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HOUSE BILL 2317

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State of Washington                      65th Legislature                      2018 Regular Session

By Representatives Appleton, Muri, Fey, and Fitzgibbon

Prefiled 12/22/17.

1            AN ACT Relating to contractor bonding requirements for public  
2 transportation benefit areas and passenger-only ferry service  
3 districts; amending RCW 39.08.100; and reenacting and amending RCW  
4 39.08.030.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            **Sec. 1.** RCW 39.08.030 and 2013 c 113 s 4 and 2013 c 28 s 2 are  
7 each reenacted and amended to read as follows:

8            (1)(a) The bond mentioned in RCW 39.08.010 must be in an amount  
9 equal to the full contract price agreed to be paid for such work or  
10 improvement, except under subsection (2) of this section, and must be  
11 to the state of Washington, except as otherwise provided in RCW  
12 39.08.100, and except in cases of cities, towns, public  
13 transportation benefit areas, passenger-only ferry service districts,  
14 and water-sewer districts, in which cases such municipalities may by  
15 general ordinance fix and determine the amount of such bond and to  
16 whom such bond runs. However, the same may not be for a less amount  
17 than twenty-five percent of the contract price of any such  
18 improvement for cities ~~((and))~~, towns, public transportation benefit  
19 areas, and passenger-only ferry service districts, and not less than  
20 the full contract price of any such improvement for water-sewer  
21 districts, and may designate that the same must be payable to such

1 city, town, ((~~or~~)) water-sewer district, public transportation  
2 benefit area, or passenger-only ferry service district, and not to  
3 the state of Washington, and all such persons mentioned in RCW  
4 39.08.010 have a right of action in his, her, or their own name or  
5 names on such bond for work done by such laborers or mechanics, and  
6 for materials furnished or provisions and goods supplied and  
7 furnished in the prosecution of such work, or the making of such  
8 improvements, and the state has a right of action for the collection  
9 of taxes, increases, and penalties specified in RCW 39.08.010:  
10 PROVIDED, That, except for the state with respect to claims for  
11 taxes, increases, and penalties specified in RCW 39.08.010, such  
12 persons do not have any right of action on such bond for any sum  
13 whatever, unless within thirty days from and after the completion of  
14 the contract with an acceptance of the work by the affirmative action  
15 of the board, council, commission, trustees, officer, or body acting  
16 for the state, county or municipality, or other public body, city,  
17 town or district, the laborer, mechanic or subcontractor, or material  
18 supplier, or person claiming to have supplied materials, provisions  
19 or goods for the prosecution of such work, or the making of such  
20 improvement, must present to and file with such board, council,  
21 commission, trustees or body acting for the state, county or  
22 municipality, or other public body, city, town or district, a notice  
23 in writing in substance as follows:

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

26 Notice is hereby given that the undersigned (here  
27 insert the name of the laborer, mechanic or  
28 subcontractor, or material supplier, or person claiming to  
29 have furnished labor, materials or provisions for or upon  
30 such contract or work) has a claim in the sum of . . . . .  
31 dollars (here insert the amount) against the bond taken  
32 from . . . . . (here insert the name of the principal and  
33 surety or sureties upon such bond) for the work of . . . . .  
34 (here insert a brief mention or description of the work  
35 concerning which said bond was taken).

36 (here to be signed) .....

37 (b) Such notice must be signed by the person or corporation  
38 making the claim or giving the notice, and the notice, after being

1 presented and filed, is a public record open to inspection by any  
2 person, and in any suit or action brought against such surety or  
3 sureties by any such person or corporation to recover for any of the  
4 items specified in this section, the claimant is entitled to recover  
5 in addition to all other costs, attorneys' fees in such sum as the  
6 court adjudges reasonable. However, attorneys' fees are not allowed  
7 in any suit or action brought or instituted before the expiration of  
8 thirty days following the date of filing of the notice as provided in  
9 this section. However, any city may avail itself of the provisions of  
10 RCW 39.08.010 through 39.08.030, notwithstanding any charter  
11 provisions in conflict with this section. Moreover, any city or town  
12 may impose any other or further conditions and obligations in such  
13 bond as may be deemed necessary for its proper protection in the  
14 fulfillment of the terms of the contract secured thereby, and not in  
15 conflict with this section. The thirty-day notice requirement under  
16 this subsection does not apply to claims made by the state for taxes,  
17 increases, and penalties specified in RCW 39.08.010.

18 (2) Under the job order contracting procedure described in RCW  
19 39.10.420, bonds will be in an amount not less than the dollar value  
20 of all open work orders.

21 (3) Where retainage is not withheld pursuant to RCW  
22 60.28.011(1)(b), upon final acceptance of the public works project,  
23 the state, county, municipality, or other public body must within  
24 thirty days notify the department of revenue, the employment security  
25 department, and the department of labor and industries of the  
26 completion of contracts over thirty-five thousand dollars.

27 **Sec. 2.** RCW 39.08.100 and 2005 c 101 s 1 are each amended to  
28 read as follows:

29 On contracts for construction, maintenance, or repair of a marine  
30 vessel, the department of transportation, a public transportation  
31 benefit area, a passenger-only ferry service district, or any county  
32 may permit, subject to specified format and conditions, the  
33 substitution of one or more of the following alternate forms of  
34 security in lieu of all or part of the bond: Certified check,  
35 replacement bond, cashier's check, treasury bills, an irrevocable  
36 bank letter of credit, assignment of a savings account, or other  
37 liquid assets specifically approved by the secretary of  
38 transportation or county engineer, for their respective projects. The  
39 secretary of transportation or county engineer, or equivalent for a

1 public transportation benefit area or passenger-only ferry service  
2 district, respectively, shall predetermine and include in the special  
3 provisions of the bid package the amount of this alternative form of  
4 security or bond, or a combination of the two, on a case-by-case  
5 basis, in an amount adequate to protect one hundred percent of the  
6 state's or county's exposure to loss. Assets used as an alternative  
7 form of security shall not be used to secure the bond. By October 1,  
8 1989, the department shall develop and adopt rules under chapter  
9 34.05 RCW that establish the procedures for determining the state's  
10 exposure to loss on contracts for construction, maintenance, or  
11 repair of a marine vessel. Prior to awarding any contract limiting  
12 security to the county's, public transportation benefit area's, or  
13 passenger-only ferry service district's exposure to loss, ((a  
14 ~~county~~)) the governing board of the county or agency shall develop  
15 and adopt an ordinance that establishes the procedure for determining  
16 the county's or agency's exposure to loss on contracts for  
17 construction, maintenance, or repair of a marine vessel.

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