## SENATE BILL 5663

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.

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; amending RCW 39.08.030, 39.08.030, and 60.28.030; providing an 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 equal to the full contract price agreed to be paid for such work or 10 improvement, except under subsections (2) and (3) of this section, and 11 12 shall be to the state of Washington, except as otherwise provided in RCW 39.08.100, and except in cases of cities and towns, in which cases 13 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 percent of the contract price of any such improvement, and may 17 18 designate that the same shall be payable to such city, and not to the 19 state of Washington((, and)).

(b) All such persons mentioned in RCW 39.08.010 shall have a right 1 2 of action in his, her, or their own name or names on such bond for work done by such laborers or mechanics, and for materials furnished or 3 provisions and goods supplied and furnished in the prosecution of such 4 work, or the making of such improvements((: PROVIDED, That)). 5 However, such persons shall not have any right of action on such bond 6 7 for any sum whatever, unless within thirty days from and after the 8 completion of the contract with an acceptance of the work by the 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 12 subcontractor, or material supplier, or person claiming to have 13 supplied materials, provisions or goods for the prosecution of such 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 17 a notice in writing in substance as follows:

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

Such notice shall be signed by the person or corporation making the claim or giving the notice, and said notice, after being presented and filed, shall be a public record open to inspection by any person((-34 and)).

35 <u>(c) In any suit or action brought against such surety or sureties</u> 36 by any such person or corporation to recover for any of the items

((hereinbefore)) specified in (b) of this subsection, the claimant 1 2 shall be entitled to recover in addition to all other costs, attorney's fees in such sum as the court shall adjudge reasonable( $(\div PROVIDED,$ 3 HOWEVER, That)). However, no attorney's fees shall be allowed in any 4 suit or action brought or instituted before the expiration of thirty 5 days following the date of filing of the notice hereinbefore 6 mentioned((: PROVIDED FURTHER, That)). Furthermore, any city may 7 avail itself of the provisions of RCW 39.08.010 through 39.08.030, 8 9 notwithstanding any charter provisions in conflict herewith((+ AND PROVIDED FURTHER, That)), and any city or town may impose any other or 10 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 delinguent 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 bonds in an amount less than the full contract price of the project. 25 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 performance bond must not be less than two hundred fifty million 31 32 dollars. The payment bond must be in an amount fixed by the department but must not be less than the amount of the performance bond. 33 The secretary of transportation must approve each performance bond and 34 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

of the bond set by the department to ensure that one hundred percent of the state's exposure to loss is adequately protected. All the requirements of this chapter apply respectively to the individual performance and payment bonds. The performance bond is solely for the protection of the department. The payment bond is solely for the protection of laborers, mechanics, subcontractors, and suppliers 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:

(1)(a) The bond mentioned in RCW 39.08.010 shall be in an amount 24 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 to the state of Washington, except as otherwise provided in RCW 27 39.08.100, and except in cases of cities and towns, in which cases such 28 29 municipalities may by general ordinance fix and determine the amount of such bond and to whom such bond shall run((: PROVIDED,)). However, 30 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

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

15 To (here insert the name of the state, county or 16 municipality or other public body, city, town or district): 17 Notice is hereby given that the undersigned (here insert 18 the name of the laborer, mechanic or subcontractor, or 19 material supplier, or person claiming to have furnished 20 labor, materials or provisions for or upon such contract or 21 work) has a claim in the sum of ..... dollars (here insert 22 the amount) against the bond taken from ..... (here insert 23 the name of the principal and surety or sureties upon such bond) for the work of ..... (here insert a brief mention or 24 25 description of the work concerning which said bond was 26 taken).

27

(here to be signed) .....

Such notice shall be signed by the person or corporation making the claim or giving the notice, and said notice, after being presented and filed, shall be a public record open to inspection by any person((-31 and)).

32 (c) In any suit or action brought against such surety or sureties 33 by any such person or corporation to recover for any of the items 34 ((hereinbefore)) specified in (b) of this subsection, the claimant 35 shall be entitled to recover in addition to all other costs, attorney's 36 fees in such sum as the court shall adjudge reasonable((÷ PROVIDED, 37 HOWEVER, That)). However, no attorney's fees shall be allowed in any

suit or action brought or instituted before the expiration of thirty 1 2 days following the date of filing of the notice hereinbefore mentioned((+ PROVIDED FURTHER, That)). Furthermore, any city may 3 avail itself of the provisions of RCW 39.08.010 through 39.08.030, 4 notwithstanding any charter provisions in conflict herewith((+ AND 5 PROVIDED FURTHER, That)), and any city or town may impose any other or 6 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 delinguent contributions to a benefit plan.

(2) Under the job order contracting procedure described in RCW
 ((39.10.130)) 39.10.420, bonds will be in an amount not less than the
 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 laws to secure property so as to hold it for the satisfaction of any 26 lien against it((: PROVIDED, That)). The state courts and the federal 27 courts shall have concurrent jurisdiction over an action to foreclose 28 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

р. б

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 <u>NEW SECTION.</u> Sec. 4. Section 1 of this act expires June 30, 2016.

15 <u>NEW SECTION.</u> Sec. 5. Section 2 of this act takes effect June 30, 16 2016.

--- END ---