

By the Council for Smarter Government and Committee on
Judicial Oversight and Representative Smith

1 A bill to be entitled
2 An act relating to sureties; amending s.
3 199.185, F.S.; exempting mortgages and liens
4 recorded to secure performance of an indemnitor
5 to a surety from the intangible personal
6 property tax and the excise tax on documents at
7 time of recording; providing that those taxes
8 become due upon exercise of rights under the
9 mortgage or lien; providing that failure to pay
10 those taxes when due is a first degree
11 misdemeanor; amending s. 210.08, F.S.;
12 providing methods other than a bond for
13 dealers, agents, or distributing agents to
14 guarantee tax payment to the Division of
15 Alcoholic Beverages and Tobacco of the
16 Department of Business and Professional
17 Regulation; amending s. 255.05, F.S.; requiring
18 public construction bonds to be similar to the
19 statutory form; amending s. 713.24, F.S.;
20 providing that sureties have no liability in
21 excess of a lien transfer bond; providing an
22 exception; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Subsection (9) is added to section 199.185,
27 Florida Statutes, to read:

28 199.185 Property exempted from annual and
29 non-recurring taxes.--

30 (9)(a) Mortgages and liens recorded to secure the
31 performance of an indemnitor to a surety by insurance

1 companies licensed in the State of Florida that issue surety
2 are exempt from chapters 199 and 201 at the time of recording
3 the mortgage or lien. The clerk of the court shall accept such
4 recordings at the time of submittal and such mortgage or lien
5 shall have a priority as of the date of recording over any
6 subsequent filings by other parties notwithstanding that the
7 enforcement of the recorded mortgage or lien on the indemnity
8 may come subsequent to the later recording and any action
9 against the indemnitor affecting said mortgage or lien shall
10 provide notice to the insurance company.

11 (b) Upon exercise of the rights under the mortgage or
12 lien, all applicable taxes due pursuant to chapter 199 or
13 chapter 201 shall become due and payable as if the mortgage or
14 lien were initially executed and recorded without this
15 exemption.

16 (c) Failure to pay tax at time of exercise shall not
17 affect the mortgage or lien, but any person who fails or
18 refuses to pay tax due by him or her under this subsection
19 commits a misdemeanor of the first degree.

20 Section 2. Section 210.08, Florida Statutes, is
21 amended to read:

22 210.08 Bond for payment of taxes.--Each dealer, agent,
23 or distributing agent shall file with the division a surety
24 bond, irrevocable letter of credit, or evidence of a
25 certificate of deposit acceptable to the division in the sum
26 of \$10,000 as surety for the payment of all taxes; provided,
27 however, that where in the discretion of the division the
28 amount of business done by the dealer, agent, or distributing
29 agent is of such volume that a bond of less than \$10,000 will
30 be adequate to secure the payment of all taxes assessed as
31 authorized by the cigarette tax law, the division may accept a

1 bond in a lesser sum than \$10,000, but in no event shall it
2 accept a bond, certificate of deposit, or letter of credit of
3 less than \$1,000, and it may at any time in its discretion
4 require any bond in an amount less than \$10,000 to be
5 increased not to exceed \$10,000.

6 Section 3. Subsection (3) of section 255.05, Florida
7 Statutes, is amended to read:

8 255.05 Bond of contractor constructing public
9 buildings; form; action by materialmen.--

10 (3) The bond required in subsection (1) shall ~~may~~ be
11 in substantially the following form:

12
13 PUBLIC CONSTRUCTION BOND

14
15 BY THIS BOND, We, as Principal and, a
16 corporation, as Surety, are bound to, herein called
17 Owner, in the sum of \$. . . ., for payment of which we bind
18 ourselves, our heirs, personal representatives, successors,
19 and assigns, jointly and severally.

20 THE CONDITION OF THIS BOND is that if Principal:

21 1. Performs the contract dated,, between
22 Principal and Owner for construction of, the contract
23 being made a part of this bond by reference, at the times and
24 in the manner prescribed in the contract; and

25 2. Promptly makes payments to all claimants, as
26 defined in Section 255.05(1), Florida Statutes, supplying
27 Principal with labor, materials, or supplies, used directly or
28 indirectly by Principal in the prosecution of the work
29 provided for in the contract; and

30 3. Pays Owner all losses, damages, expenses, costs,
31 and attorney's fees, including appellate proceedings, that

1 Owner sustains because of a default by Principal under the
2 contract; and

3 4. Performs the guarantee of all work and materials
4 furnished under the contract for the time specified in the
5 contract, then this bond is void; otherwise it remains in full
6 force.

7 Any changes in or under the contract documents and
8 compliance or noncompliance with any formalities connected
9 with the contract or the changes does not affect Surety's
10 obligation under this bond.

11

12 DATED ON,

13 ... (Name of Principal)...

14 By ... (As Attorney in Fact)...

15 ... (Name of Surety)...

16

17 Section 4. Subsection (3) of section 713.24, Florida
18 Statutes, is amended to read:

19 713.24 Transfer of liens to security.--

20 (3) Any party having an interest in such security or
21 the property from which the lien was transferred may at any
22 time, and any number of times, file a complaint in chancery in
23 the circuit court of the county where such security is
24 deposited, or file a motion in a pending action to enforce a
25 lien, for an order to require additional security, reduction
26 of security, change or substitution of sureties, payment of
27 discharge thereof, or any other matter affecting the said
28 security. If the court finds that the amount of the deposit or
29 bond in excess of the amount claimed in the claim of lien is
30 insufficient to pay the lienor's attorney's fees and court
31 costs incurred in the action to enforce the lien, the court

1 must increase the amount of the cash deposit or lien transfer
2 bond. However, the surety has no liability in excess of the
3 lien transfer bond filed with the clerk unless it provides a
4 new or amended bond.

5 Section 5. This act shall take effect July 1, 2002.
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