

By Senator Saunders

37-1424-07

1 A bill to be entitled

2 An act relating to contractor bonds; amending

3 s. 255.05, F.S.; clarifying provisions that

4 require contractors who contract with the state

5 or a local government for certain public

6 buildings or public work to provide a

7 performance bond and a payment bond equal to

8 the full contact amount; allowing a set off in

9 the amount of certain bonds required to be

10 provided by subcontractors; providing an

11 effective date.

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13 Be It Enacted by the Legislature of the State of Florida:

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15 Section 1. Subsection (1) of section 255.05, Florida

16 Statutes, is amended to read:

17 255.05 Bond of contractor constructing public

18 buildings; form; action by materialmen.--

19 (1)(a) Any person entering into a formal contract with

20 the state or any county, city, or political subdivision

21 thereof, or other public authority, for the construction of a

22 public building, for the prosecution and completion of a

23 public work, or for repairs upon a public building or public

24 work shall be required, before commencing the work or before

25 recommencing the work after a default or abandonment, to

26 execute, deliver to the public owner, and record in the public

27 records of the county where the improvement is located, the

28 following bonds: a payment and performance bond with a surety

29 insurer authorized to do business in this state as surety.

30 1. A performance bond in an amount equal to the full

31 contract amount conditioned on the faithful performance of the

1 contract in accordance with plans, specifications, and
2 conditions of the contract, except that for
3 construction-manager-at-risk construction services and
4 design-build construction services, the amount of the
5 performance bond shall be the price of construction and may
6 not include the cost of any design services, preconstruction
7 services, finance services, maintenance services, operations
8 services, or other related services included in the contract;
9 and

10 2. A payment bond in an amount equal to the full
11 contract amount solely for the protection of claimants
12 supplying labor or materials to the contractor or the
13 contractor's subcontractors in the prosecution of the
14 construction and not for the protection of persons providing
15 design services, preconstruction services, finance services,
16 maintenance services, operations services, or other related
17 services provided for the contract, except that for
18 construction-manager-at-risk construction services and
19 design-build construction services, the amount of the payment
20 bond shall be the price of construction and may not include
21 the cost of any design services, preconstruction services,
22 finance services, maintenance services, operations services,
23 or other related services included in the contract.

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25 To the extent that the contractor, pursuant to written
26 agreements with its subcontractors, requires the
27 subcontractors to provide performance and payment bonds that
28 name both the contractor and the public entity as obligees,
29 the amount of the payment and performance bonds required to be
30 provided by the contractor pursuant to this section may be
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1 reduced by the amount of such bonds that are provided by the
2 subcontractors..

3 **(b)** A public entity may not require a contractor to
4 secure a surety bond under this section from a specific agent
5 or bonding company. The bond must state on its front page: the
6 name, principal business address, and phone number of the
7 contractor, the surety, the owner of the property being
8 improved, and, if different from the owner, the contracting
9 public entity; the contract number assigned by the contracting
10 public entity; and a description of the project sufficient to
11 identify it, such as a legal description or the street address
12 of the property being improved, and a general description of
13 the improvement. Such bond shall be conditioned upon the
14 contractor's performance of the construction work in the time
15 and manner prescribed in the contract and promptly making
16 payments to all persons defined in s. 713.01 who furnish
17 labor, services, or materials for the prosecution of the work
18 provided for in the contract. Any claimant may apply to the
19 governmental entity having charge of the work for copies of
20 the contract and bond and shall thereupon be furnished with a
21 certified copy of the contract and bond. The claimant shall
22 have a right of action against the contractor and surety for
23 the amount due him or her, including unpaid finance charges
24 due under the claimant's contract. Such action shall not
25 involve the public authority in any expense. When such work is
26 done for the state and the contract is for \$100,000 or less,
27 no payment and performance bond shall be required. At the
28 discretion of the official or board awarding such contract
29 when such work is done for any county, city, political
30 subdivision, or public authority, any person entering into
31 such a contract which is for \$200,000 or less may be exempted

1 from executing the payment and performance bond. When such
2 work is done for the state, the Secretary of the Department of
3 Management Services may delegate to state agencies the
4 authority to exempt any person entering into such a contract
5 amounting to more than \$100,000 but less than \$200,000 from
6 executing the payment and performance bond. In the event such
7 exemption is granted, the officer or officials shall not be
8 personally liable to persons suffering loss because of
9 granting such exemption. The Department of Management Services
10 shall maintain information on the number of requests by state
11 agencies for delegation of authority to waive the bond
12 requirements by agency and project number and whether any
13 request for delegation was denied and the justification for
14 the denial. Any provision in a payment bond furnished for
15 public work contracts as provided by this subsection which
16 restricts the classes of persons as defined in s. 713.01
17 protected by the bond or the venue of any proceeding relating
18 to such bond is unenforceable.

19 ~~(c)(b)~~ The Department of Management Services shall
20 adopt rules with respect to all contracts for \$200,000 or
21 less, to provide:

22 1. Procedures for retaining up to 10 percent of each
23 request for payment submitted by a contractor and procedures
24 for determining disbursements from the amount retained on a
25 pro rata basis to laborers, materialmen, and subcontractors,
26 as defined in s. 713.01.

27 2. Procedures for requiring certification from
28 laborers, materialmen, and subcontractors, as defined in s.
29 713.01, prior to final payment to the contractor that such
30 laborers, materialmen, and subcontractors have no claims
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1 against the contractor resulting from the completion of the
2 work provided for in the contract.

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4 The state shall not be held liable to any laborer,
5 materialman, or subcontractor for any amounts greater than the
6 pro rata share as determined under this section.

7 Section 2. This act shall take effect July 1, 2007.

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10 SENATE SUMMARY

11 Clarifies provisions relating to contractors who contract
12 with the state or a local government for certain public
13 buildings or public work. Provides exceptions for certain
14 types of contracts and allows a set off in the amount of
15 bonds required of subcontractors working on the project.
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