SUBSTITUTE SENATE BILL 5499

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.

AN ACT Relating to bond amounts for department of transportation highway contracts; amending RCW 39.08.030; 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 to the full contract price agreed to be paid for such work or 8 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 such municipalities may by general ordinance fix and determine the 12 amount of such bond and to whom such bond shall run: 13 PROVIDED, The 14 same shall not be for a less amount than twenty-five percent of the contract price of any such improvement, and may designate that the same 15 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 done by such laborers or mechanics, and for materials furnished or 19

provisions and goods supplied and furnished in the prosecution of such 1 2 work, or the making of such improvements: PROVIDED, That such persons shall not have any right of action on such bond for any sum whatever, 3 4 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, 5 council, commission, trustees, officer, or body acting for the state, б 7 county or municipality, or other public body, city, town or district, 8 the laborer, mechanic or subcontractor, or material supplier, or person claiming to have supplied materials, provisions or goods for the 9 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).

(here to be signed)

Such notice shall be signed by the person or corporation making the 28 29 claim or giving the notice, and said notice, after being presented and filed, shall be a public record open to inspection by any person, and 30 in any suit or action brought against such surety or sureties by any 31 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

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

8 (2) Under the job order contracting procedure described in RCW 9 ((39.10.130)) <u>39.10.420</u>, 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 department of transportation with an estimated contract price of two 12 13 hundred fifty million dollars or more, the department may authorize bonds in an amount less than the full contract price of the project. 14 If a bond less than the full contract price is authorized by the 15 department, the bond must be in the form of a performance bond and a 16 separate payment bond. The department shall fix the amount of the 17 performance bond on a contract-by-contract basis to adequately protect 18 one hundred percent of the state's exposure to loss. The amount of the 19 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 but must not be less than the amount of the performance bond. The 22 secretary of transportation must approve each performance bond and 23 24 payment bond authorized to be less than the full contract price of a project. All the requirements of this chapter apply respectively to 25 26 the individual performance and payment bonds. The performance bond is solely for the protection of the department. The payment bond is 27 solely for the protection of laborers, mechanics, subcontractors, and 28 suppliers mentioned in RCW 39.08.010. 29

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

37 (c) The department shall report to the house of representatives and
38 senate transportation committees by December 1, 2012: Each project

1 where the department authorized bonds that were less than the full 2 contract price; the difference between the project amount and the bond 3 requirements; the number of bidders on the project; and other 4 information that documents the effects of the reduced bond amounts on 5 the project.

6 <u>NEW SECTION.</u> Sec. 2. This act expires June 30, 2016.

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