

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Jennings 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) may  
79 be in substantially the following form:

81 PUBLIC CONSTRUCTION PERFORMANCE BOND

83 Bond No. (enter bond number)

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