

1 A bill to be entitled
2 An act relating to sureties; amending ss.
3 199.185, 201.23, F.S.; exempting mortgages and
4 liens recorded to secure performance of an
5 indemnitor to a surety from the intangible
6 personal property tax and the excise tax on
7 documents at time of recording; providing that
8 those taxes become due upon exercise of rights
9 under the mortgage or lien; providing that
10 failure to pay intangibles tax is subject to
11 criminal penalties in s. 199.282, F.S.;
12 providing that failure to pay excise taxes when
13 due is a first degree misdemeanor; amending s.
14 210.08, F.S.; providing methods other than a
15 bond for dealers, agents, or distributing
16 agents to guarantee tax payment to the Division
17 of Alcoholic Beverages and Tobacco of the
18 Department of Business and Professional
19 Regulation; amending s. 255.05, F.S.; requiring
20 public construction bonds to be the same as the
21 statutory form; revising the statutory form;
22 amending s. 713.24, F.S.; providing that
23 sureties have no liability in excess of a lien
24 transfer bond; providing an exception;
25 providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Subsection (9) is added to section 199.185,
30 Florida Statutes, to read:

31

1 199.185 Property exempted from annual and
2 non-recurring taxes.--

3 (9)(a) Mortgages and liens recorded to secure the
4 performance of an indemnitor to a surety by insurance
5 companies licensed in the State of Florida that issue surety
6 are exempt from this chapter at the time of recording the
7 mortgage or lien. The clerk of the court shall accept such
8 recordings at the time of submittal and such mortgage or lien
9 shall have a priority as of the date of recording over any
10 subsequent filings by other parties notwithstanding that the
11 enforcement of the recorded mortgage or lien on the indemnity
12 may come subsequent to the later recording and any action
13 against the indemnitor affecting said mortgage or lien shall
14 provide notice to the insurance company.

15 (b) Upon exercise of the rights under the mortgage or
16 lien, all applicable taxes due pursuant to this chapter shall
17 become due and payable as if the mortgage or lien were
18 initially executed and recorded without this exemption.

19 (c) Failure to pay tax at time of exercise shall not
20 affect the mortgage or lien, but any person who willfully
21 violates or fails to comply with this subsection is subject to
22 the penalties set forth in s. 199.282.

23 Section 2. Subsection (5) is added to section 201.23,
24 Florida Statutes, to read:

25 201.23 Foreign notes and other written obligations
26 exempt.--

27 (5) Mortgages and liens recorded to secure the
28 performance of an indemnitor to a surety by insurance
29 companies licensed in this state which issue surety are exempt
30 from this chapter at the time of recording the mortgage or
31 lien. The clerk of the court shall accept such recordings at

1 the time of submittal, and such mortgage or lien shall have a
2 priority as of the date of recording over any subsequent
3 filings by other parties, notwithstanding that the enforcement
4 of the recorded mortgage or lien on the indemnity may occur
5 after the later recording and any action against the
6 indemnitor affecting the mortgage or lien provides notice to
7 the insurance company. Upon exercise of the rights under the
8 mortgage or lien, all applicable taxes due pursuant to this
9 chapter shall become due and payable as if the mortgage or
10 lien were initially executed and recorded without this
11 exception. Failure to pay any tax at time of exercise shall
12 not affect the mortgage or lien, but any person who willfully
13 fails or refuses to pay tax due under this subsection commits
14 a misdemeanor of the first degree, punishable as provided in
15 s. 775.082 or s. 775.083.

16 Section 3. Section 210.08, Florida Statutes, is
17 amended to read:

18 210.08 Bond for payment of taxes.--Each dealer, agent,
19 or distributing agent shall file with the division a surety
20 bond, certificate of deposit, or irrevocable letter of credit
21 acceptable to the division in the sum of \$10,000 as surety for
22 the payment of all taxes; provided, however, that where in the
23 discretion of the division the amount of business done by the
24 dealer, agent, or distributing agent is of such volume that a
25 bond, certificate of deposit, or irrevocable letter of credit
26 of less than \$10,000 will be adequate to secure the payment of
27 all taxes assessed as authorized by the cigarette tax law, the
28 division may accept a bond, certificate of deposit, or
29 irrevocable letter of credit in a lesser sum than \$10,000, but
30 in no event shall it accept a bond, certificate of deposit, or
31 irrevocable letter of credit of less than \$1,000, and it may

1 at any time in its discretion require any bond, certificate of
2 deposit, or irrevocable letter of credit in an amount less
3 than \$10,000 to be increased not to exceed \$10,000.

4 Section 4. Subsection (3) of section 255.05, Florida
5 Statutes, is amended to read:

6 255.05 Bond of contractor constructing public
7 buildings; form; action by materialmen.--

8 (3) The bond required in subsection (1) shall be in
9 the following form, and any deviation of the bond required by
10 the public owner or furnished by the contractor shall be
11 disregarded ~~may be in substantially the following form:~~

12
13 PUBLIC CONSTRUCTION BOND

14
15 BY THIS BOND, We{enter name principal business
16 address, and telephone number of contractor}, as Principal and
17 {enter name, principal business address, and telephone number
18 of surety}...., a corporation, authorized to do business in
19 Florida as a surety insurer, as Surety, are bound to
20 {enter name, principal business address, and telephone number
21 of public owner}, herein called Owner, in the sum of
22 \$....{enter contract amount as penal sum of bond}, for payment
23 of which we bind ourselves, our heirs, personal
24 representatives, successors, and assigns, jointly and
25 severally.

26
27 WHEREAS, Principal has entered into a contract with
28 Owner for{enter description of project sufficient to
29 identify it such as a legal description of property, the
30 street address of property, and a general description of the
31 improvement to be constructed}, which is Owner's Contract No.

1{enter contract number} belonging to{enter name,
2 principal business address, and telephone number of owner of
3 property if different from the contract public entity}
4 (hereinafter the Project); and

5
6 WHEREAS, this Bond is given to meet the requirements of
7 Section 255.05, Florida Statutes, which shall control the
8 respective rights and obligations of the Principal, Surety,
9 Owner, and any claimant.

10
11 NOW, THEREFORE, THE CONDITION OF THIS BOND is that if
12 Principal:

13 1. Performs the contract dated,, {enter date
14 of contract} between Principal and Owner for construction of
15 the Project....., the contract being made a part of this bond
16 by reference, at the times and in the manner prescribed in the
17 contract; and

18 2. Promptly makes payments to all claimants, as
19 defined in Section 255.05(1), Florida Statutes, supplying
20 Principal with labor, materials, or supplies, used directly or
21 indirectly by Principal in the prosecution of the work
22 provided for in the contract; and

23 3. Pays Owner all losses, damages, expenses, costs,
24 and attorney's fees, including appellate proceedings, that
25 Owner sustains because of a default by Principal under the
26 contract; and

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

31

1 Any changes in or under the contract documents and
2 compliance or noncompliance with any formalities connected
3 with the contract or the changes does not affect Surety's
4 obligation under this bond.

5
6 DATED ON,

7 ...(Date of Bond)...

8 ...(Name of Principal)...

9 By ...(As Authorized Attorney in Fact)...

10 ...(Name of Surety)...

11
12 Section 5. Subsection (3) of section 713.24, Florida
13 Statutes, is amended to read:

14 713.24 Transfer of liens to security.--

15 (3) Any party having an interest in such security or
16 the property from which the lien was transferred may at any
17 time, and any number of times, file a complaint in chancery in
18 the circuit court of the county where such security is
19 deposited, or file a motion in a pending action to enforce a
20 lien, for an order to require additional security, reduction
21 of security, change or substitution of sureties, payment of
22 discharge thereof, or any other matter affecting the said
23 security. If the court finds that the amount of the deposit or
24 bond in excess of the amount claimed in the claim of lien is
25 insufficient to pay the lienor's attorney's fees and court
26 costs incurred in the action to enforce the lien, the court
27 must increase the amount of the cash deposit or lien transfer
28 bond. However, the surety has no liability in excess of the
29 lien transfer bond filed with the clerk unless it provides a
30 new or amended bond.

31 Section 6. This act shall take effect July 1, 2002.