

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 785 Hillsborough County
SPONSOR(S): Murman
TIED BILLS: IDEN./SIM. BILLS: SB 1854

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: 1) Local Government & Veterans' Affairs, Grayson, Cutchins. Rows 2-5 are blank.

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.

This bill increases the threshold, from \$200,000 to \$500,000, below which Hillsborough County may waive payment and performance bonds for certain public works projects competitively bid on by participants in an economic development program for local small businesses.

The bill further provides for participant criteria, rights and obligations of parties where such payment and performance bonds are waived, a limitation on the number of times a contractor may successfully bid, a bi-annual report to the legislative delegation, and an automatic repeal of this act on September 30, 2009.

According to County representatives, the goal of this bill is to increase public sector contracting opportunities for local small businesses in the community. (See "OTHER COMMENTS")

Pursuant to House Rule 5.5(b), a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. The provisions of House Rule 5.5(b) appear to apply to this bill. (See section I.B. "EFFECT OF PROPOSED CHANGES:")

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

#### B. EFFECT OF PROPOSED CHANGES:

##### Effect of Bill

As to Hillsborough County, this bill raises the threshold from, \$200,000 to \$500,000, below which payment and performance bonds for certain public works projects may be waived by the County. The bill requires that such projects be awarded as part of a race and gender neutral economic development program for the encouragement of local small businesses adopted by the county governing body as part of resolution or ordinance. The project types eligible under this bill are the construction of a public building, the prosecution and completion of a public work, or the repair on a public building or public work.

The bill requires that the County's adopted criteria for participation require a participant to:

- Be an independent business.
- Be principally domiciled in Hillsborough County, unless a reciprocal program is established by interlocal agreement with another jurisdiction.
- Have been in business for at least 1 year.
- Employ 25 or fewer full time employees.
- Have a three year average gross annual sales of \$2 million or less with regard to any construction element of the program.
- Participate in an education curriculum regarding bonding eligibility.

The bill provides that the County's procedures for waiving payment and performance bonds for projects between \$200,000 and \$500,000 must limit the waiver to projects that have been set aside to be competitively bid on by participants in an economic development program for local small businesses. The bill provides that a committee of County staff will determine suitability of projects and provides some procedure for that determination.

Section 255.05(9), F.S., provides certain rights and obligations regarding contractual claims arising from public works projects for which the public authority requires a performance and payment bond. Section 4 of the bill extends those same rights and obligations in situations where the County has waived a performance or payment bond pursuant to the provisions of this bill.

The bill limits participants to no more than three successful bids on projects for which the payment and performance bonds are waived pursuant to the authority of this bill.

The bill requires the County to report activity under this bill to the legislative delegation every two years beginning on December 31, 2006.

The bill provides for repeal on September 30, 2009.

### Exemption to General Law

This bill provides exemptions to general law. Section 255.50(1), F.S., provides discretion to local governments regarding waiver of performance and payment bonds for certain projects below \$200,000. Section 1 of the bill authorizes increases that threshold to \$500,000 for certain Hillsborough County public projects. Section 255.05(9), F.S., provides certain rights and obligations regarding contractual claims arising from public works projects for which the public authority requires a performance and payment bond. Section 4 of the bill extends those same rights and obligations in situations where the county has waived a performance or payment bond pursuant to the provisions of this bill.

**Pursuant to House Rule 5.5(b), a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. The provisions of House Rule 5.5(b) appear to apply to this bill.**

### Background

Section 255.05(1), 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.

#### C. SECTION DIRECTORY:

Section 1. Provides for waiver of certain payment and performance bonds in Hillsborough County.

Section 2. Provides for participant eligibility.

Section 3. Provides for project eligibility.

Section 4. Provides for payment for labor, services and materials in lieu of surety.

Section 5. Provides for ineligibility.

Section 6. Provides for a report.

Section 7. Provides for repeal on September 30, 2009.

Section 8. Provides an effective date of upon becoming law.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN?

December 29, 2003

WHERE?

The Tampa Tribune, a newspaper published at Tampa in Hillsborough County.

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

During the 2003 Session, HB 259 and SB 1332 would have provided similar authority statewide for all local governments, consistent with the current general law's applicability. According to a representative of Hillsborough County<sup>1</sup>, Hillsborough County has an excellent program record over the life span of its program from 1994 to current date. The county has processed a total of 36 construction projects costing nearly \$4 million with no defaults. The Legislature's concern in 2003 was that the general law would apply to all local governments and several of which do not have the same or a similar program as Hillsborough County to produce such success with no defaults.

---

<sup>1</sup> Darcy A. Foster, Intergovernmental Relations Manager, Hillsborough County, 2/18/04.

## Hillsborough County

According to information provided by representatives of Hillsborough County<sup>2</sup>:

- The bill would change the statutory waiver threshold for the requirement of Payment and Performance Bonds from \$200,000 to \$500,000 for utilization in its Small Business Encouragement (SBE) program.
- Despite the County's SBE program's success, the County Commission has been forced to narrow the quantity and quality of projects that come under the umbrella of the program because the statutory performance waiver limit has not kept pace with inflation. Projects that were the backbone of the program 10 years ago are no longer available because inflation has pushed costs beyond the current local government statutory bond waiver threshold of \$200,000.
- The County's SBE program, which is race and gender neutral, has been in place for 11 years, with no burden of loss to its taxpayers, and no loss to subcontractors. The program is a valuable tool to help prepare small contractors to better compete in the open market and to be more capable of being bonded for larger public and private projects.
- During the period 1994-2003, Hillsborough County has spent nearly \$4 million in 36 construction projects that were set-aside for bidding solely by registered SBEs. The County has experienced no losses or defaults as a result of these projects, in which bond requirements were waived, pursuant to Florida law.
- The goal is to increase public sector contracting opportunities for local small businesses in the community. The current program provides a sheltered market for small businesses for those projects that the County determines will not expose the taxpayers to unreasonable risk with the waiver of payment and performance bond. This is accomplished through strict program criteria and project monitoring. This tried and proven program will be enhanced by an educational component to increase contractors' ability to secure bonds in the future. Thus, the County's desire to seek a local bill due to its unique standards.
- The County's program has proven successful in the transition from subcontracting to prime contracting for small construction firms within the community.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

None.

---

<sup>2</sup> Gene Gray, Director, Economic Development Department, and Darcy A. Foster, Intergovernmental Relations Manager, Hillsborough County, 2/18/04.