

HOUSE BILL REPORT

HB 1241

As Reported by House Committee On:
Local Government

Title: An act relating to contractor's bond.

Brief Description: Concerning contractor's bond.

Sponsors: Representatives Takko, Kochmar, Fitzgibbon, Crouse and Upthegrove.

Brief History:

Committee Activity:

Local Government: 1/29/13, 1/31/13 [DP].

Brief Summary of Bill

- Authorizes water-sewer districts, in addition to cities and towns, to fix and determine the amount of a public works contractor's surety bond and to whom the bond shall run.
- Makes several technical changes, such as removing outdated language and fixing a reference to recodified law.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass. Signed by 7 members: Representatives Takko, Chair; Fitzgibbon, Vice Chair; Kochmar, Assistant Ranking Minority Member; Buys, Liias, Springer and Upthegrove.

Minority Report: Do not pass. Signed by 1 member: Representative Taylor, Ranking Minority Member.

Staff: Michaela Murdock (786-7289).

Background:

Surety Bond Requirement for Public Works Contracts.

A surety bond is a three-way contract in which a bonding company, or surety, agrees to guarantee a public entity that a contractor will perform its obligations under a contract and

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will make all payments to laborers, mechanics, subcontractors, and material suppliers. The bond covers both performance and payment. If the contractor defaults in the performance of the contract or fails to fully pay laborers, mechanics, subcontractors, or material suppliers, the surety becomes liable to provide bond funds to complete performance of the contract and/or pay outstanding debts.

Under the law, all contractors awarded a public works contract must execute a surety bond conditioned upon faithful performance of the contract and payment to all laborers, mechanics, subcontractors, and material suppliers, it must be equal to the full contract price, and it must run to the State of Washington. In the cases of cities and towns, however, the amount of the surety bond and to whom it shall run may be fixed and determined by general ordinance. Cities and towns are authorized to fix the amount of a surety bond at not less than 25 percent of the contract price and may designate that it shall be payable to the city and not to the State of Washington.

Department of Transportation Authority to Set Bond Amounts.

In 2009 the Legislature amended the law to authorize the Department of Transportation (DOT), on highway construction contracts with an estimated contract price of \$250 million or more, to allow contractors to provide performance and payment bonds at less than 100 percent of the contract price. The amount of the performance bond may not be less than \$250 million, and the payment bond may not be in an amount less than the amount of the performance bond fixed by the DOT.

The DOT was required to report to the Legislature by December 1, 2012, on details for each project for which bonds less than the full contract price were authorized by the DOT and information relating to the effects of reduced bond amounts on a given project. The authority granted to the DOT in 2009 to allow performance and payment bonds for less than 100 percent of the full contract price is only effective until June 30, 2016, at which time it expires.

Summary of Bill:

In addition to cities and towns, water-sewer districts may, by general ordinance, fix and determine the amount of a public works contractor's surety bond and to whom it shall run. While cities and towns may fix the amount of a surety bond for not less than 25 percent of the contract price, water-sewer districts may not fix the amount of a surety bond for less than 100 percent of the contract price of an improvement. Like cities and towns, water-sewer districts may designate that a surety bond shall be payable to the district and not to the State of Washington. Unlike the authorization granted to the DOT to set bond amounts, which expires on June 30, 2016, the authorization granted to water-sewer districts under this section does not expire.

Several technical changes are made, including changing "attorney's fees" to "attorneys' fees," fixing reference to recodified law, and deleting an outdated provision requiring the DOT to report to the Legislature by December 1, 2012.

Appropriation: None.

Fiscal Note: Available.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 2 relating to performance and payment bonds, which takes effect June 30, 2016.

Staff Summary of Public Testimony:

(In support) Water-sewer districts do not currently have construction bonds payable to the district; they are payable to the State of Washington. In the event that there is a claim on a bond, the bond is paid to the state and then the state pays the district. The bill will remove this middle step.

Cities and towns are authorized to have construction bonds payable to them, and water-sewer districts are asking for the same authority.

In the rare event that a project is not finished for one reason or another, such authority will allow water-sewer districts to get their money back and finish the project.

This change should be looked at as a housekeeping matter. It makes sense that the bond should be payable to the districts. As an example, bond companies often assume that a bond should be payable to the district, rather than to the state, and point it out to districts as an error in a construction contract.

Other changes made by the bill are technical changes proposed by staff. Such changes are not objected to.

(Opposed) None.

Persons Testifying: Representative Takko, prime sponsor; Joe Daniels, Washington Association of Water and Sewer Districts; and Mike Hanis, Soos Creek Water and Sewer District.

Persons Signed In To Testify But Not Testifying: None.