

Amendment No.

CHAMBER ACTION

Senate

House

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Representative Moraitis offered the following:

Amendment (with title amendment)

Remove lines 122-296 and insert:

(b) Before commencing the work or before recommencing the work after a default or abandonment, the contractor shall provide to the public entity a certified copy of the recorded bond. Notwithstanding the terms of the contract or any other law governing prompt payment for construction services, the public entity may not make a payment to the contractor until the contractor has complied with this paragraph. This paragraph applies to contracts entered into on or after October 1, 2012.

(c) The ~~Such~~ bond shall be conditioned upon the contractor's performance of the construction work in the time and manner prescribed in the contract and promptly making payments to all persons defined in s. 713.01 who furnish labor,
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17 services, or materials for the prosecution of the work provided
18 for in the contract. ~~A~~ ~~Any~~ claimant may apply to the
19 governmental entity having charge of the work for copies of the
20 contract and bond and shall thereupon be furnished with a
21 ~~certified~~ copy of the contract and the recorded bond. The
22 claimant shall have a cause ~~right~~ of action against the
23 contractor and surety for the amount due him or her, including
24 unpaid finance charges due under the claimant's contract. Such
25 action may ~~shall~~ not involve the public authority in any
26 expense.

27 (d) When the ~~such~~ work is done for the state and the
28 contract is for \$100,000 or less, no payment and performance
29 bond shall be required. At the discretion of the official or
30 board awarding such contract when such work is done for any
31 county, city, political subdivision, or public authority, a ~~any~~
32 person entering into such a contract that ~~which~~ is for \$200,000
33 or less may be exempted from executing the payment and
34 performance bond. When such work is done for the state, the
35 Secretary of Management Services may delegate to state agencies
36 the authority to exempt any person entering into such a contract
37 amounting to more than \$100,000 but less than \$200,000 from
38 executing the payment and performance bond. If an ~~In the event~~
39 ~~such~~ exemption is granted, the officer or official is ~~officials~~
40 ~~shall~~ not be personally liable to persons suffering loss because
41 of granting such exemption. The Department of Management
42 Services shall maintain information on the number of requests by
43 state agencies for delegation of authority to waive the bond
44 requirements by agency and project number and whether any

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45 request for delegation was denied and the justification for the
46 denial.

47 (e) Any provision in a payment bond issued on or after
48 October 1, 2012, furnished for public work contracts as provided
49 by this subsection which further restricts the classes of
50 persons ~~as defined in s. 713.01~~ protected by the bond, which
51 restricts ~~or~~ the venue of any proceeding relating to such bond,
52 which limits or expands the effective duration of the bond, or
53 which adds conditions precedent to the enforcement of a claim
54 against the bond beyond those provided in this section is
55 unenforceable.

56 (f) ~~(b)~~ The Department of Management Services shall adopt
57 rules with respect to all contracts for \$200,000 or less, to
58 provide:

59 1. Procedures for retaining up to 10 percent of each
60 request for payment submitted by a contractor and procedures for
61 determining disbursements from the amount retained on a pro rata
62 basis to laborers, materialmen, and subcontractors, as defined
63 in s. 713.01.

64 2. Procedures for requiring certification from laborers,
65 materialmen, and subcontractors, as defined in s. 713.01, before
66 ~~prior to~~ final payment to the contractor that such laborers,
67 materialmen, and subcontractors have no claims against the
68 contractor resulting from the completion of the work provided
69 for in the contract.

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71 The state is ~~shall~~ not ~~be held~~ liable to any laborer,
72 materialman, or subcontractor for any amounts greater than the
73 pro rata share as determined under this section.

74 (g)~~(e)~~1. The amount of the bond shall equal the contract
75 price, except that for a contract in excess of \$250 million, if
76 the state, county, municipality, political subdivision, or other
77 public entity finds that a bond in the amount of the contract
78 price is not reasonably available, the public owner shall set
79 the amount of the bond at the largest amount reasonably
80 available, but not less than \$250 million.

81 2. For construction-management or design-build contracts,
82 if the public owner does not include in the bond amount the cost
83 of design or other nonconstruction services, the bond may not be
84 conditioned on performance of such services or payment to
85 persons furnishing such services. Notwithstanding paragraphs (c)
86 and (e) ~~paragraph (a)~~, such a bond may exclude persons
87 furnishing such services from the classes of persons protected
88 by the bond.

89 (2) (a)1. If a claimant is no longer furnishing labor,
90 services, or materials on a project, a contractor or the
91 contractor's agent or attorney may elect to shorten the
92 ~~prescribed time in this paragraph~~ within which an action to
93 enforce any claim against a payment bond must ~~provided pursuant~~
94 ~~to this section~~ may be commenced by recording in the clerk's
95 office a notice in substantially the following form:

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97 NOTICE OF CONTEST OF CLAIM
98 AGAINST PAYMENT BOND

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To: ...(Name and address of claimant)...

You are notified that the undersigned contests your notice of nonpayment, dated,, and served on the undersigned on,, and that the time within which you may file suit to enforce your claim is limited to 60 days after the date of service of this notice.

DATED on,

Signed: ...(Contractor or Attorney)...

The claim of a ~~any~~ claimant upon whom such notice is served and who fails to institute a suit to enforce his or her claim against the payment bond within 60 days after service of such notice shall be extinguished automatically. The contractor or the contractor's attorney ~~clerk~~ shall serve ~~mail~~ a copy of the notice of contest to the claimant at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of the ~~such~~ notice and record the notice. ~~Service is complete upon mailing.~~

2. A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 45 days after commencing to furnish labor, services, or materials for the prosecution of the work, furnish the contractor with a written notice that he or she intends to look to the bond for protection. A claimant who is not in privity

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127 | with the contractor and who has not received payment for his or
128 | her labor, services, or materials shall deliver to the
129 | contractor and to the surety written notice of the performance
130 | of the labor or delivery of the materials or supplies and of the
131 | nonpayment. The notice of nonpayment shall ~~may~~ be served ~~at any~~
132 | ~~time~~ during the progress of the work or thereafter but may not
133 | be served earlier than ~~before~~ 45 days after the first furnishing
134 | of labor, services, or materials or, ~~and not~~ later than 90 days
135 | after the final furnishing of the labor, services, or materials
136 | by the claimant or, with respect to rental equipment, not later
137 | than 90 days after the date that the rental equipment was last
138 | on the job site available for use. Any notice of nonpayment
139 | served by a claimant who is not in privity with the contractor
140 | which includes sums for retainage must specify the portion of
141 | the amount claimed for retainage. An ~~No~~ action for the labor,
142 | materials, or supplies may not be instituted against the
143 | contractor or the surety unless the notice to the contractor and
144 | notice of nonpayment have been served, if required by this
145 | section ~~both notices have been given~~. Notices required or
146 | permitted under this section shall ~~may~~ be served in accordance
147 | with s. 713.18. A claimant may not waive in advance his or her
148 | right to bring an action under the bond against the surety. In
149 | any action brought to enforce a claim against a payment bond
150 | under this section, the prevailing party is entitled to recover
151 | a reasonable fee for the services of his or her attorney for
152 | trial and appeal or for arbitration, in an amount to be
153 | determined by the court, which fee must be taxed as part of the
154 | prevailing party's costs, as allowed in equitable actions. The
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155 time periods for service of a notice of nonpayment or for
156 bringing an action against a contractor or a surety shall be
157 measured from the last day of furnishing labor, services, or
158 materials by the claimant and may ~~shall~~ not be measured by other
159 standards, such as the issuance of a certificate of occupancy or
160 the issuance of a certificate of substantial completion.

161 (6) All payment bond forms used by a public owner and all
162 payment bonds executed pursuant to this section by a surety
163 shall make reference to this section by number, and shall
164 contain reference to the notice and time limitation provisions
165 in subsections ~~subsection~~ (2) and (10), and shall comply with
166 the requirements of paragraph (1) (a).

167 (11) When a contractor furnishes and records a payment and
168 performance bond for a public works project in accordance with
169 this section and provides the public authority with a written
170 consent from the surety regarding the project or payment in
171 question, the public authority may not condition its payment to
172 the contractor on the production of a release, waiver, or like
173 documentation from a claimant demonstrating that the claimant
174 does not have an outstanding claim against the contractor, the
175 surety, the payment bond, or the public authority for payments
176 due on labor, services, or materials furnished on the public
177 works project. The surety may, in a writing served on the public
178 authority, revoke its consent or direct that the public
179 authority withhold a specified amount from a payment, which
180 shall be effective upon receipt. This subsection applies to
181 contracts entered into on or after October 1, 2012.

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182 Section 3. Effective upon this act becoming a law, section
183 255.0518, Florida Statutes, is created

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186 Remove lines 918-933 and insert:

187 (f) A Any lienor has a direct right of action on the bond
188 against the surety. Any provision in a payment bond issued on or
189 after October 1, 2012, which further restricts A bond must not
190 contain any provisions restricting the classes of persons who
191 are protected by the payment bond, which restricts thereby or
192 the venue of any proceeding relating to such payment bond, which
193 limits or expands the effective duration of the payment bond, or
194 which adds conditions precedent to the enforcement of a claim
195 against a payment bond beyond those provided in this part is
196 unenforceable. The surety is not entitled to the defense of pro
197 tanto discharge as against any lienor because of changes or
198 modifications in the contract to which the surety is not a
199 party; but the liability of the surety may not be increased
200 beyond the penal sum of the bond. A lienor may not waive in
201 advance his or her right to bring an action under the bond
202 against the surety.

203

204 Remove line 966 and insert:

205 Section 12. Except as otherwise expressly provided in this
206 act, this act shall take effect October 1, 2012.

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T I T L E A M E N D M E N T

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210 Remove line 66 and insert:
211 of certain provisions; providing effective dates.