

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 487 CS                      Public Construction Bonds  
**SPONSOR(S):** Murzin and others  
**TIED BILLS:**                              **IDEN./SIM. BILLS:** CS/SB 652

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| REFERENCE                                   | ACTION                | ANALYST         | STAFF DIRECTOR        |
|---------------------------------------------|-----------------------|-----------------|-----------------------|
| 1) <u>Governmental Operations Committee</u> | <u>5 Y, 0 N</u>       | <u>Luppert</u>  | <u>Everhart</u>       |
| 2) <u>Local Government Council</u>          | <u>7 Y, 0 N</u>       | <u>Camechis</u> | <u>Hamby</u>          |
| 3) <u>Finance &amp; Tax Committee</u>       | <u>9 Y, 0 N</u>       | <u>Levin</u>    | <u>Diez-Arguelles</u> |
| 4) <u>State Administration Council</u>      | <u>8 Y, 0 N, w/CS</u> | <u>Luppert</u>  | <u>Bussey</u>         |
| 5) _____                                    | _____                 | _____           | _____                 |

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### SUMMARY ANALYSIS

Current law requires a contractor constructing a public work for state or local government valued in excess of \$200,000 to post a payment and performance bond. A bond required by statute is a "statutory bond" for which there is a 1-year statute of limitations for filing actions against the contractor or surety. Thus, a claimant against the bond must file a lawsuit within one year after the performance of the labor or completion of delivery of the material or supplies. If a bond contains provisions other than those required by statute, it is a common law bond for which there is a 5-year statute of limitations.

This bill amends current law to modify 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. The bill specifies that, under no circumstance, may a statutory bond be converted into a common law bond.

The effect of these statutory changes is to provide a 1-year statute of limitations for filing a claim against any payment or performance bonds required by statute for public construction projects.

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 required by statute for public construction projects is 1 year.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

Section 255.05, F.S., currently requires a contractor constructing a public work for state or local government valued in excess of \$200,000 to post a payment and performance bond. Payment and performance bonds protect state and local governments from default by a contractor, and they also protect subcontractors who cannot file a mechanic's lien because the project involves public property. "Payment bond"<sup>1</sup> is a bond which guarantees payment of money from the contractor to persons who furnish labor, material equipment and/or supplies for use in the performance of the contract. "Performance bond"<sup>2</sup> is a bond which guarantees that the contractor will perform the contract in accordance with its terms.

Section 255.05(2), F.S., prescribes notice requirements, waiver requirements, and time limitations for filing actions against the contractor or the surety on the payment bond or a performance bond. An action, except for an action exclusively for recovery of retainage, must be instituted against the contractor or the surety on the payment bond or the payment provisions of a combined payment and performance bond within 1 year after the performance of the labor or completion of delivery of the materials or supplies. An action exclusively for recovery of retainage must be instituted against the contractor or the surety within 1 year after the performance of the labor or completion of delivery of the materials or supplies, or within 90 days after receipt of final payment (or the payment estimate containing the owner's final reconciliation of quantities if no further payment is earned and due as a result of deductive adjustments) by the contractor or surety, whichever comes last.<sup>3</sup> 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 that are *not* required by statute is a common law bond, for which there is a 5 year statute of limitations.<sup>4</sup> 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.

Section 255.05(4), F.S., requires the payment provisions of all bonds furnished for public work contracts must, regardless of form, be construed and deemed statutory bond provisions, subject to all notice, waiver, and time limitations imposed by s. 255.05(2), F.S.

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<sup>1</sup>United States Small Business Administration

<sup>2</sup> United States Small Business Administration

<sup>3</sup> Section 95.11(5)(e), F.S., provides a one year statute of limitation for: "An action to enforce any claim against a payment bond on which the principal is a contractor, subcontractor, or sub-subcontractor as defined in s. 713.01, for private work as well as public work, from the last furnishing of labor, services, or materials or from the last furnishing of labor, services, or materials by the contractor if the contractor is the principal on a bond on the same construction project, whichever is later."

<sup>4</sup> 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.

Section 255.05(6), F.S., requires all bonds executed pursuant to this section to make reference to that statutory section by number and contain reference to the notice and time limitation provisions of that section.

### **Effect of Proposed Changes**

The bill amends s. 255.05(3), F.S., which contains the suggested bond form, to add a line for entry of a bond number. In addition, the bill 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 also amends s. 255.05(4), F.S., to provide that all payment and performance bonds must be construed and deemed statutory bonds and that those bonds must not, under any circumstances, be converted into common law bonds. 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, even if the bond includes terms and conditions other than those required by statute.

The bill also revises subsection (6) of s. 255.05, F.S., to require all bond forms used by a public owner and all payment bonds executed pursuant to s. 255.05, F.S., to refer to this statute section by number and contain reference to the notice and time limitation provisions of that section.

#### **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:           This bill does not address rule-making authority.**

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:           None.**

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On April 20, 2005, the State Administration Council adopted an amendment that clarifies the bill language to ensure that bonds on public construction projects will be treated as statutory bonds rather than common law bonds regardless of variations in the bond form.