

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 259 Contractor Bonds for Public Building Construction
SPONSOR(S): Joyner
TIED BILLS: none **IDEN./SIM. BILLS:** SB 1332

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	_____	<u>Bond</u>	<u>Everhart</u>
2) <u>Local Government & Veterans' Affairs</u>	_____	_____	_____
3) <u>Sub. on Commerce & Local Affairs Approp.</u>	_____	_____	_____
4) <u>Appropriations</u>	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Current law requires that contractors providing construction work for the state, or for local governments, procure a payment and performance bond. Local government may waive the bond requirement if the value of the contract is less than \$200,000. The bond is automatically waived for state government contracts under \$100,000, and the Department of Management Services may waive the bond requirement providing the contract is under \$200,000.

This bill increases the threshold beyond which state or local government may not waive a payment and performance bond from \$200,000 to \$500,000, and increases for state government the level below which a bond is automatically waived from \$100,000 to \$250,000.

The fiscal impact on state and local governments is unknown.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0259.sa.doc
DATE: April 8, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain: Not applicable.

B. EFFECT OF PROPOSED CHANGES:

Background

Section 255.05, F.S., requires that any person entering into a contract with the state, or any local government, for the construction or repair of a public building or public work, must purchase a payment and performance bond. Such bond is to be conditioned upon the contractor's performance of the construction work in the time and manner prescribed in the contract, and the contractor's promptly making payments to all suppliers and subcontractors.

As to local governments, the requirement of a payment and performance bond may be waived by the local government when the contract is for \$200,000 or less. As to the state, the requirement of a payment and performance bond is automatically waived for contracts under \$100,000; and the Secretary of the Department of Management Services may delegate to state agencies the authority to exempt contracts between \$100,000 and \$200,000.

As to private construction contracts, the laborers, materialmen, and subcontractors are given the right, pursuant to ch. 713, F.S., to file a lien against the property improved in order to enforce payment of their contract should the general contractor fail or refuse to pay. There are, however, no lien rights against public property; thus a materialman or subcontractor who is not paid for construction work on public property may only sue the general contractor or collect against the bond, if any. If the general contractor is not financially solvent, and the bond was waived, a materialman or subcontractor has no means to recover payment for materials or labor supplied.

The current threshold amounts were enacted in 1985. See ch. 85-130, L.O.F. Adjusting for inflation from 1985 to 2003 would raise the \$100,000 figure to \$169,516.73, and the \$200,000 figure to \$339,033.46.¹

Effect of Bill

As to local governments, this bill raises the threshold beyond which a payment and performance bond may not be waived from \$200,000 to \$500,000. As to state government, this bill raises the threshold for automatic waiver of the bond requirement from \$100,000 to \$250,000; and raises the threshold beyond which a payment and performance bond may not be waived by a state agency from \$200,000 to \$500,000.

C. SECTION DIRECTORY:

¹ Consumer Price Index adjustment, calculated at <http://www.aier.org>.

Section 1 amends s. 255.05, F.S., to increase the thresholds for payment and performance bonds on public works.

Section 2 provides an effective date of July 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will likely impact insurance companies and agents by reducing the number of contractor bonds sold.

D. FISCAL COMMENTS:

It is possible that the following might occur as a result of this bill:

- Contractors who are not required to purchase a bond as a result of the changes made by this bill might offer slightly lower bids for public works.
- Additional vendors may be able to bid on public works contracts, leading to increased competition and lower prices.
- State and local governments may incur additional costs in public works contracts due to non-compliance by contractors (defective work and/or abandonment of the job).
- Materialmen and subcontractors, facing a higher number of defaults in payment for public works as a result of this bill, will raise their prices accordingly.

The net fiscal impact of this bill, if any, is unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable.
2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.