentioned in RCW 39.08.010 have a right of action in his, her, or their own name or names on such bond for work done by such laborers or mechanics, and for materials furnished or provisions and goods supplied and furnished in the prosecution of such work, or the making of such improvements, and the state has a right of action for the collection of taxes, increases, and penalties specified in RCW 39.08.010: PROVIDED, That, except for the state with respect to claims for taxes, increases, and penalties specified in RCW 39.08.010, such persons do not have any right of action on such bond for any sum whatever, unless within thirty days from and after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer, or body acting for the state, county or municipality, or other public body, city, town or district, the laborer, mechanic or subcontractor, or material supplier, or person claiming to have supplied materials, provisions or goods for the prosecution of such work, or the making of such improvement, must present to and file with such board, council, commission, trustees or body acting for the state, county or municipality, or other public body, city, town or district, a notice in writing in substance as follows:

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| To (here insert the name of the state, county or municipality or other public body, city, town or district): | | |
| Notice is hereby given that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or material supplier, or person claiming to have furnished labor, materials or provisions for or upon such contract or work) has a claim in the sum of . . . . . . dollars (here insert the amount) against the bond taken from . . . . . . (here insert the name of the principal and surety or sureties upon such bond) for the work of . . . . . . (here insert a brief mention or description of the work concerning which said bond was taken). | | |
|  | (here to be signed) |  |

(b) Such notice must be signed by the person or corporation making the claim or giving the notice, and the notice, after being presented and filed, is a public record open to inspection by any person, and in any suit or action brought against such surety or sureties by any such person or corporation to recover for any of the items specified in this section, the claimant is entitled to recover in addition to all other costs, attorneys' fees in such sum as the court adjudges reasonable. However, attorneys' fees are not allowed in any suit or action brought or instituted before the expiration of thirty days following the date of filing of the notice as provided in this section. However, any city may avail itself of the provisions of RCW 39.08.010 through 39.08.030, notwithstanding any charter provisions in conflict with this section. Moreover, any city or town may impose any other or further conditions and obligations in such bond as may be deemed necessary for its proper protection in the fulfillment of the terms of the contract secured thereby, and not in conflict with this section. The thirty-day notice requirement under this subsection does not apply to claims made by the state for taxes, increases, and penalties specified in RCW 39.08.010.

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

(3) Where retainage is not withheld pursuant to RCW 60.28.011(1)(b), upon final acceptance of the public works project, the state, county, municipality, or other public body must within thirty days notify the department of revenue, the employment security department, and the department of labor and industries of the completion of contracts over thirty-five thousand dollars.

**Sec.**  RCW 39.08.100 and 2005 c 101 s 1 are each amended to read as follows:

On contracts for construction, maintenance, or repair of a marine vessel, the department of transportation, a public transportation benefit area, a passenger-only ferry service district, or any county may permit, subject to specified format and conditions, the substitution of one or more of the following alternate forms of security in lieu of all or part of the bond: Certified check, replacement bond, cashier's check, treasury bills, an irrevocable bank letter of credit, assignment of a savings account, or other liquid assets specifically approved by the secretary of transportation ((~~or~~)), county engineer, or equivalent for a public transportation benefit area or a passenger-only ferry service district, for their respective projects. The secretary of transportation ((~~or~~)), county engineer, or equivalent for a public transportation benefit area or a passenger-only ferry service district, respectively, shall predetermine and include in the special provisions of the bid package the amount of this alternative form of security or bond, or a combination of the two, on a case-by-case basis, in an amount adequate to protect one hundred percent of the state's or county's exposure to loss. Assets used as an alternative form of security shall not be used to secure the bond. By October 1, 1989, the department shall develop and adopt rules under chapter 34.05 RCW that establish the procedures for determining the state's exposure to loss on contracts for construction, maintenance, or repair of a marine vessel. Prior to awarding any contract limiting security to the county's, public transportation benefit area's, or passenger-only ferry service district's exposure to loss, ((~~a county~~)) the governing board of the county or agency shall develop and adopt an ordinance or resolution that establishes the procedure for determining the county's or agency's exposure to loss on contracts for construction, maintenance, or repair of a marine vessel.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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