SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1986

SPONSOR: Senator Sebesta

SUBJECT: Public construction bonds

DATE: March 19, 2003 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Greenbaum	Roberts	JU	Favorable
2.			GO	
3.				
4.				
5.				
6.				

I. Summary:

This bill revises the mandatory form for public construction bonds to require specific information describing the parties to the surety agreement and the construction agreement. The bill also requires two clauses to be included in the bond to describe the project to be constructed and the property upon which the project is to be built, and that the rights and obligations of the parties are governed by the provisions of s. 255.05, F.S. This bill provides that the parties to the bond cannot deviate from the statutory requirements for the form.

This bill substantially amends s. 255.05, F.S.

II. Present Situation:

In Florida, "surety insurance" is defined to include payment and performance bonds.[1] Such bonds are contracts in which a surety company, which is paid a premium by a principal, e.g., a general contractor, agrees to stand in the place of the principal in the event the principal defaults either as to performance of the contract or as to payment of its subcontractors/suppliers.[2] [3]

Unlike a normal insurance situation in which there is a two-party relationship, i.e., the insurer and the insured, the nature of surety is a triparty relationship, which consists of: (a) the obligee, which may be either the person purchasing the performance from the contractor in the case of a

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[1] Section 624.606, F.S.

[2] *Surety Bonds: A Basic User's Guide for Payment Bond Claimants and Obligees*, Construction Lawyer, Daniel Toomey and Tamara McNulty, Winter, 2002.

[3] Although surety is oft times referred to in law as "surety insurance," legal commentators have explained that this is somewhat of a misnomer, as it does not insure the purchaser of the surety, i.e., the general contractor, against claims such as poor workmanship; rather, the surety insurance protects the obligee against the general contractor's default. *Id.*

performance bond or the subcontractor/supplier expecting payment from the contractor in the case of a payment bond; (b) a principal, e.g., the contractor; and (c) the surety that provides the bond to protect against the principal's default. A second difference between a normal insurance relationship and a surety relationship is that the surety requires a principal to indemnify the surety against losses sustained by the carrier if the surety must perform or pay under the bonds. In this instance, the principal is referred to as the indemnitor to the surety.[4]

Section 255.05(1), F.S., provides that any person who enters 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 is required to deliver to the public owner a payment and performance bond with a state authorized surety insurer. Section 255.05(3), F.S., further provides that this bond may be in substantially the same form as a model form public construction bond that is provided in the subsection. This model form was significantly revised in 2002 to require the bond to contain the following: (a) the principal business address and telephone numbers of the contractor, surety, and public owner; (b) the amount of the bond; (c) a description of the project; (d) a statement indicating that s. 255.05, F.S., controls the rights and obligations of the parties; and (e) the dates of the contract and bond.[5]

III. Effect of Proposed Changes:

This bill tightens the requirements for the use of the mandatory construction bond form used by persons entering into contracts with the state or political subdivision of the state for construction projects. This bill provides that deviations to the bond form done by the public owner or the contractor are to be disregarded. The bond form is amended to require specific information regarding the parties to the surety agreement, and provides for two clauses to describe the project and the location of the project, and that the rights and obligations of the parties are governed by the provisions of s. 255.05, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[4] *Id.*
[5] *See* Senate Staff analysis and Economic Impact Statement for CS/SB 2292 (2002) at 5; the provisions of CS/SB 2292 passed in CS/CS/3d Eng./SB 990 (2002) (2002-299, L.O.F.).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill refines the mandatory form for public construction bonds and removes the discretion previously afforded the parties to alter the terms of the bond form. The Department of Management Services indicates that bill will simplify the process and thereby benefit vendors who do business state-wide regularly with public entities.

C. Government Sector Impact:

This bill refines the mandatory form for public construction bonds and removes the discretion previously afforded the parties to alter the terms of the bond form. The Department of Management Services indicates that the bill may limit government agencies in instances when the scale, complexity or diversity of the public project does not lend itself to the application of a uniform practice. The department cites as an example of this situation the event of multiple bond providers serving as sureties on large public construction projects.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.