

By Senator Constantine

9-854-01

1 A bill to be entitled
2 An act relating to surety bonds; amending ss.
3 235.32, 255.05, F.S.; prohibiting public
4 entities from directing that contractors
5 building public facilities obtain surety bonds
6 from a specific agent or bonding company;
7 providing an effective date.

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9 Be It Enacted by the Legislature of the State of Florida:

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11 Section 1. Section 235.32, Florida Statutes, is
12 amended to read:
13 235.32 Substance of contract; contractors to give
14 bond; penalties.--Each board shall develop contracts
15 consistent with this chapter and statutes governing public
16 facilities. Such a contract must contain the drawings and
17 specifications of the work to be done and the material to be
18 furnished, the time limit in which the construction is to be
19 completed, the time and method by which payments are to be
20 made upon the contract, and the penalty to be paid by the
21 contractor for any failure to comply with the terms of the
22 contract. The board may require the contractor to pay a
23 penalty for any failure to comply with the terms of the
24 contract and may provide an incentive for early completion.
25 Upon accepting a satisfactory bid, the board shall enter into
26 a contract with the party or parties whose bid has been
27 accepted. The contractor shall furnish the board with a
28 performance and payment bond as set forth in s. 255.05. A
29 board or other public entity may not require a contractor to
30 secure a surety bond under s. 255.05 from a specific agent or
31 bonding company.Notwithstanding any other provision of this

1 section, if 25 percent or more of the costs of any
2 construction project is paid out of a trust fund established
3 pursuant to 31 U.S.C. s. 1243(a)(1), laborers and mechanics
4 employed by contractors or subcontractors on such construction
5 will be paid wages not less than those prevailing on similar
6 construction projects in the locality, as determined by the
7 Secretary of Labor in accordance with the Davis-Bacon Act, as
8 amended. A person, firm, or corporation that constructs any
9 part of any educational plant, or addition thereto, on the
10 basis of any unapproved plans or in violation of any plans
11 approved in accordance with the provisions of this chapter and
12 rules of the Commissioner of Education relating to building
13 standards or specifications is subject to forfeiture of bond
14 and unpaid compensation in an amount sufficient to reimburse
15 the board for any costs that will need to be incurred in
16 making any changes necessary to assure that all requirements
17 are met and is also guilty of a misdemeanor of the second
18 degree, punishable as provided in s. 775.082 or s. 775.083,
19 for each separate violation.

20 Section 2. Subsection (1) of section 255.05, Florida
21 Statutes, is amended to read:

22 255.05 Bond of contractor constructing public
23 buildings; form; action by materialmen.--

24 (1)(a) Any person entering into a formal contract with
25 the state or any county, city, or political subdivision
26 thereof, or other public authority, for the construction of a
27 public building, for the prosecution and completion of a
28 public work, or for repairs upon a public building or public
29 work shall be required, before commencing the work or before
30 recommencing the work after a default or abandonment, to
31 execute, deliver to the public owner, and record in the public

1 records of the county where the improvement is located, a
2 payment and performance bond with a surety insurer authorized
3 to do business in this state as surety. A public entity may
4 not require a contractor to secure a surety bond under this
5 section from a specific agent or bonding company.The bond
6 must state on its front page: the name, principal business
7 address, and phone number of the contractor, the surety, the
8 owner of the property being improved, and, if different from
9 the owner, the contracting public entity; the contract number
10 assigned by the contracting public entity; and a description
11 of the project sufficient to identify it, including, if
12 applicable, a legal description and the street address of the
13 property being improved, and a general description of the
14 improvement. Such bond shall be conditioned that the
15 contractor perform the contract in the time and manner
16 prescribed in the contract and promptly make payments to all
17 persons defined in s. 713.01 whose claims derive directly or
18 indirectly from the prosecution of the work provided for in
19 the contract. Any claimant may apply to the governmental
20 entity having charge of the work for copies of the contract
21 and bond and shall thereupon be furnished with a certified
22 copy of the contract and bond. The claimant shall have a right
23 of action against the contractor and surety for the amount due
24 him or her, including unpaid finance charges due under the
25 claimant's contract. Such action shall not involve the public
26 authority in any expense. When such work is done for the
27 state and the contract is for \$100,000 or less, no payment and
28 performance bond shall be required. At the discretion of the
29 official or board awarding such contract when such work is
30 done for any county, city, political subdivision, or public
31 authority, any person entering into such a contract which is

1 for \$200,000 or less may be exempted from executing the
2 payment and performance bond. When such work is done for the
3 state, the Secretary of the Department of Management Services
4 may delegate to state agencies the authority to exempt any
5 person entering into such a contract amounting to more than
6 \$100,000 but less than \$200,000 from executing the payment and
7 performance bond. In the event such exemption is granted, the
8 officer or officials shall not be personally liable to persons
9 suffering loss because of granting such exemption. The
10 Department of Management Services shall maintain information
11 on the number of requests by state agencies for delegation of
12 authority to waive the bond requirements by agency and project
13 number and whether any request for delegation was denied and
14 the justification for the denial.

15 (b) The Department of Management Services shall adopt
16 rules with respect to all contracts for \$200,000 or less, to
17 provide:

18 1. Procedures for retaining up to 10 percent of each
19 request for payment submitted by a contractor and procedures
20 for determining disbursements from the amount retained on a
21 pro rata basis to laborers, materialmen, and subcontractors,
22 as defined in s. 713.01.

23 2. Procedures for requiring certification from
24 laborers, materialmen, and subcontractors, as defined in s.
25 713.01, prior to final payment to the contractor that such
26 laborers, materialmen, and subcontractors have no claims
27 against the contractor resulting from the completion of the
28 work provided for in the contract.

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1 The state shall not be held liable to any laborer,
2 materialman, or subcontractor for any amounts greater than the
3 pro rata share as determined under this section.

4 Section 3. This act shall take effect upon becoming a
5 law.

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8 SENATE SUMMARY

9 Prohibits school boards and other public entities from
10 directing that contractors building public facilities
11 obtain surety bonds from a specific agent or bonding
12 company.

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