

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Joyner offered the following:

Amendment (with title amendment)

On page 1, line 9, through page 3, line 26,
remove: all of said lines

and insert:

Section 1. Paragraph (a) of subsection (1) and subsections
(3) and (6) of section 255.05, Florida Statutes, are amended,
and subsection (4) of said section is reenacted, to read:

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

(1)(a) Any person entering into a formal contract with the
state or any county, city, or political subdivision thereof, or
other public authority, for the construction of a public
building, for the prosecution and completion of a public work,
or for repairs upon a public building or public work shall be

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28 required, before commencing the work or before recommencing the
29 work after a default or abandonment, to execute, deliver to the
30 public owner, and record in the public records of the county
31 where the improvement is located, a payment bond and a
32 performance bond with a surety insurer authorized to do business
33 in this state as surety. A public entity may not require a
34 contractor to secure a surety bond under this section from a
35 specific agent or bonding company. Each ~~The~~ bond must state on
36 its front page: the name, principal business address, and phone
37 number of the contractor, the surety, the owner of the property
38 being improved, and, if different from the owner, the
39 contracting public entity; the contract number assigned by the
40 contracting public entity; and a description of the project
41 sufficient to identify it, such as a legal description or the
42 street address of the property being improved, and a general
43 description of the improvement. The performance ~~Such~~ bond shall
44 be conditioned upon the contractor's performance of the
45 construction work in the time and manner prescribed in the
46 contract, and the payment bond shall be conditioned upon the
47 contractor promptly making payments to all persons defined in s.
48 713.01 who furnish labor, services, or materials for the
49 prosecution of the work provided for in the contract. Any
50 claimant may apply to the governmental entity having charge of
51 the work for copies of the contract and the payment bond and
52 shall thereupon be furnished with a certified copy of the
53 contract and the payment bond. The claimant shall have a right
54 of action against the contractor and surety for the amount due
55 him or her, including unpaid finance charges due under the
56 claimant's contract. Such action shall not involve the public

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57 authority in any expense. When such work is done for the state
58 and the contract is for \$100,000 or less, no payment or ~~and~~
59 performance bond shall be required. At the discretion of the
60 official or board awarding such contract when such work is done
61 for any county, city, political subdivision, or public
62 authority, any person entering into such a contract which is for
63 \$200,000 or less may be exempted from executing the payment and
64 performance bonds required by this section ~~bond~~. When such work
65 is done for the state, the Secretary of the Department of
66 Management Services may delegate to state agencies the authority
67 to exempt any person entering into such a contract amounting to
68 more than \$100,000 but less than \$200,000 from executing the
69 payment and performance bonds required by this section ~~bond~~. In
70 the event such exemption is granted, the officer or officials
71 shall not be personally liable to persons suffering loss because
72 of granting such exemption. The Department of Management
73 Services shall maintain information on the number of requests by
74 state agencies for delegation of authority to waive the bond
75 requirements by agency and project number and whether any
76 request for delegation was denied and the justification for the
77 denial.

78 (3)(a) The performance bond required in subsection (1)
79 shall ~~may~~ be in substantially the following form:

80
81 PUBLIC CONSTRUCTION PERFORMANCE BOND

82
83 Bond No. (enter bond number)
84

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85 BY THIS BOND, We, _____(enter name, principal business
86 address, and telephone number of contractor) _____, as Principal,
87 and _____(enter name, principal business address, and telephone
88 number of surety) _____, a corporation authorized to do business
89 in Florida as a surety insurer, as Surety, are bound to
90 _____(enter name, principal business address, and telephone
91 number of public owner) _____, hereinafter ~~herein~~ called Owner,
92 in the sum of \$ _____(enter contract amount as penal sum of bond)
93 , for payment of which the Principal and each individually named
94 surety binds itself and its ~~we bind ourselves, our~~ heirs,
95 personal representatives, successors, and assigns, jointly and
96 severally.

97
98 WHEREAS, Principal has entered into a contract with Owner
99 for ...(enter description of project sufficient to identify it,
100 such as a legal description of property, the street address of
101 property, and a general description of the improvement to be
102 constructed)..., which is Owner's contract No. ...(enter
103 contract number)... belonging to ...(enter name, principal
104 business address, and telephone number of owner of property if
105 different from the contracting public entity)...; and

106
107 WHEREAS, the Bond is given to meet the requirements of the
108 contract and Section 255.05, Florida Statutes, and the
109 respective rights and obligations of the Principal, Surety, and
110 Owner shall be controlled by the contract and Section 255.05,
111 Florida Statutes.

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113 NOW, THEREFORE, THE CONDITION OF THIS BOND is that if
114 Principal:

115 1. Performs the contract dated _____(enter date of
116 contract) _____, _____, between Principal and Owner for
117 construction of the Project, the contract being made a part
118 of this bond by reference, at the times and in the manner
119 prescribed in the contract; and

120 ~~2. Promptly makes payments to all claimants, as defined in~~
121 ~~Section 255.05(1), Florida Statutes, supplying Principal with~~
122 ~~labor, materials, or supplies, used directly or indirectly by~~
123 ~~Principal in the prosecution of the work provided for in the~~
124 ~~contract; and~~

125 ~~2.3.~~ Pays Owner all losses, damages as defined in the
126 contract, expenses, costs, and attorney's fees, including
127 appellate proceedings, that Owner sustains because of a default
128 by Principal under the contract; and

129 ~~3.4.~~ Performs the guarantee of all work and materials
130 furnished under the contract for the time specified in the
131 contract, then this bond is void; otherwise it remains in full
132 force.

133
134 NO RIGHT OF ACTION SHALL ACCRUE ON THIS BOND TO, OR FOR THE
135 BENEFIT OR USE OF, ANY PERSON OR CORPORATION OTHER THAN . . .
136 (enter the name of public owner) . . ., THE OWNER, ITS
137 SUCCESSORS, AND ASSIGNS.

138
139 Any changes in or under the contract documents and compliance or
140 noncompliance with any formalities connected with the contract

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141 or the changes does not affect Surety's obligation under this
142 bond.

143
144 DATED ON _____, _____(enter date of bond) _____.

145
146 ... (enter name of Principal) ...

147 By ... (enter name of its authorized officer) (~~As Attorney in~~
148 ~~Fact~~) ...

149 ... (enter name of Surety) ...
150

151 By ... (its authorized Attorney-in-Fact)

152 (b) The payment bond required in subsection (1) shall be
153 in substantially the following form:

154
155 PUBLIC CONSTRUCTION PAYMENT BOND

156
157 Bond No. (enter bond number)

158
159 BY THIS BOND, We, _____(enter name, principal business
160 address, and telephone number of contractor) _____, as Principal,
161 and _____(enter name, principal business address, and telephone
162 number of surety) _____, a corporation authorized to do business
163 in Florida as a surety insurer, as Surety, are bound to
164 _____ (enter name, principal business address, and telephone
165 number of public owner) _____, hereinafter called Owner, in the
166 sum of \$_____ (enter contract amount as penal sum of bond) _____,
167 for payment of which the Principal and each individually named
168 surety binds itself and its heirs, personal representatives,
169 successors, and assigns, jointly and severally.

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WHEREAS, Principal has entered into a contract with Owner for ...(enter description of project sufficient to identify it, such as a legal description of property, the street address of property, and a general description of the improvement to be constructed)..., which is Owner's contract No. ...(enter contract number)... belonging to ...(enter name, principal business address, and telephone number of owner of property if different from the contracting public entity)...; and

WHEREAS, the Bond is given to meet the requirements of the contract and Section 255.05, Florida Statutes, and the respective rights and obligations of the Principal, Surety, Owner, and any Claimant shall be controlled by Section 255.05, Florida Statutes, including specifically the notice and time limitation provisions of Section 255.05(2), Florida Statutes.

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

1. Performs the contract dated _____(enter date of contract) _____, between Principal and Owner for construction of _____the Project_____, the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and

2. Pays Owner all losses, damages as defined in the contract, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract; and

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198 3. Promptly makes payments to all claimants, as defined in
199 Section 255.05(1), Florida Statutes, supplying Principal with
200 labor, materials, or supplies, used directly or indirectly by
201 Principal in the prosecution of the work provided for in the
202 contract, then this bond is void; otherwise, it remains in full
203 force, subject, however, to the following conditions:

204 a. No action for labor, materials, or supplies may be
205 instituted against the Principal or the Surety unless the
206 notices required under Section 255.05(2), Florida Statutes, have
207 been given; and

208 b. Any action under this Bond must be instituted in
209 accordance with the notice and time limitation provisions
210 prescribed in Section 255.05(2), Florida Statutes.

211
212 Any changes in or under the contract documents and compliance or
213 noncompliance with any formalities connected with the contract
214 or the changes does not affect Surety's obligation under this
215 bond.

216
217 DATED ON _____, _____ (enter date of bond) _____.

218
219 ... (enter name of Principal) ...

220 By ... (enter name of its authorized officer) ...

221 ... (enter name of Surety) ...

222
223 By ... (its authorized Attorney-in-Fact)

224 (4) The payment provisions of all bonds furnished for
225 public work contracts described in subsection (1) shall,

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226 regardless of form, be construed and deemed statutory bond
227 provisions, subject to all requirements of subsection (2).

228 (6) The notice and time limitation provisions of
229 subsection (2) shall apply to all payment bonds furnished for
230 public building and public work contracts described in
231 subsection (1), and any deviation from such requirements
232 contained in the bond form used by the public owner or furnished
233 by the contractor shall be disregarded ~~All bonds executed~~
234 ~~pursuant to this section shall make reference to this section by~~
235 ~~number and shall contain reference to the notice and time~~
236 ~~limitation provisions of this section.~~

237
238 ===== T I T L E A M E N D M E N T =====

239 On page 1, line(s) 3-5,
240 remove: all of said lines

241
242 and insert: amending s. 255.05, F.S.; providing for mandatory
243 forms for public performance construction bonds and payment
244 construction bonds for public work contracts; describing form of
245 said public construction bonds; reenacting s. 255.05(4), F.S.;
246 requiring payment bond provisions to be construed as statutory
247 bonds; providing that deviations from the notice and time
248 limitations in s. 255.05(2), F.S., in bond forms must be
249 disregarded; providing an effective date.