CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5499

61st Legislature 2009 Regular Session

Passed by the Senate April 26, 2009 YEAS 38 NAYS 9	CERTIFICATE
	I, Thomas Hoemann, Secretary of the Senate of the State of Washington do hereby certify that the attached
President of the Senate	is SUBSTITUTE SENATE BILL 5499 as passed by the Senate and the House
Passed by the House April 25, 2009 YEAS 92 NAYS 2	of Representatives on the dates hereon set forth.
Speaker of the House of Representatives	Secretary
Approved	FILED
	Secretary of State State of Washington
Governor of the State of Washington	

SUBSTITUTE SENATE BILL 5499

AS AMENDED BY THE HOUSE

Passed Legislature - 2009 Regular Session

State of Washington

8 9 61st Legislature

2009 Regular Session

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
- chapter 39.08 RCW; and providing an expiration date. 3
- BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON: 4
- 5 Sec. 1. RCW 39.08.030 and 2007 c 218 s 89 are each amended to read as follows: 6
- 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 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 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, 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, shall 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:

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)

Such notice shall be signed by the person or corporation making the 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 in any suit or action brought against such surety or sureties by any such person or corporation to recover for any of the items hereinbefore specified, the claimant shall be entitled to recover in addition to all other costs, attorney's fees in such sum as the court shall adjudge reasonable: PROVIDED, HOWEVER, That no attorney's fees shall be allowed in any suit or action brought or instituted before the

- expiration of thirty days following the date of filing of the notice 1 2 hereinbefore mentioned: PROVIDED FURTHER, That any city may avail itself of the provisions of RCW 39.08.010 through 39.08.030, 3 notwithstanding any charter provisions in conflict herewith: 4 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 its proper protection in the fulfillment of the terms of the contract 7 8 secured thereby, and not in conflict herewith.
 - (2) Under the job order contracting procedure described in RCW ((39.10.130)) 39.10.420, bonds will be in an amount not less than the dollar value of all open work orders.

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- 12 (3)(a) On highway construction contracts administered by the 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 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 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 24 secretary of transportation must approve each performance bond and payment bond authorized to be less than the full contract price of a 25 26 project. Before the secretary may approve any bond authorized to be less than the full contract price of a project, the office of financial 27 management shall review and approve the analysis supporting the amount 28 of the bond set by the department to ensure that one hundred percent of 29 30 the state's exposure to loss is adequately protected. All the requirements of this chapter apply respectively to the individual 31 performance and payment bonds. The performance bond is solely for the 32 protection of the department. The payment bond is solely for the 33 protection of laborers, mechanics, subcontractors, and suppliers 34 35 mentioned in RCW 39.08.010.
 - (b) The department shall develop risk assessment guidelines and gain approval of these guidelines from the office of financial management before implementing (a) of this subsection. The guidelines

- must include a clear process for how the department measures the
 state's exposure to loss and how the performance bond amount,
 determined under (a) of this subsection, adequately protects one
 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.
- NEW SECTION. Sec. 2. A new section is added to chapter 39.08 RCW to read as follows:
 - In consultation with the director of the office of financial management and the secretary of the department of transportation, the governor shall approve any contract and bond amount authorized with respect to contracts in which the department intends to authorize bonds under RCW 39.08.030 in an amount less than the full contract price of the contract.
- 20 <u>NEW SECTION.</u> **Sec. 3.** This act expires June 30, 2016.

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