

# SENATE BILL REPORT

## SB 5663

---

---

As Reported by Senate Committee On:  
Labor, Commerce & Consumer Protection, February 21, 2011

**Title:** An act relating to concurrent jurisdiction of state and federal courts over certain actions under chapters 39.08 and 60.28 RCW, including actions involving delinquent contributions to benefit plans

**Brief Description:** Regarding concurrent jurisdiction of state and federal courts over actions brought against sureties and actions to foreclose liens, including actions involving claims for delinquent contributions to benefit plans.

**Sponsors:** Senators Harper, Roach, Conway and Kline.

**Brief History:**

**Committee Activity:** Labor, Commerce & Consumer Protection: 2/17/11, 2/21/11 [DP, DNP].

---

### SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

**Majority Report:** Do pass.

Signed by Senators Kohl-Welles, Chair; Conway, Vice Chair; Keiser and Kline.

**Minority Report:** Do not pass.

Signed by Senators Holmquist Newbry, Ranking Minority Member; King, Assistant Ranking Minority Member; Hewitt.

**Staff:** Mac Nicholson (786-7445)

**Background:** A contractor working on a public works project must obtain a performance and payment bond with a surety company and file it with the public agency contracting for the project. The performance and payment bond is to be conditioned that the contractor must faithfully perform all the provisions of such contract and pay all laborers, mechanics, subcontractors, material suppliers, and all persons who supply such persons, or subcontractors, with provisions and supplies for the carrying on of the work. Anyone who has a claim against the bond must file a claim within 30 days from and after the completion of the contract with an acceptance of the work by the affirmative action of the public owner.

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

State law also requires public agencies to withhold 5 percent of money due the contractor for a public improvement or work until completion and/or acceptance of the contract. This is known as retainage, and retainage money is to be set aside as a trust fund for the protection and payment of anyone who performs labor; provides materials, supplies, or equipment; or subcontracts to the prime contractor. Anyone who performs labor; provides materials, supplies, or equipment; or subcontracts to the prime contractor must file a notice of lien against retainage within 45 days of the completion of all contract work. After completion of all contract work, the contractor may request that the public agency release the retainage. The agency is to release these funds within 60 days of this request.

**Summary of Bill:** State and federal courts have concurrent jurisdiction over any suit or action brought against the surety or sureties of the performance and payment bond to recover for work done or materials furnished, including any suit or action involving a claim for delinquent contributions to a benefit plan.

State and federal courts have concurrent jurisdiction over an action to foreclose a lien on retainage, including an action involving a claim for delinquent contributions to a benefit plan.

**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 will help members get benefits they need and help benefit trust funds. A Washington court decision in 2000 essentially gutted some worker protections and prevented suits from employee benefit trust funds in state court. Federal courts have jurisdiction, but state courts do not; so a suit under the federal court jurisdiction requirement can't bring suit, so the trust fund is out the money but still needs to provide benefits. Contractors in financial trouble will stop paying employee benefits, and they do this before they stop paying wages; so, this bill makes it possible for the trust funds to collect from delinquent employers.

CON: This is a complex issue and the solutions to the problems are available; the trusts have chosen to not implement them. The state Supreme Court has ruled that in these matters federal law preempts state law, making federal courts the proper venue. This bill is a legislative attempt to determine the winner. The bill is also unfair to general contractors, who have no way to protect themselves against subcontractors who fail to make payments to trusts. The bill also makes a federal case out of state matters.

OTHER: There are some concerns, but a little more time is needed to get input.

**Persons Testifying:** PRO: Chad Smith and David Tuttle, International Union of Painter and Allied Trades; Nicole Grant, Certified Electrical Workers of Washington.

CON: Rick Slunaker, Associated General Contractors.

OTHER: Larry Stevens, Mechanical and Electrical Contractors.