

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 487

Public Construction Bonds

SPONSOR(S): Murzin

TIED BILLS:

IDEN./SIM. BILLS: SB 652

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>	<u>4 Y, 0 N</u>	<u>Luppert</u>	<u>Everhart</u>
2) <u>Local Government Council</u>	<u></u>	<u></u>	<u></u>
3) <u>Finance & Tax Committee</u>	<u></u>	<u></u>	<u></u>
4) <u>State Administration Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill affects contractors who enter into contracts for construction services with state and local governments.

This bill modifies the statutory form of a payment and performance bond for public works, and provides that the statute of limitations for filing a claim against any payment and performance bonds for public works is one year.

This bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill provides that the statute of limitations for filing a claim against any payment and performance bonds is 1 year.

B. EFFECT OF PROPOSED CHANGES:

Background

Current law requires that a contractor constructing a public work for state or local government valued in excess of \$200,000 must post a payment and performance bond.¹

“Payment bond”² is a bond which guarantees payment from the contractor of money to persons who furnish labor, material equipment and/or supplies for use in the performance of the contract.

“Performance bond”³ is a bond which guarantees that the contractor will perform the contract in accordance with its term.

Payment and performance bonds are used to protect state and local governments from default by a contractor, and protect subcontractors who cannot file a mechanic’s lien because the project involves public property. A bond required by statute is a statutory bond, for which there is a 1 year statute of limitations. Thus, a claimant against the bond must file a lawsuit against the bonding company within one year of completion or abandonment of the project. A bond that contains provisions or terms not required by statute is a common law bond, for which there is a 5 year statute of limitations.⁴ See *Martin Paving Co. v. United Pacific Insurance Co.*, 646 So.2d 268 (Fla. 5th DCA 1994), and *Insurance Co. of North America v. Metropolitan Dade County*, 705 So.2d 33 (Fla. 3rd DCA 1997).

Section 255.05(3), F.S., provides a suggested form for payment and performance bonds on public works. There is an argument that a bond that does not exactly follow this statutory form is a common law bond, not a statutory one.

Effect of Bill

The bill amends the suggested bond form to add a line for entry of a bond number, and adds the following clause to the form:

“Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2) of the Florida Statutes.”

The bill provides that a payment and performance bond required of public works by s. 255.05(1), F.S., is to be construed and deemed a statutory bond, not a common law bond. The effect of this change is to provide a 1 year statute of limitations for filing a claim against any payment and performance bonds required by s. 255.05, F.S., for a public work.

¹ Section 255.05(1)(a), F.S.

² United States Small Business Administration

³ United States Small Business Administration

⁴ There is no specific statute of limitations for a common law bond. The applicable statute of limitations is s. 95.11(2)(b), F.S., which is the 5 year statute of limitations applicable to written contracts.

C. SECTION DIRECTORY:

Section 1 amends s. 255.05, F.S., to modify the suggested bond form and provide that a bond under s. 255.05, F.S., is a statutory bond.

Section 2 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not affect a state revenue source.

2. Expenditures:

None. This bill is not expected to affect state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not affect a local government revenue source.

2. Expenditures:

None. This bill is not expected to affect local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require the counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.