

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

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Subsection (9) is added to section 199.185,
26 Florida Statutes, to read:

27 199.185 Property exempted from annual and nonrecurring
28 taxes.--

29 (9)(a) Notes, bonds, or other obligations secured by
30 mortgages or liens given to secure the performance of an
31 indemnitor in an amount less than \$2 million to a surety by

1 insurance companies licensed in this state when such surety is
2 issued for the following purposes:

- 3 1. Construction bid bonds,
- 4 2. Construction performance bonds,
- 5 3. Construction payment bonds,
- 6 4. Construction licenses,
- 7 5. Permits,
- 8 6. Court bonds, or
- 9 7. Bail bonds

10
11 are exempt from the tax imposed under this chapter at the time
12 of recording the mortgage, deed of trust, or lien. The clerk
13 of the court shall accept such recordings at the time of
14 submittal and such mortgage or lien shall have a priority as
15 of the date of recording over any subsequent filings by other
16 parties notwithstanding that the enforcement of the recorded
17 mortgage or lien on the indemnity may come subsequent to the
18 later recording and any action against the indemnitor
19 affecting said mortgage or lien shall provide notice to the
20 insurance company.

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

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

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

31

1 201.23 Foreign notes and other written obligations
2 exempt.--

3 (5)(a) Mortgages, trust deeds, liens, or security
4 agreements filed or recorded to secure the performance of an
5 indemnitor to a surety in an amount less than \$2 million by
6 insurance companies licensed in this state when such surety is
7 issued for the following purposes:

- 8 1. Construction bid bonds,
- 9 2. Construction performance bonds,
- 10 3. Construction payment bonds,
- 11 4. Construction licenses,
- 12 5. Permits,
- 13 6. Court bonds, or
- 14 7. Bail bonds

15
16 are exempt from the tax imposed under this chapter at the time
17 of recording the mortgage or lien. The clerk of the court
18 shall accept such recordings at the time of submittal and such
19 mortgage or lien shall have a priority as of the date of
20 recording over any subsequent filings by other parties
21 notwithstanding that the enforcement of the recorded mortgage
22 or lien on the indemnity may occur after the later recording
23 and any action against the indemnitor affecting said mortgage
24 or provides notice to the insurance company.

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

29 (c) Failure to pay any tax at time of exercise shall
30 result in the penalties set forth in this chapter for failure
31 to pay the tax.

1 Section 3. Section 210.08, Florida Statutes, is
2 amended to read:

3 210.08 Bond for payment of taxes.--Each dealer, agent,
4 or distributing agent shall file with the division a surety
5 bond, certificate of deposit, or irrevocable letter of credit
6 acceptable to the division in the sum of \$10,000 as surety for
7 the payment of all taxes; provided, however, that where in the
8 discretion of the division the amount of business done by the
9 dealer, agent, or distributing agent is of such volume that a
10 bond, certificate of deposit, or irrevocable letter of credit
11 of less than \$10,000 will be adequate to secure the payment of
12 all taxes assessed as authorized by the cigarette tax law, the
13 division may accept a bond, certificate of deposit, or
14 irrevocable letter of credit in a lesser sum than \$10,000, but
15 in no event shall it accept a bond, certificate of deposit, or
16 irrevocable letter of credit of less than \$1,000, and it may
17 at any time in its discretion require any bond, certificate of
18 deposit, or irrevocable letter of credit in an amount less
19 than \$10,000 to be increased not to exceed \$10,000.

20 Section 4. Subsection (3) 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 (3) The bond required in subsection (1) shall be in
25 the following form, and any deviation of the bond required by
26 the public owner or furnished by the contractor shall be
27 disregarded ~~may be in substantially the following form:~~

28
29 PUBLIC CONSTRUCTION BOND
30
31

1 BY THIS BOND, We{enter name principal business
2 address, and telephone number of contractor}, as Principal and
3 {enter name, principal business address, and telephone number
4 of surety}...., a corporation, authorized to do business in
5 Florida as a surety insurer, as Surety, are bound to
6 {enter name, principal business address, and telephone number
7 of public owner}, herein called Owner, in the sum of
8 \$....{enter contract amount as penal sum of bond}, for payment
9 of which we bind ourselves, our heirs, personal
10 representatives, successors, and assigns, jointly and
11 severally.

12
13 WHEREAS, Principal has entered into a contract with
14 Owner for{enter description of project sufficient to
15 identify it such as a legal description of property, the
16 street address of property, and a general description of the
17 improvement to be constructed}, which is Owner's Contract No.
18{enter contract number} belonging to{enter name,
19 principal business address, and telephone number of owner of
20 property if different from the contract public entity}
21 (hereinafter the Project); and

22
23 WHEREAS, this Bond is given to meet the requirements of
24 Section 255.05, Florida Statutes, which shall control the
25 respective rights and obligations of the Principal, Surety,
26 Owner, and any claimant.

27
28 NOW, THEREFORE, THE CONDITION OF THIS BOND is that if
29 Principal:

30 1. Performs the contract dated,, {enter date
31 of contract} between Principal and Owner for construction of

1 the Project..., the contract being made a part of this bond
2 by reference, at the times and in the manner prescribed in the
3 contract; and

4 2. Promptly makes payments to all claimants, as
5 defined in Section 255.05(1), Florida Statutes, supplying
6 Principal with labor, materials, or supplies, used directly or
7 indirectly by Principal in the prosecution of the work
8 provided for in the contract; and

9 3. Pays Owner all losses, damages, expenses, costs,
10 and attorney's fees, including appellate proceedings, that
11 Owner sustains because of a default by Principal under the
12 contract; and

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

17 Any changes in or under the contract documents and
18 compliance or noncompliance with any formalities connected
19 with the contract or the changes does not affect Surety's
20 obligation under this bond.

21
22 DATED ON,

23 ...(Date of Bond)...

24 ...(Name of Principal)...

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

26 ...(Name of Surety)...

27
28 Section 5. Subsection (3) of section 713.24, Florida
29 Statutes, is amended to read:

30 713.24 Transfer of liens to security.--
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1 (3) Any party having an interest in such security or
2 the property from which the lien was transferred may at any
3 time, and any number of times, file a complaint in chancery in
4 the circuit court of the county where such security is
5 deposited, or file a motion in a pending action to enforce a
6 lien, for an order to require additional security, reduction
7 of security, change or substitution of sureties, payment of
8 discharge thereof, or any other matter affecting the said
9 security. If the court finds that the amount of the deposit or
10 bond in excess of the amount claimed in the claim of lien is
11 insufficient to pay the lienor's attorney's fees and court
12 costs incurred in the action to enforce the lien, the court
13 must increase the amount of the cash deposit or lien transfer
14 bond. However, the surety has no liability in excess of the
15 lien transfer bond filed with the clerk unless it provides a
16 new or amended bond.

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