SENATE BILL REPORT
SB 5499

As of February 17, 2009

Title: An act relating to bond amounts for department of transportation highway contracts.

Brief Description: Concerning bond amounts for department of transportation highway contracts.

Sponsors: Senators Jarrett, Swecker, Haugen, Marr and Shin; by request of Department of Transportation.

Brief History:
Committee Activity: Transportation: 2/16/09.

SENATE COMMITTEE ON TRANSPORTATION

Staff: Amanda Cecil (786-7429)

Background: Current law requires that public works contracts have a surety bond equal to the full contract price. A surety bond is a three-way contract in which a bonding company, or surety, agrees to guarantee the public entity that the contractor will perform its obligations under the contract and will make all payments to subcontractors, laborers, and suppliers. The bond covers both performance and payment. If the contractor defaults in the performance of the contract or fails to fully pay subcontractors, suppliers, and workers, the surety becomes liable to provide bond funds to complete the contract or pay unpaid subcontractors, suppliers, or workers.

Based on recent activity in the surety market and on industry information, sureties do not generally sell bonds in which the value of the bond exceeds $500 million. On contracts that exceed the $500 million level, contractors may generally obtain bonds at less than the full contract price and only in states where the law allows them to do so.

In a number of states, separate bonds are required for performance and for payment. The Department of Transportation (Department) indicates that the maximum risk at any given time on a highway construction project to which the state is exposed is about 30 percent of the contract amount.

Summary of Bill: The Department is authorized to allow contractors to provide surety bonds at less than 100 percent of the price of contracts exceeding $250 million. If surety

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bonds at less than the full contract price are authorized, the contractor must provide both a performance bond and a payment bond. The Department must set the amount of the performance bond to adequately cover 100 percent of the state's exposure to loss but no less than $250 million. The payment bond must be set at no less than the performance bond amount.

The Department must develop risk assessment guidelines for the purposes of assessing the state's exposure to loss on highway construction contracts. The Office of Financial Management must approve the guidelines before the Department may authorize contractors to provide surety bonds at less than the full price of a contract.

The Department must report to the Legislature by December 2012 on any activity on contracts of $250 million or more in which surety bonds at less than 100 percent of contract price were provided.

This authority expires at the end of fiscal year 2016.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill is needed in order for mega projects to go forward. This does not cause the cost to increase to contractors and it provides opportunities for people to bid on these jobs. Since the exposure to risk is not 100 percent of the contract price, this bill does not expose the Department to added risk.

OTHER: An amendment is proposed to clarify some of the wording.

Persons Testifying: PRO: Linea Laird, Bob Dyer, Washington State Department of Transportation; Duke Schaub, Association of General Contractors of Washington; Gery Stronnigan, Safeco; Amber Carter, Association of Washington Business.

OTHER: Cliff Webster, American Insurance Association.