

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 535 w/CS Public Construction Bonds  
**SPONSOR(S):** State Administration, Murzin and others  
**TIED BILLS:** none **IDEN./SIM. BILLS:** CS/SB 1600(s)

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government & Veterans' Affairs	19 Y, 0 N w/CS	Grayson	Cutchins
2) State Administration	7 Y, 0 N w/CS	Bond	Everhart
3) Appropriations			
4)			
5)			

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**SUMMARY ANALYSIS**

This bill with CS modifies the permissive statutory form of a payment and performance bond for public works, and provides that the statute of limitations for collection against any payment and performance bond for public works is one year.

This bill with CS does not appear to have a fiscal impact on state or local government.

## 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

Current law requires that a contractor constructing a public work for state or local government valued in excess of \$200,000 must post a payment and performance bond. A payment and performance bond protects state and local governments from default by a contractor, and protects subcontractors who cannot file a mechanic's lien because the project involves public property. A bond required by statute is a statutory bond, for which there is a one year statute of limitations.<sup>1</sup> Thus, a claimant against the bond must file a lawsuit against the bonding company within one year of completion or abandonment of the project. A bond that contains provisions or terms not required by statute is a common law bond, for which there is a 5 year statute of limitations.<sup>2</sup> See *Martin Paving Co. v. United Pacific Insurance Co.*, 646 So.2d 268 (Fla. 5th DCA 1994), and *Insurance Co. of North America v. Metropolitan Dade County*, 705 So.2d 33 (Fla. 3rd DCA 1997).

Section 255.05(3), F.S., provides a suggested form for a payment and performance bond on public works. There is an argument that a bond that does not exactly follow this statutory form is a common law bond, not a statutory one.

##### Effect of Bill

The bill with CS amends the suggested bond form to add a line for entry of a bond number, and adds the following clause to the form:

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05 of the Florida Statutes.

The bill with CS provides that a payment and performance bond required of public works by s. 255.05(1), F.S., is to be construed and deemed a statutory bond, not a common law bond. The effect of this change is to provide a 1 year statute of limitations for collection against any payment and performance bond required by s. 255.05, F.S., for a public work.

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<sup>1</sup> Section 95.11(5)(e), F.S., provides a one year statute of limitation for: "An action to enforce any claim against a payment bond on which the principal is a contractor, subcontractor, or sub-subcontractor as defined in s. 713.01, for private work as well as public work, from the last furnishing of labor, services, or materials or from the last furnishing of labor, services, or materials by the contractor if the contractor is the principal on a bond on the same construction project, whichever is later."

<sup>2</sup> There is no specific statute of limitations for a common law bond. The applicable statute of limitations is s. 95.11(2)(b), F.S., which is the 5 year statute of limitations applicable to written contracts.

C. SECTION DIRECTORY:

Section 1 amends s. 255.05, F.S., to modify the suggested bond form and provide that a bond under s. 255.05, F.S., is a statutory bond.

Section 2 provides an effective date of upon becoming a law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not affect a state revenue source.

2. Expenditures:

None. This bill is not expected to affect state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not affect a local government revenue source.

2. Expenditures:

None. This bill is not expected to affect local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Management Services' bill analysis indicates that this bill would have no fiscal impact on state or local government.<sup>3</sup>

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

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<sup>3</sup> Department of Management Services 2004 Substantive Bill Analysis, HB 535, 1/23/04.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 23, 2004, the Committee on Local Government & Veterans' Affairs adopted one strike all amendment. The amendment amends s. 255.05, F.S., relating to public construction bonds. The amendment revises the bond form, requires that all public construction bonds be construed as statutory bonds, prohibits the conversion to common law bonds, and requires that public bond forms used by public owners comply with notice and time limitation provisions.

On March 31, 2004, the Committee on State Administration adopted one amendment to this bill amending the statutory bond form to cite to the Florida Statutes in a form understandable by lay persons. The bill was then reported favorably with a committee substitute.