

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House principles.

B. EFFECT OF PROPOSED CHANGES:

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. The bond is conditioned upon the contractor's performance of the construction work in the time and manner prescribed in the contract, and the contractor's prompt payment to all suppliers and subcontractors. A local government may waive the requirement of a payment and performance bond for contracts of \$200,000 or less.

This bill allows the City of Jacksonville to waive the requirement for a payment and performance bond for contracts of \$500,000 or less. The bill requires projects to be awarded pursuant to a race-neutral and gender-neutral economic development program adopted by the City for the encouragement of local small businesses. Eligible projects include the construction of a public building, the prosecution and completion of a public work, or the repair on a public building or public work.

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. This bill extends those same rights and obligations in situations where the City has waived a performance or payment bond pursuant to the provisions of this bill.

With respect to private construction contracts, laborers, materialmen, and subcontractors have 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 might not recover payment for materials or labor supplied.

The bill requires the City to pay all persons as defined in s. 713.01, F.S., who furnish labor, services, or materials under a contract to the same extent and upon the same conditions that a surety on the payment bond would have been obligated to pay such persons if the payment or performance bond had not been waived.

C. SECTION DIRECTORY:

- Section 1. Amends ch. 92-341, L.O.F., to increase the dollar threshold for waiver payment and performance bonds.
- Section 2. Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? October 18, 2004

WHERE? Financial News & Daily Record, Jacksonville, Duval County, Florida.

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: Rule-making is not addressed in this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Exemption to General Law

This bill appears to provide an exemption 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. This bill authorizes increases that threshold to \$500,000 for certain City of Jacksonville 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. The bill also extends those same rights and obligations in situations where the City 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.

Previous Legislation

In 2004, the Legislature enacted ch. 2004-414, L.O.F., which also provided for an increase in the threshold from \$200,000 to \$500,000 for Hillsborough County. However, that bill included provisions that are not included in this bill, and which were negotiated between Hillsborough County and subcontractor representatives.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.