

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Jennings offered the following:

Amendment (with directory and title amendments)

Remove line(s) 8-82, 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 required, before commencing the work or before recommencing the work after a default or abandonment, to execute, deliver to the public owner, and record in the public records of the county

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28 where the improvement is located, a payment bond and a
29 performance bond with a surety insurer authorized to do business
30 in this state as surety. A public entity may not require a
31 contractor to secure a surety bond under this section from a
32 specific agent or bonding company. Each ~~The~~ bond must state on
33 its front page: the name, principal business address, and phone
34 number of the contractor, the surety, the owner of the property
35 being improved, and, if different from the owner, the
36 contracting public entity; the contract number assigned by the
37 contracting public entity; and a description of the project
38 sufficient to identify it, such as a legal description or the
39 street address of the property being improved, and a general
40 description of the improvement. The performance ~~Such~~ bond shall
41 be conditioned upon the contractor's performance of the
42 construction work in the time and manner prescribed in the
43 contract, and the payment bond shall be conditioned upon the
44 contractor promptly making payments to all persons defined in s.
45 713.01 who furnish labor, services, or materials for the
46 prosecution of the work provided for in the contract. Any
47 claimant may apply to the governmental entity having charge of
48 the work for copies of the contract and the payment bond and
49 shall thereupon be furnished with a certified copy of the
50 contract and the payment bond. The claimant shall have a right
51 of action against the contractor and surety for the amount due
52 him or her, including unpaid finance charges due under the
53 claimant's contract. Such action shall not involve the public
54 authority in any expense. When such work is done for the state
55 and the contract is for \$100,000 or less, no payment or ~~and~~
56 performance bond shall be required. At the discretion of the

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57 official or board awarding such contract when such work is done
 58 for any county, city, political subdivision, or public
 59 authority, any person entering into such a contract which is for
 60 \$200,000 or less may be exempted from executing the payment and
 61 performance bonds required by this section ~~bond~~. When such work
 62 is done for the state, the Secretary of the Department of
 63 Management Services may delegate to state agencies the authority
 64 to exempt any person entering into such a contract amounting to
 65 more than \$100,000 but less than \$200,000 from executing the
 66 payment and performance bonds required by this section ~~bond~~. In
 67 the event such exemption is granted, the officer or officials
 68 shall not be personally liable to persons suffering loss because
 69 of granting such exemption. The Department of Management
 70 Services shall maintain information on the number of requests by
 71 state agencies for delegation of authority to waive the bond
 72 requirements by agency and project number and whether any
 73 request for delegation was denied and the justification for the
 74 denial.

75 (3)(a) The performance bond required in subsection (1) may
 76 be in substantially the following form:

78 PUBLIC CONSTRUCTION PERFORMANCE BOND

80 Bond No. (enter bond number)

82 BY THIS BOND, We, _____ (enter name, principal business
 83 address, and telephone number of contractor), as Principal,
 84 and _____ (enter name, principal business address, and telephone
 85 number of surety), a corporation authorized to do business

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

94
95 WHEREAS, Principal has entered into a contract with Owner
96 for ... (enter description of project sufficient to identify it,
97 such as a legal description of property, the street address of
98 property, and a general description of the improvement to be
99 constructed)..., which is Owner's contract No. ... (enter
100 contract number)... belonging to ... (enter name, principal
101 business address, and telephone number of owner of property if
102 different from the contracting public entity)...; and

103
104 WHEREAS, the Bond is given to meet the requirements of the
105 contract and Section 255.05, Florida Statutes, and the
106 respective rights and obligations of the Principal, Surety, and
107 Owner shall be controlled by the contract and Section 255.05,
108 Florida Statutes.

109
110 NOW, THEREFORE, THE CONDITION OF THIS BOND is that if
111 Principal:

112 1. Performs the contract dated _____ (enter date of
113 contract) _____, _____, between Principal and Owner for
114 construction of the Project, the contract being made a part

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115 of this bond by reference, at the times and in the manner
116 prescribed in the contract; and

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

122 2.3. Pays Owner all losses, damages as defined in the
123 contract, expenses, costs, and attorney's fees, including
124 appellate proceedings, that Owner sustains because of a default
125 by Principal under the contract; and

126 3.4. Performs the guarantee of all work and materials
127 furnished under the contract for the time specified in the
128 contract, then this bond is void; otherwise it remains in full
129 force.

130
131 NO RIGHT OF ACTION SHALL ACCRUE ON THIS BOND TO, OR FOR THE
132 BENEFIT OR USE OF, ANY PERSON OR CORPORATION OTHER THAN . . .
133 (enter the name of public owner) . . ., THE OWNER, ITS
134 SUCCESSORS, AND ASSIGNS.

135
136 Any changes in or under the contract documents and compliance or
137 noncompliance with any formalities connected with the contract
138 or the changes does not affect Surety's obligation under this
139 bond.

140
141 DATED ON _____, _____(enter date of bond) _____.

142
143 ... (enter name of Principal) ...

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144 By ... (enter name of its authorized officer) ~~(As Attorney in~~
145 ~~Fact)~~ ...
146 ... (enter name of Surety) ...
147

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

149 (b) The payment bond required in subsection (1) may be in
150 substantially the following form:

151
152 PUBLIC CONSTRUCTION PAYMENT BOND

153
154 Bond No. (enter bond number)

155
156 BY THIS BOND, We, _____(enter name, principal business
157 address, and telephone number of contractor) _____, as Principal,
158 and _____(enter name, principal business address, and telephone
159 number of surety) _____, a corporation authorized to do business
160 in Florida as a surety insurer, as Surety, are bound to
161 _____ (enter name, principal business address, and telephone
162 number of public owner) _____, hereinafter called Owner, in the
163 sum of \$_____ (enter contract amount as penal sum of bond) _____,
164 for payment of which the Principal and each individually named
165 surety binds itself and its heirs, personal representatives,
166 successors, and assigns, jointly and severally.

167
168 WHEREAS, Principal has entered into a contract with Owner
169 for ... (enter description of project sufficient to identify it,
170 such as a legal description of property, the street address of
171 property, and a general description of the improvement to be
172 constructed)...., which is Owner's contract No. ... (enter

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173 contract number)... belonging to ...(enter name, principal
174 business address, and telephone number of owner of property if
175 different from the contracting public entity)...; and

176
177 WHEREAS, the Bond is given to meet the requirements of the
178 contract and Section 255.05, Florida Statutes, and the
179 respective rights and obligations of the Principal, Surety,
180 Owner, and any Claimant shall be controlled by Section 255.05,
181 Florida Statutes, including specifically the notice and time
182 limitation provisions of Section 255.05(2), Florida Statutes.

183
184 NOW, THEREFORE, THE CONDITION OF THIS BOND is that if
185 Principal:

186 1. Performs the contract dated _____(enter date of
187 contract) _____, between Principal and Owner for construction of
188 ___the Project___, the contract being made a part of this bond by
189 reference, at the times and in the manner prescribed in the
190 contract; and

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

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

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

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

208
209 Any changes in or under the contract documents and compliance or
210 noncompliance with any formalities connected with the contract
211 or the changes does not affect Surety's obligation under this
212 bond.

213
214 DATED ON _____, _____ (enter date of bond) .

215
216 ... (enter name of Principal) ...

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

218 ... (enter name of Surety) ...

219
220 By ... (its authorized Attorney-in-Fact)

221 (4) The payment provisions of all bonds furnished for
222 public work contracts described in subsection (1) shall,
223 regardless of form, be construed and deemed statutory bond
224 provisions, subject to all requirements of subsection (2).

225 (6) The notice and time limitation provisions of
226 subsection (2) shall apply to all payment bonds furnished for
227 public building and public work contracts described in
228 subsection (1), and any deviation from such requirements
229 contained in the bond form used by the public owner or furnished

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230 ~~by the contractor shall be disregarded All bonds executed~~
 231 ~~pursuant to this section shall make reference to this section by~~
 232 ~~number and shall contain reference to the notice and time~~
 233 ~~limitation provisions of this section.~~

234
 235 ===== T I T L E A M E N D M E N T =====

236 Remove line(s) 3-4, and insert:
 237 255.05, F.S.; providing for forms for public performance
 238 construction bonds and payment construction bonds for
 239 public work contracts; describing form of said public
 240 construction bonds; reenacting s. 255.05(4), F.S.;
 241 requiring payment bond provisions to be construed as
 242 statutory bonds; providing that deviations from the notice
 243 and time limitations in s. 255.05(2), F.S., in bond forms
 244 must be disregarded; providing an effective date.