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**SUBSTITUTE SENATE BILL 5499**

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**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; 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 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. The performance bond is  
27 solely for the protection of the department. The payment bond is  
28 solely for the protection of laborers, mechanics, subcontractors, and  
29 suppliers mentioned in RCW 39.08.010.

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

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