

# SENATE BILL REPORT

## SB 6110

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As of February 3, 2014

**Title:** An act relating to retainage bonds on public contracts.

**Brief Description:** Regulating retainage bonds on public contracts.

**Sponsors:** Senators Ericksen and Hobbs.

**Brief History:**

**Committee Activity:** Financial Institutions, Housing & Insurance: 1/30/14.

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### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

**Staff:** Edward Redmond (786-7471)

**Background:** A surety bond is a promise to pay one party a certain amount if a second party fails to meet some obligation, such as fulfilling the terms of a contract. A surety bond consists of an agreement between at least three parties: the obligee, the party who is the recipient of the obligation, e.g. a project owner; the principal, the primary party who will perform the contractual obligation, e.g. a general contractor; and the surety, the bonding company that assures the obligee that the principal can perform the task, e.g. an insurance company. The principal will pay a premium in exchange for the bonding company's financial strength to extend surety credit. In the event of a claim, the surety will investigate it. If it turns out to be a valid claim, the surety will pay the obligee and then turn to the principal for reimbursement including any legal fees incurred.

There are various subtypes of surety bonds issued in Washington State, including fiduciary bonds, judiciary bonds, and retainage bonds. Retainage bonds are a type of performance bond that protect the obligee after a job or project is complete. It guarantees that the principal will carry out all necessary work to correct structural and/or other defects discovered immediately after completion of the contract, even if full payment has been made to the principal.

The Office of Insurance Commissioner is responsible for overseeing the regulation of surety insurance. Under current law, a surety bond must be approved and accepted by a court, public official, or public body if it is otherwise proper and guaranteed by an authorized surety insurer, or unauthorized surety insurer as a surplus line as set forth in statute.

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*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.*

**Summary of Bill:** The statutory requirement to approve a surety bond which is otherwise proper and guaranteed by an authorized surety insurer is amended and made applicable to all surety bonds issued in the state. This provision supersedes any contrary state statute, law, or public body ordinance.

**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: One public body put in place a financial qualification test for writers of retainage bonds. Due to an ambiguity in statute, there was some leeway for junior taxing districts to institute financial tests for insurers. Although Liberty Mutual is the largest writer of performance bonds, our \$28,000 retainage bond was disallowed. We tried to work it out over the course of three years, but the issue was not resolved. The bill will have the effect of allowing a greater selection of bond writers to be available to public owners in Washington State. The availability of a retainage bond really does make a difference to contractors. Since 5 percent retainage can be withheld until the completion of the project, this could translate to a substantial portion or all of the funds for the overhead costs being withheld.

OTHER: The Washington Public Ports Association appreciates the concerns that the insurers have raised; however, this bill may go a little too far as it is currently drafted. Currently a public owner can define an acceptable form of bond and is allowed to set standards so that the bonding company has to meet those in order for the bond to be accepted in lieu of the retainage. This bill would eliminate a public body's ability to set any standards. Public bodies should have a minimum amount of standards to be able to ensure that they are not carrying too much risk. An amendment is currently being worked on with the proponents of the bill to address these concerns.

**Persons Testifying:** PRO: Gary Strannigan, Jamie Ziegler, Liberty Mutual Insurance; Mel Sorenson, Property Casualty Insurers Assn. of America; Gary Smith, Independent Business Assn.; Van Collins, Associated General Contractors.

OTHER: Ginger Eagle, WA Public Port Assn.