

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

An act relating to surety bonds; amending ss.  
235.32, 255.05, F.S.; prohibiting public  
entities from directing that contractors  
building public facilities obtain surety bonds  
from a specific agent or bonding company;  
providing an effective date.

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

Section 1. Section 235.32, Florida Statutes, is  
amended to read:

235.32 Substance of contract; contractors to give  
bond; penalties.--Each board shall develop contracts  
consistent with this chapter and statutes governing public  
facilities. Such a contract must contain the drawings and  
specifications of the work to be done and the material to be  
furnished, the time limit in which the construction is to be  
completed, the time and method by which payments are to be  
made upon the contract, and the penalty to be paid by the  
contractor for any failure to comply with the terms of the  
contract. The board may require the contractor to pay a  
penalty for any failure to comply with the terms of the  
contract and may provide an incentive for early completion.  
Upon accepting a satisfactory bid, the board shall enter into  
a contract with the party or parties whose bid has been  
accepted. The contractor shall furnish the board with a  
performance and payment bond as set forth in s. 255.05. A  
board or other public entity may not require a contractor to  
secure a surety bond under s. 255.05 from a specific agent or  
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.

29  
30  
31

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.

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31