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HOUSE BILL 1241

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State of Washington                      63rd Legislature                      2013 Regular Session

By Representatives Takko, Kochmar, Fitzgibbon, Crouse, and Upthegrove

Read first time 01/21/13. Referred to Committee on Local Government.

1            AN ACT Relating to contractor's bond; amending RCW 39.08.030 and  
2 39.08.030; providing an effective date; 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 2009 c 473 s 1 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, and water-  
12 sewer districts, in which cases such municipalities may by general  
13 ordinance fix and determine the amount of such bond and to whom such  
14 bond shall run: PROVIDED, The same shall not be for a less amount than  
15 twenty-five percent of the contract price of any such improvement for  
16 cities and towns, and not less than the full contract price of any such  
17 improvement for water-sewer districts, and may designate that the same  
18 shall be payable to such city, town, or water-sewer district and not to  
19 the state of Washington, and all such persons mentioned in RCW

1 39.08.010 shall have a right of action in his, her, or their own name  
2 or names on such bond for work done by such laborers or mechanics, and  
3 for materials furnished or provisions and goods supplied and furnished  
4 in the prosecution of such work, or the making of such improvements:  
5 PROVIDED, That such persons shall not have any right of action on such  
6 bond for any sum whatever, unless within thirty days from and after the  
7 completion of the contract with an acceptance of the work by the  
8 affirmative action of the board, council, commission, trustees,  
9 officer, or body acting for the state, county or municipality, or other  
10 public body, city, town or district, the laborer, mechanic or  
11 subcontractor, or material supplier, or person claiming to have  
12 supplied materials, provisions or goods for the prosecution of such  
13 work, or the making of such improvement, shall present to and file with  
14 such board, council, commission, trustees or body acting for the state,  
15 county or municipality, or other public body, city, town or district,  
16 a notice in writing in substance as follows:

17 To (here insert the name of the state, county or  
18 municipality or other public body, city, town or district):  
19 Notice is hereby given that the undersigned (here insert  
20 the name of the laborer, mechanic or subcontractor, or  
21 material supplier, or person claiming to have furnished  
22 labor, materials or provisions for or upon such contract or  
23 work) has a claim in the sum of . . . . . dollars (here insert  
24 the amount) against the bond taken from . . . . . (here insert  
25 the name of the principal and surety or sureties upon such  
26 bond) for the work of . . . . . (here insert a brief mention or  
27 description of the work concerning which said bond was  
28 taken).  
29 (here to be signed) .....

30 Such notice shall be signed by the person or corporation making the  
31 claim or giving the notice, and said notice, after being presented and  
32 filed, shall be a public record open to inspection by any person, and  
33 in any suit or action brought against such surety or sureties by any  
34 such person or corporation to recover for any of the items hereinbefore  
35 specified, the claimant shall be entitled to recover in addition to all  
36 other costs, (~~attorney's~~) attorneys' fees in such sum as the court

1 shall adjudge reasonable: PROVIDED, HOWEVER, That no (~~attorney's~~)  
2 attorneys' fees shall be allowed in any suit or action brought or  
3 instituted before the expiration of thirty days following the date of  
4 filing of the notice hereinbefore mentioned: PROVIDED FURTHER, That  
5 any city may avail itself of the provisions of RCW 39.08.010 through  
6 39.08.030, notwithstanding any charter provisions in conflict herewith:  
7 AND PROVIDED FURTHER, That any city or town may impose any other or  
8 further conditions and obligations in such bond as may be deemed  
9 necessary for its proper protection in the fulfillment of the terms of  
10 the contract secured thereby, and not in conflict herewith.

11 (2) Under the job order contracting procedure described in RCW  
12 39.10.420, bonds will be in an amount not less than the dollar value of  
13 all open work orders.

14 (3)(a) On highway construction contracts administered by the  
15 department of transportation with an estimated contract price of two  
16 hundred fifty million dollars or more, the department may authorize  
17 bonds in an amount less than the full contract price of the project.  
18 If a bond less than the full contract price is authorized by the  
19 department, the bond must be in the form of a performance bond and a  
20 separate payment bond. The department shall fix the amount of the  
21 performance bond on a contract-by-contract basis to adequately protect  
22 one hundred percent of the state's exposure to loss. The amount of the  
23 performance bond must not be less than two hundred fifty million  
24 dollars. The payment bond must be in an amount fixed by the department  
25 but must not be less than the amount of the performance bond. The  
26 secretary of transportation must approve each performance bond and  
27 payment bond authorized to be less than the full contract price of a  
28 project. Before the secretary may approve any bond authorized to be  
29 less than the full contract price of a project, the office of financial  
30 management shall review and approve the analysis supporting the amount  
31 of the bond set by the department to ensure that one hundred percent of  
32 the state's exposure to loss is adequately protected. All the  
33 requirements of this chapter apply respectively to the individual  
34 performance and payment bonds. The performance bond is solely for the  
35 protection of the department. The payment bond is solely for the  
36 protection of laborers, mechanics, subcontractors, and suppliers  
37 mentioned in RCW 39.08.010.

1 (b) The department shall develop risk assessment guidelines and  
2 gain approval of these guidelines from the office of financial  
3 management before implementing (a) of this subsection. The guidelines  
4 must include a clear process for how the department measures the  
5 state's exposure to loss and how the performance bond amount,  
6 determined under (a) of this subsection, adequately protects one  
7 hundred percent of the state's exposure to loss.

8 ~~((c) The department shall report to the house of representatives  
9 and senate transportation committees by December 1, 2012: Each project  
10 where the department authorized bonds that were less than the full  
11 contract price; the difference between the project amount and the bond  
12 requirements; the number of bidders on the project; and other  
13 information that documents the effects of the reduced bond amounts on  
14 the project.))~~

15 **Sec. 2.** RCW 39.08.030 and 2007 c 218 s 89 are each amended to read  
16 as follows:

17 (1) The bond mentioned in RCW 39.08.010 shall be in an amount equal  
18 to the full contract price agreed to be paid for such work or  
19 improvement, except under subsection (2) of this section, and shall be  
20 to the state of Washington, except as otherwise provided in RCW  
21 39.08.100, and except in cases of cities ~~((and))~~, towns, and water-  
22 sewer districts, in which cases such municipalities may by general  
23 ordinance fix and determine the amount of such bond and to whom such  
24 bond shall run: PROVIDED, The same shall not be for a less amount than  
25 twenty-five percent of the contract price of any such improvement for  
26 cities and towns, and not less than the full contract price of any such  
27 improvement for water-sewer districts, and may designate that the same  
28 shall be payable to such city, town, or water-sewer district and not to  
29 the state of Washington, and all such persons mentioned in RCW  
30 39.08.010 shall have a right of action in his, her, or their own name  
31 or names on such bond for work done by such laborers or mechanics, and  
32 for materials furnished or provisions and goods supplied and furnished  
33 in the prosecution of such work, or the making of such improvements:  
34 PROVIDED, That such persons shall not have any right of action on such  
35 bond for any sum whatever, unless within thirty days from and after the  
36 completion of the contract with an acceptance of the work by the  
37 affirmative action of the board, council, commission, trustees,

1 officer, or body acting for the state, county or municipality, or other  
2 public body, city, town or district, the laborer, mechanic or  
3 subcontractor, or material supplier, or person claiming to have  
4 supplied materials, provisions or goods for the prosecution of such  
5 work, or the making of such improvement, shall present to and file with  
6 such board, council, commission, trustees or body acting for the state,  
7 county or municipality, or other public body, city, town or district,  
8 a notice in writing in substance as follows:

9 To (here insert the name of the state, county or  
10 municipality or other public body, city, town or district):

11 Notice is hereby given that the undersigned (here insert  
12 the name of the laborer, mechanic or subcontractor, or  
13 material supplier, or person claiming to have furnished  
14 labor, materials or provisions for or upon such contract or  
15 work) has a claim in the sum of . . . . . dollars (here insert  
16 the amount) against the bond taken from . . . . . (here insert  
17 the name of the principal and surety or sureties upon such  
18 bond) for the work of . . . . . (here insert a brief mention or  
19 description of the work concerning which said bond was  
20 taken).

21 (here to be signed) .....

22 Such notice shall be signed by the person or corporation making the  
23 claim or giving the notice, and said notice, after being presented and  
24 filed, shall be a public record open to inspection by any person, and  
25 in any suit or action brought against such surety or sureties by any  
26 such person or corporation to recover for any of the items hereinbefore  
27 specified, the claimant shall be entitled to recover in addition to all  
28 other costs, (~~attorney's~~) attorneys' fees in such sum as the court  
29 shall adjudge reasonable: PROVIDED, HOWEVER, That no (~~attorney's~~)  
30 attorneys' fees shall be allowed in any suit or action brought or  
31 instituted before the expiration of thirty days following the date of  
32 filing of the notice hereinbefore mentioned: PROVIDED FURTHER, That  
33 any city may avail itself of the provisions of RCW 39.08.010 through  
34 39.08.030, notwithstanding any charter provisions in conflict herewith:  
35 AND PROVIDED FURTHER, That any city or town may impose any other or

1 further conditions and obligations in such bond as may be deemed  
2 necessary for its proper protection in the fulfillment of the terms of  
3 the contract secured thereby, and not in conflict herewith.

4 (2) Under the job order contracting procedure described in RCW  
5 (~~39.10.130~~) 39.10.420, bonds will be in an amount not less than the  
6 dollar value of all open work orders.

7 NEW SECTION. **Sec. 3.** Section 1 of this act expires June 30, 2016.

8 NEW SECTION. **Sec. 4.** Section 2 of this act takes effect June 30,  
9 2016.

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