

Bill No. CS for SB 1600

Amendment No. ____ Barcode 554528

CHAMBER ACTION

Senate

House

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11 Senator Bennett moved the following amendment:

13 **Senate Amendment (with title amendment)**

14 On page 2, line 18, through
15 page 3, line 11, delete those lines

17 and insert: limitation provisions in Section 255.05, Florida
18 Statutes.

19 Any changes in or under the contract documents and
20 compliance or noncompliance with any formalities connected
21 with the contract or the changes does not affect Surety's
22 obligation under this bond.

24 DATED ON _____, _____.

26 ... (Name of Principal) ...
27 By ... (As Attorney in Fact) ...
28 ... (Name of Surety) ...

30 (4) The payment provisions of all bonds required by
31 ~~furnished for public work contracts described in subsection~~

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1 (1) shall, regardless of form, be construed and deemed
 2 statutory bonds furnished pursuant to this section and such
 3 bonds shall not under any circumstances be converted into
 4 common law bonds ~~bond provisions, subject to all requirements~~
 5 ~~of subsection (2).~~

6 (5) In addition to the provisions of chapter 47, any
 7 action authorized under this section may be brought in the
 8 county in which the public building or public work is being
 9 constructed or repaired. This subsection shall not apply to
 10 an action instituted prior to May 17, 1977.

11 ~~(6) All bonds executed pursuant to this section shall~~
 12 ~~make reference to this section by number and shall contain~~
 13 ~~reference to the notice and time limitation provisions of this~~
 14 ~~section.~~

15 ~~(6)(7)~~ In lieu of the bond required by this section, a
 16 contractor may file with the state, county, city, or other
 17 political authority an alternative form of security in the
 18 form of cash, a money order, a certified check, a cashier's
 19 check, an irrevocable letter of credit, or a security of a
 20 type listed in part II of chapter 625. Any such alternative
 21 form of security shall be for the same purpose and be subject
 22 to the same conditions as those applicable to the bond
 23 required by this section. The determination of the value of
 24 an alternative form of security shall be made by the
 25 appropriate state, county, city, or other political
 26 subdivision.

27 ~~(7)(8)~~ When a contractor has furnished a payment bond
 28 pursuant to this section, he or she may, when the state,
 29 county, municipality, political subdivision, or other public
 30 authority makes any payment to the contractor or directly to a
 31 claimant, serve a written demand on any claimant who is not in

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1 privity with the contractor for a written statement under oath
2 of his or her account showing the nature of the labor or
3 services performed and to be performed, if any; the materials
4 furnished; the materials to be furnished, if known; the amount
5 paid on account to date; the amount due; and the amount to
6 become due, if known, as of the date of the statement by the
7 claimant. Any such demand to a claimant who is not in privity
8 with the contractor must be served on the claimant at the
9 address and to the attention of any person who is designated
10 to receive the demand in the notice to contractor served by
11 the claimant. The failure or refusal to furnish the statement
12 does not deprive the claimant of his or her rights under the
13 bond if the demand is not served at the address of the
14 claimant or directed to the attention of the person designated
15 to receive the demand in the notice to contractor. The failure
16 to furnish the statement within 30 days after the demand, or
17 the furnishing of a false or fraudulent statement, deprives
18 the claimant who fails to furnish the statement, or who
19 furnishes the false or fraudulent statement, of his or her
20 rights under the bond. If the contractor serves more than one
21 demand for statement of account on a claimant and none of the
22 information regarding the account has changed since the
23 claimant's last response to a demand, the failure or refusal
24 to furnish such statement does not deprive the claimant of his
25 or her rights under the bond. The negligent inclusion or
26 omission of any information deprives the claimant of his or
27 her rights under the bond to the extent that the contractor
28 can demonstrate prejudice from such act or omission by the
29 claimant. The failure to furnish a response to a demand for
30 statement of account does not affect the validity of any claim
31 on the bond being enforced in a lawsuit filed before the date

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1 the demand for statement of account is received by the
2 claimant.

3 ~~(8)(9)~~ On any public works project for which the
4 public authority requires a performance and payment bond,
5 suits at law and in equity may be brought and maintained by
6 and against the public authority on any contract claim arising
7 from breach of an express provision or an implied covenant of
8 a written agreement or a written directive issued by the
9 public authority pursuant to the written agreement. In any
10 such suit, the public authority and the contractor shall have
11 all of the same rights and obligations as a private person
12 under a like contract except that no liability may be based on
13 an oral modification of either the written contract or written
14 directive. Nothing herein shall be construed to waive the
15 sovereign immunity of the state and its political subdivisions
16 from equitable claims and equitable remedies. The provisions
17 of this subsection shall apply only to contracts entered into
18 on or after July 1, 1999.

19 (9) An action, except an action for recovery of
20 retainage, must be instituted against the contractor or the
21 surety on the payment bond or the payment provisions of a
22 combined payment and performance bond within 1 year after the
23 performance of the labor or completion of delivery of the
24 materials or supplies. An action for recovery of retainage
25 must be instituted against the contractor or the surety within
26 1 year after the performance of the labor or completion of
27 delivery of the materials or supplies, provided that such an
28 action may not be instituted until one of the following
29 conditions is satisfied:

30 (a) The public entity has paid out the claimant's
31 retainage to the contractor, and the time provided under s.

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1 255.073(3) for payment of that retainage to the claimant has
2 expired;

3 (b) The claimant has completed all work required under
4 its contract and 70 days have passed since the contractor sent
5 its final payment request to the public entity; or

6 (c) The claimant has asked the contractor, in writing,
7 when the contractor received payment of the claimant's
8 retainage or when the contractor sent its final payment
9 request to the public entity, and the contractor has failed to
10 respond to this request, in writing, within 10 days after
11 receipt.

12
13 If none of the conditions described in paragraph (a),
14 paragraph (b), or paragraph (c) is satisfied and an action for
15 recovery of retainage therefore cannot be instituted within
16 the 1-year limitation period set forth in this subsection,
17 this limitation period shall be extended until 120 days after
18 one of these conditions is satisfied.

19 Section 1. Paragraph (b) of subsection (2) of section
20 95.11, Florida Statutes, is amended to read:

21 95.11 Limitations other than for the recovery of real
22 property.--Actions other than for recovery of real property
23 shall be commenced as follows:

24 (2) WITHIN FIVE YEARS.--

25 (b) A legal or equitable action on a contract,
26 obligation, or liability founded on a written instrument,
27 except for an action to enforce a claim against a payment
28 bond, which shall be governed by the applicable provisions of
29 ss. 255.05(9) ~~255.05(2)(a)2.~~ and 713.23(1)(e).

30 Section 2. Neither the amendments to sections 95.11,
31 218.70, 218.72, 218.735, and 255.071, Florida Statutes, and

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1 that ss. 218.72-218.76, F.S., apply to the
2 payment of any payment request for retainage;
3 providing exceptions; creating s. 255.0705,
4 F.S.; providing a short title; amending s.
5 255.071, F.S.; revising deadlines for the
6 payment of subcontractors, sub-subcontractors,
7 materialmen, and suppliers on construction
8 contracts for public projects; creating ss.
9 255.072, 255.073, 255.074, 255.075, 255.076,
10 255.077, and 255.078, F.S.; providing
11 definitions; providing for timely payment for
12 purchases of construction services by a public
13 entity; providing procedures for calculating
14 payment due dates; providing procedures for
15 handling improper payment requests; providing
16 for the resolution of disputes; providing for
17 project closeout and payment of retainage;
18 providing that ss. 255.072-255.076, F.S., apply
19 to the payment of any payment request for
20 retainage; providing exceptions; amending s.
21 255.05, F.S.; providing requirements for
22 certain notices of nonpayment served by a
23 claimant who is not in privity with the
24 contractor; revising the form for a public
25 construction bond; requiring the payment
26 provisions of all public construction bonds to
27 be construed as statutory bonds; prohibiting
28 conversion to common law bonds; deleting a
29 requirement that bond forms used by public
30 owners reference certain notice and time
31 limitation provisions; providing limitations on

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1 a claimant's institution of certain actions
2 against a contractor or surety; amending s.
3 95.11, F.S., to conform a cross-reference;
4 providing for application of specified sections
5 of the act to certain contracts and projects;
6 providing an effective date.

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