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SENATE BILL 5663

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Harper, Roach, Conway, and Kline

Read first time 02/03/11. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to concurrent jurisdiction of state and federal  
2 courts over certain actions under chapters 39.08 and 60.28 RCW,  
3 including actions involving delinquent contributions to benefit plans;  
4 amending RCW 39.08.030, 39.08.030, and 60.28.030; providing an  
5 effective date; and providing an expiration date.

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

7 **Sec. 1.** RCW 39.08.030 and 2009 c 473 s 1 are each amended to read  
8 as follows:

9 (1)(a) The bond mentioned in RCW 39.08.010 shall be in an amount  
10 equal to the full contract price agreed to be paid for such work or  
11 improvement, except under subsections (2) and (3) of this section, and  
12 shall be to the state of Washington, except as otherwise provided in  
13 RCW 39.08.100, and except in cases of cities and towns, in which cases  
14 such municipalities may by general ordinance fix and determine the  
15 amount of such bond and to whom such bond shall run(~~(+—PROVIDED,)~~).  
16 However, the same shall not be for a less amount than twenty-five  
17 percent of the contract price of any such improvement, and may  
18 designate that the same shall be payable to such city, and not to the  
19 state of Washington(~~(, and)~~).



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

14 (d) The state courts and the federal courts shall have concurrent  
15 jurisdiction over any suit or action brought against such surety or  
16 sureties by any such person or corporation to recover for any of the  
17 items specified in (b) of this subsection, including any suit or action  
18 involving a claim for delinquent contributions to a benefit plan.

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

22 (3)(a) On highway construction contracts administered by the  
23 department of transportation with an estimated contract price of two  
24 hundred fifty million dollars or more, the department may authorize  
25 bonds in an amount less than the full contract price of the project.  
26 If a bond less than the full contract price is authorized by the  
27 department, the bond must be in the form of a performance bond and a  
28 separate payment bond. The department shall fix the amount of the  
29 performance bond on a contract-by-contract basis to adequately protect  
30 one hundred percent of the state's exposure to loss. The amount of the  
31 performance bond must not be less than two hundred fifty million  
32 dollars. The payment bond must be in an amount fixed by the department  
33 but must not be less than the amount of the performance bond. The  
34 secretary of transportation must approve each performance bond and  
35 payment bond authorized to be less than the full contract price of a  
36 project. Before the secretary may approve any bond authorized to be  
37 less than the full contract price of a project, the office of financial  
38 management shall review and approve the analysis supporting the amount

1 of the bond set by the department to ensure that one hundred percent of  
2 the state's exposure to loss is adequately protected. All the  
3 requirements of this chapter apply respectively to the individual  
4 performance and payment bonds. The performance bond is solely for the  
5 protection of the department. The payment bond is solely for the  
6 protection of laborers, mechanics, subcontractors, and suppliers  
7 mentioned in RCW 39.08.010.

8 (b) The department shall develop risk assessment guidelines and  
9 gain approval of these guidelines from the office of financial  
10 management before implementing (a) of this subsection. The guidelines  
11 must include a clear process for how the department measures the  
12 state's exposure to loss and how the performance bond amount,  
13 determined under (a) of this subsection, adequately protects one  
14 hundred percent of the state's exposure to loss.

15 (c) The department shall report to the house of representatives and  
16 senate transportation committees by December 1, 2012: Each project  
17 where the department authorized bonds that were less than the full  
18 contract price; the difference between the project amount and the bond  
19 requirements; the number of bidders on the project; and other  
20 information that documents the effects of the reduced bond amounts on  
21 the project.

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

24 (1)(a) The bond mentioned in RCW 39.08.010 shall be in an amount  
25 equal to the full contract price agreed to be paid for such work or  
26 improvement, except under subsection (2) of this section, and shall be  
27 to the state of Washington, except as otherwise provided in RCW  
28 39.08.100, and except in cases of cities and towns, in which cases such  
29 municipalities may by general ordinance fix and determine the amount of  
30 such bond and to whom such bond shall run(~~(:—PROVIDED,)~~). However,  
31 the same shall not be for a less amount than twenty-five percent of the  
32 contract price of any such improvement, and may designate that the same  
33 shall be payable to such city, and not to the state of Washington(~~(-~~  
34 and)).

35 (b) All such persons mentioned in RCW 39.08.010 shall have a right  
36 of action in his, her, or their own name or names on such bond for work  
37 done by such laborers or mechanics, and for materials furnished or



1 suit or action brought or instituted before the expiration of thirty  
2 days following the date of filing of the notice hereinbefore  
3 mentioned(~~(:—PROVIDED FURTHER, That)~~). Furthermore, any city may  
4 avail itself of the provisions of RCW 39.08.010 through 39.08.030,  
5 notwithstanding any charter provisions in conflict herewith(~~(:—AND~~  
6 ~~PROVIDED FURTHER, That)~~), and any city or town may impose any other or  
7 further conditions and obligations in such bond as may be deemed  
8 necessary for its proper protection in the fulfillment of the terms of  
9 the contract secured thereby, and not in conflict herewith.

10 (d) The state courts and the federal courts shall have concurrent  
11 jurisdiction over any suit or action brought against such surety or  
12 sureties by any such person or corporation to recover for any of the  
13 items specified in (b) of this subsection, including any suit or action  
14 involving a claim for delinquent contributions to a benefit plan.

15 (2) Under the job order contracting procedure described in RCW  
16 (~~(39.10.130)~~) 39.10.420, bonds will be in an amount not less than the  
17 dollar value of all open work orders.

18 **Sec. 3.** RCW 60.28.030 and 1979 ex.s. c 38 s 1 are each amended to  
19 read as follows:

20 (1) Any person, firm, or corporation filing a claim against the  
21 reserve fund shall have four months from the time of the filing thereof  
22 in which to bring an action to foreclose the lien. The lien shall be  
23 enforced by action in the superior court of the county where filed, and  
24 shall be governed by the laws regulating the proceedings in civil  
25 actions touching the mode and manner of trial and the proceedings and  
26 laws to secure property so as to hold it for the satisfaction of any  
27 lien against it(~~(:—PROVIDED, That)~~). The state courts and the federal  
28 courts shall have concurrent jurisdiction over an action to foreclose  
29 the lien, including an action involving a claim for delinquent  
30 contributions to a benefit plan.

31 (2) The public body shall not be required to make any detailed  
32 answer to any complaint or other pleading but need only certify to the  
33 court: The name of the contractor; the work contracted to be done; the  
34 date of the contract; the date of completion and final acceptance of  
35 the work; the amount retained; the amount of taxes certified due or to  
36 become due to the state; and all claims filed with it showing  
37 respectively the dates of filing, the names of claimants, and amounts

1 claimed. Such certification shall operate to arrest payment of so much  
2 of the funds retained as is required to discharge the taxes certified  
3 due or to become due and the claims filed in accordance with this  
4 chapter.

5 (3) In any action brought to enforce the lien, the claimant, if he  
6 prevails, is entitled to recover, in addition to all other costs,  
7 attorney fees in such sum as the court finds reasonable.

8 (4) If a claimant fails to bring action to foreclose his lien  
9 within the four months period, the reserve fund shall be discharged  
10 from the lien of his claim and the funds shall be paid to the  
11 contractor. The four months limitation shall not, however, be  
12 construed as a limitation upon the right to sue the contractor or his  
13 surety where no right of foreclosure is sought against the fund.

14 NEW SECTION. **Sec. 4.** Section 1 of this act expires June 30, 2016.

15 NEW SECTION. **Sec. 5.** Section 2 of this act takes effect June 30,  
16 2016.

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