

By the Committee on Governmental Oversight and Productivity;  
and Senator Geller

302-2299-02

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.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
SB 2292

Provides that intangibles and documentation stamp taxes do not have to be paid by insurance companies that record mortgages and liens to secure the performance of an indemnitor unless the insurance company exercises its rights under the mortgages or liens. Requires use of the model public construction bond form contained in s. 255.05, F.S. Removes the bill's provisions concerning notices of commencement.