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DATE: March 20, 1998

HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: HB 3381

RELATING TO: Public officers and employees

SPONSOR(S): Representative Constantine

COMPANION BILL(S): SB 0222(i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
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I. SUMMARY:

This bill is a response to an interim project entitled *A Review of the Necessity for Performance (Surety) Bonds for Public Officers and Public Employees* completed by staff of the Joint Legislative Auditing Committee in 1995. The bill would repeal, or amend, many provisions of law that require the procurement of performance bonds by specified state officers, county officers, constitutional officers, clerks of the courts, other officers of the courts, local government officials, and other specific public employees. Instead, in most cases, an agency head, at his or her discretion, would be authorized to require a surety or performance bond of any employee, should the need arise.

There would be a fiscal impact on both state and local governments, but it is difficult to estimate the level of impact. Inasmuch as there would be considerable flexibility in the procurement of bonds, it is possible that the impact would be positive, saving money at both the state and local levels.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Article II, s. 5, Fla. Const., requires that each state and county officer must provide bond as specified by law before discharging the duties of his or her office. Numerous statutes require individual public officials to provide a performance, faithful performance, or surety bond. The public officers affected include court officers, local and state law enforcement officers, Cabinet officers, and heads of state agencies, among various others.

According to a 1995 interim project report completed by the Joint Legislative Auditing Committee, requirements that public officers provide performance bonds were instituted as a means of protecting the public and ensuring that public officials performed their duties as required by law. Many public officers are required to furnish a bond that insures the faithful performance of their respective duties, particularly in cases in which the duties of the office pertain to the oversight of public monies or other assets, or the safety and protection of citizens.

For example, the State Treasurer is required[1] to give a bond in the amount of $100,000; the Comptroller is required[2] to give a bond in the amount of $50,000. Similarly, the Commissioner of Agriculture is required[3] to give a bond in the amount of $10,000.

Prior to 1996, the Auditor General was required[4] to give bond in the amount of $10,000. The law also required all auditors employed by the Auditor General to be bonded. During the 1996 regular session, the Legislature repealed the bonding requirements relative to the Auditor General and related auditors.[5]

The Division of Purchasing of the Department of Management Services is responsible for purchasing surety bonds on behalf of state agencies under the general authority granted to the division for the purchase of insurance.[6] Until recently, the division purchased a blanket "faithful performance of duty" bond for various state employees, as well as separate public official bonds for specified public officials. The division now purchases a blanket faithful performance of duty bond that includes state employees and public officials. Agencies are responsible for premium amounts based upon the number of employees covered by the blanket "faithful performance of duty" bond.

Many county and constitutional officers are required by law to provide performance bonds. Many local governmental bodies and court administrators are self-insured for the purpose of providing liability and other insurance for their respective local public officials and employees. For example, sheriffs are generally covered by the Florida

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[1]Section 18.01, F.S.

[2]Section 17.01, F.S.

[3]Section 19.14, F.S.

[4]Section 11.42, F.S.

[5]Chapter 96-318, L.O.F.

[6]Section 287.022, F.S.

Sheriff's Self-Insurance Fund. In some cases, sheriffs are covered by the self-insurance funds of their respective counties.

The Florida Casualty Insurance Risk Management Trust Fund is established in statute[7] as a self-insurance fund to provide state agencies with insurance for workers' compensation, general liability, certain federal civil rights actions, and court-awarded attorneys fees. The fund is administered by the Division of Risk Management of the Department of Insurance. The scope and types of coverage are determined by law. The trust fund covers all agencies of the executive, legislative and judicial branches and their respective employees, agents, and volunteers, unless an agency is specifically excluded from coverage. The Division of Risk Management does not provide or purchase surety coverage, however.

B. EFFECT OF PROPOSED CHANGES:

The bill would repeal numerous provisions of law that require specified public officers and employees to be covered by a faithful performance, surety, or performance bond. Instead, in most cases, an agency head, at his or her discretion, would be authorized to require a performance bond of a public employee should the need arise. In some cases, the agency head would be a collegial commission or council.

See Section-By-Section Research for detail.

C. APPLICATION OF PRINCIPLES:

1. <u>Less Government:</u>

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. Some individual agency personnel would have to exercise additional discretion to determine when surety or performance bonds should be procured.

(3) any entitlement to a government service or benefit?

No.

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[7] Section 284.30, F.S.

b. If an agency or program is eliminated or reduced:

Not Applicable.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. <u>Lower Taxes:</u>

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. <u>Personal Responsibility:</u>

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

Not Applicable.

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

Not Applicable.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

The bill creates a new subsection in s. 20.05, F.S.

The bill amends ss. 18.01, 19.14, 20.05, 20.23, 20.32, 27.255, 28.01, 28.02, 28.09, 30.01, 30.02, 30.06, 30.09, 30.21, 40.35, 48.021, 98.015, 113.07, 115.03, 137.01, 137.02, 137.03, 137.04, 137.05, 240.268, 240.38, 242.343, 250.10, 266.00001, 266.0013, 284.41, 320.03, 372.04, 388.131, 440.50, 443.191, 443.211, 523.22, 561.051, 570.073, 570.09, 570.11, and 582.055, F.S.

The bill repeals ss.17.01, 17.19, 113.05, 137.06, 137.07, 213.04, 229.501, 252.55(5), 281.09, 321.08, and s. 523.11, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Section 1 -- Section 18.01, F.S., is amended to delete the requirement that the State Treasurer provide a $100,000 surety bond.

Section 2 -- Section 19.14, F.S., is amended to delete the requirement that the Commissioner of Agriculture provide a $10,000 surety bond.

Section 3 -- A new subsection (4) is created in s. 20.05, F.S., relating to the powers and duties of agency heads. Under the amendment, the head of any department, at his or her discretion, would be authorized to require any officer or employee to provide a performance bond in an amount determined by the agency head. Premiums for bonds would be paid out of the funds of the department.

Section 4 -- Section 20.23, F.S., is amended to delete the requirement that the comptroller of the Department of Transportation provide a $100,000 surety bond to the Governor.

Section 5 -- Section 20.32, F.S., relating to the Parole Commission, is amended to authorize the commission to require its employees to provide a performance bond. The fees for such bonds would be paid from the operating funds of the commission.

Section 6 -- Section 27.255, F.S., is amended to delete the requirement that investigators employed by a state attorney provide a surety bond. Under the change, any state attorney still could require a bond of such investigators, however.

Section 7 -- Section 28.01, F.S., is amended to authorize a board of county commissioners in a county with a population of fewer than 150,000 residents to require a performance bond of its clerk of the circuit court. The change deletes the current requirement for clerks to present surety bonds before taking office.

Section 8 -- Section 28.02, F.S., is amended to authorize a board of county commissioners in a county with a population of more than 150,000 residents to require its clerk of the circuit court to present a surety bond. The change deletes the current requirement that such clerks present a surety bond prior to taking office.

Section 9 -- Section 28.09, F.S., is amended to provide that a board of county commissioners is to determine whether a clerk ad interim --a clerk appointed to serve temporarily in the place of an elected clerk of the circuit court-- is to give a bond and security for the faithful performance of the duties of the clerk.

Section 10 -- Section 30.01, F.S., is amended to authorize the board of county commissioners in a county with a population of fewer than 150,000 residents to require a surety bond of the county's sheriff. The current requirement that such sheriffs provide a surety bond before taking office is deleted. Further, when a sheriff is appointed to fill a vacancy, the bill provides that a bond may not be a prerequisite to succession in offices. If the county commission requires a bond, the commission is required to allow a period of 10 days after the effective date of the appointment for the bond to be provided.

Section 11 -- Section 30.02, F.S., is amended to authorize the board of county commissioners in a county with a population of more than 150,000 residents to require a surety bond of the county's sheriff. The current requirement that such sheriffs provide a surety bond before taking office is deleted.

Section 12 -- Section 30.06, F.S., relating to companies issuing surety bonds on behalf of sheriffs, is amended to incorporate the amendments made by **Section 10** and **Section 11**.

Section 13 -- Section 30.09, F.S., is amended to authorize a board of county commissioners to require a surety bond of any deputy employed by the county sheriff. The current requirement that a deputy provide a surety bond before beginning work for a county sheriff is deleted.

Section 14 -- Section 30.21, F.S., is amended to clarify that a surety company that bonds a sheriff is liable for any fines, fees, costs, or other monies collected but not remitted by the sheriff.

Section 15 -- Section 40.35, F.S., is amended to clarify that a surety company of a clerk of the court would be liable for any monies not properly accounted for by the bonded clerk.

Section 16 -- Section 48.021, F.S., is amended to delete the requirement that applicants to become special process servers must present a surety bond in the amount of $5,000 before taking or accepting a job.

Section 17 -- Section 98.015, F.S., is amended to delete the requirement that a supervisor of elections must provide a $5,000 surety bond before assuming office.

Section 18 -- Section 113.07, F.S., is amended to clarify general provisions relating to public officers and employees who are required to post fidelity or performance bonds before assuming public office. The requirement that a bond be presented before the officer assumes his or her duties would be deleted.

Section 19 -- Section 115.03, F.S., is amended to clarify that any assistant or deputy appointed to fill the position of a public official or employee who is on leave of absence may be required to post a performance bond before assuming the office for which he or she is appointed.

Section 20 -- Section 137.01, F.S., is amended to authorize a board of county commissioners to require a surety bond of any county officer; deletes obsolete requirements relating to surety bonds of county officers.

Section 21 -- Section 137.02, F.S., relating to the surety bond of a county tax collector, is amended to assign duties relating to the amount of the bond to the respective board of county commissioners.

Section 22 -- Section 137.03, F.S., relating to the surety bond of a county property appraiser, is amended to assign duties relating to the amount of the bond to the respective board of county commissioners.

Section 23 -- Section 137.04, F.S., is amended to clarify that each board of county commissioners is authorized to set the amount of the surety bond required of each commissioner.

Section 24 -- Section 137.05, F.S., relating to the duty of each board of county commissioners, is clarified and amended to review the surety bonds of county officers and employees twice each year in order to determine the sufficiency of the bonds.

Section 25 -- Section 240.268, F.S., is amended to authorize, rather than require, state university police officers to post security bonds before accepting employment with a state university.

Section 26 -- Section 240.38, F.S., is amended to authorize, rather than require, community college police officers to post bonds before accepting employment with a state community college. The community college is authorized to determine the amount of the bond. In making this determination, the community college is authorized to consider the amount of money or property likely to be in the custody of the officer at any one time.

Section 27 -- Section 242.343, F.S., is amended to authorize, rather than require, campus police officers employed by the Florida School for the Deaf and Blind to post bonds before accepting employment with the school. The board of trustees may determine the amount of the bond, based upon the amount of money or property likely to be in the custody of the officer at any one time.

Section 28 -- Section 250.10, F.S., is amended to delete the requirement that the State Quartermaster of the Department of Military Affairs provide a surety bond before executing his or her responsibilities.

Section 29 -- Section 266.00001, F.S., is amended to authorize the Department of State to require members of the Historic Pensacola Preservation Board of Trustees to post a bond.

Section 30 -- Section 266.0013, F.S., is amended to delete the requirement that members of the Historic Pensacola Preservation Board of Trustees give a $5,000 surety bond in order to serve on the board.

Section 31 -- Subsection (5) of s. 252.55, F.S., is repealed and deletes the requirement that the Wing Commander of the Florida Wing of the Civil Air Patrol furnish a $50,000 surety bond to the Comptroller.

Section 32 -- Section 284.41, F.S., is amended to delete a reference to the surety bond of the Treasurer and Insurance Commissioner. The requirement for such a surety bond is repealed by **Section 1** of the bill.

Section 33 -- Section 320.03, F.S., is amended to authorize, rather than require, that each county tax collector provide a surety bond to the Department of Highway Safety and Motor Vehicles.

Section 34 -- Section 372.04, F.S., is amended to authorize, rather than require, that the director of the Game and Fresh Water Fish Commission provide a performance bond.

Section 35 -- Section 388.131, F.S., is amended to authorize, rather than require, that a member of a mosquito control district board of commissioners provide a surety bond to the Commissioner of Agriculture.

Section 36 -- Section 440.50, F.S., relating to the Workers' Compensation Administration Trust Fund, is amended to delete a reference to the surety bond of the State Treasurer. This amendment is in conformity with changes made by **Section 1** of the bill.

Section 37 -- Section 443.191, F.S., relating to the Unemployment Compensation Trust Fund, is amended to delete a reference to the surety bond required of the State Treasurer. This amendment is in conformity with changes made by **Section 1** of the bill.

Section 38 -- Section 443.211, F.S., relating to the Employment Security Administration Trust Fund, is amended to delete a reference to the surety bond required of the State Treasurer. This amendment is in conformity with changes made by **Section 3** of the bill.

Section 39 -- Section 523.22, F.S., relating to the inspection of naval stores, i.e., turpentine and rosin, at Florida ports is amended to delete the requirement for inspectors of naval stores to collect fees sufficient to pay the cost of bonding the inspectors.

Section 40 -- Section 561.051, F.S., is amended to delete the requirement that the director of the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation, and the assistant directors and employees of the division, provide a surety bond before carrying out their respective responsibilities.

Section 41 -- Section 570.09, F.S., is amended to delete the requirement for the Assistant Commissioner of Agriculture to provide a surety bond. The change would conform to the changes made by **Section 43** of the bill.

Section 42 -- Section 570.073, F.S., is amended to delete the requirement for law enforcement officers of the Department of Agriculture and Consumer Services to be covered by a faithful performance bond.

Section 43 -- Section 570.11, F.S., is amended to delete the requirement that directors within the Department of Agriculture and Consumer Services provide a performance bond before assuming office.

Section 44 -- Section 582.055, F.S., relating to the powers of the Department of Agriculture and Consumer Services, is amended to delete the directive for the department to provide surety bonds for employees of the department.

Section 45 -- would repeal the following sections of law:

- Section 17.01, F.S., that requires the Comptroller to give a $50,000 faithful performance bond before assuming office;
- Section 17.19, F.S., that requires the Comptroller to examine the bonds of state officials annually to determine the sufficiency of the bonds;
- Section 113.05, F.S., that prohibits the Governor from issuing commissions to public officers and employees until they have provided the required faithful performance bond;
- Section 137.06, F.S., which requires that a county or state officer be suspended from office until the official has posted the required surety bond. The law also allows for impeachment of a public officer who fails to present the proper bond;
- Section 137.07, F.S., which relates to the duties of the Comptroller and each board of county commissioners to certify that state and local officials, respectively, have presented the required performance bond;
- Section 213.04, F.S., which requires the Executive Director of the Department of Revenue to provide a faithful performance bond before assuming office;
- Section 229.501, F.S., which requires the Commissioner of Education to provide a $5,000 surety bond before assuming office;
- Section 281.09, F.S., which requires the Department of Management Services to ensure that each officer and agent of the Division of Capitol Police is covered by a blanket surety bond;
- Section 321.08, F.S., which requires surety bonds, in different amounts, for all members of the Florida Highway Patrol; and
- Section 523.11, F.S., which requires inspectors of naval stores at large, inspectors of naval stores, and supervising inspectors of naval stores to provide surety bonds before assuming office.

Section 46 -- Preserves any cause of action that accrues under laws amended or repealed by the bill before July 1, 1998.

Section 47 -- Provides an effective date of July 1, 1998.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

   None.

2. Recurring Effects:

   Until recently, the Division of Purchasing of the Department of Management Services purchased an annual blanket surety bond for various employees, as well as public official bonds for specified public officials. The division now reports that it purchases a blanket faithful performance of duty bond annually for state employees, including public officials that were previously covered by separate public official bonds. By including the public officials within the blanket faithful performance of duty bond, the division was able to obtain the same level of coverage for public officials at about half the cost. For FY 1997-98, the total premiums for bonds ensuring faithful performance of duties by both employees and state officers were $12,602. There have been no recent claims made under the faithful performance bond.

   Additionally, the division purchases an employee dishonesty bond. For FY 1997-98, the Division of Purchasing paid $49,522 for the blanket employee dishonesty bond. In 1997, the total claims paid under the employee dishonesty bond were $146,013. An additional $135,000 is currently pending claim.

   Under the provisions of the bill, state and local governmental agencies, for the most part, no longer would be required to purchase surety and faithful performance bonds for public officers and employees, although agency heads could elect to purchase such bonds on a case-by-case basis. The cost for premiums associated with faithful performance bonds is negligible to individual agencies, and the cost to the state and local governments, collectively, is estimated to be less than $1 million annually.

3. Long Run Effects Other Than Normal Growth:

   Unknown, but it is possible that the total outlay for bond premiums, plus claims where bonds do not exist, may be reduced.

4. Total Revenues and Expenditures:

   Unknown

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   Unknown.

2. Recurring Effects:

   Unknown.

3. Long Run Effects Other Than Normal Growth:

   Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   Unknown. Under the provisions of the bill, state and local government entities would be authorized, rather than required, to purchase surety and faithful performance bonds on behalf of public officers and employees. As a result, surety bond companies could experience either an increase or a decrease in the premiums associated with the purchase of faithful performance and surety bonds. It is not clear whether the fiscal impact to private insurers would be negative or positive, however.

   According to personnel in the Division of Risk Management of the Department of Insurance, the premiums paid on behalf of all governmental entities for such bonds[8] in Florida in 1996, including federal, state, and local officers and employees, was $788,084. The division additionally reported the following loss information: (a) in 1994 $90,306; (b) in 1995 $40,822; and (c) in 1996 $133,211.

2. Direct Private Sector Benefits:

   Unknown.

3. Effects on Competition, Private Enterprise and Employment Markets:

   Unknown.

D. FISCAL COMMENTS:

   None.

[8] This figure does not include premiums for bonds for notaries or hunting and fishing agents.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

In March 1995, the Division of Risk Management of the Department of Insurance sent a memorandum to the Joint Legislative Auditing Committee relating to faithful performance or surety bonds for public officers and employees. In the memo, the division noted the following:

> From all information available, state government has an extremely low frequency and severity of claims for loss resulting from public officials' failure to perform duties. The state public sector has sufficiently strict checks and balances regarding handling of funds so that risk of loss would be less probable than in the private sector. This is borne out by the history of losses over many years in state government, which appears to be extremely minimal considering the size and scope of state government. . . . In summary, the low frequency and severity of losses pertaining to faulty performance on the part of state officials does not justify any approach other than having state agencies retain the risk of loss. Requiring minimal bond coverage may be justified at some time for certain exceptional situations but does not appear to be justified for most state risks.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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