

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1516

SPONSOR: Senator Constantine

SUBJECT: Surety bonds

DATE: March 22, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CA	Favorable
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill prohibits school boards and other public entities from directing that contractors building public facilities obtain surety bonds from a specific agent or bonding company.

This bill amends the following sections of the Florida Statutes: 235.32 and 255.05.

II. Present Situation:

Section 255.05, F.S., states that any person entering into a formal contract with the state or any county, city, or political subdivision, or other public authority, for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work must deliver to the public owner, and record in the public records, a payment and performance bond with a surety insurer authorized to do business in this state as surety. This bond requires the contractor to perform the contract in the time and manner prescribed in the contract, and that the contractor make prompt payments to all persons defined in s. 713.01, F.S., whose claims derive directly or indirectly from the prosecution of the work provided for in the contract. Any claimant has a right to apply to the governmental entity having charge of the work for copies of the contract and bond.

A payment or performance bond is only required on a state funded project that costs more than \$100,000; if the project costs between \$100,000 and \$200,000, the Department of Management Services may delegate the authority to the particular state agency awarding the contract to exempt the person from procuring a payment or performance bond.

Section 255.05(7), F.S., states that in lieu of the bond required by the statute, a contractor may file with the applicable political authority an alternative form of security in the form of cash,

money order, certified or cashier's check, irrevocable letter of credit, or specified securities; the determination of the value of such alternative forms of security is to be made by the appropriate state, county, city, or other political subdivision.

Due to the fact that the law requires the contractor to obtain the services of a surety insurer, the public authority is not involved financially in any disputes between the claimant and the contractor and surety. A claimant, who is not in privity with the contractor, and who has not received payment for services, must deliver to the contractor and the surety written notice of the performance of services and of the nonpayment within a particular time period. The claimant then has a right of action against the contractor and surety for the amount due him or her, including finance charges due under the claimant's contract. Any such action must be instituted against the contractor or the surety within one year after the performance of the labor or completion of the delivery of the materials or supplies.

The requirement of a surety insurer exists at the federal level. The law requiring contract surety bonds on federal construction projects is known as the Miller Act. (40 U.S.C. Section 270) This particular law requires a contractor on a federal project to post two bonds, a performance bond and a labor and material payment bond. The surety company issuing these bonds must be listed as qualified surety on the Treasury List, which the U.S. Department of the Treasury issues each year. In addition to Florida, many states in the United States have adopted legislation that mirrors the Miller Act.

At present, 21 states prohibit directed surety. With directed surety, a person or entity is allowed to require the contractor to utilize a specific surety or insurance company. Federal law prohibits directed surety on federal construction projects: "Each surety bond shall be approved by the official of the Government required to approve or accept the bond. The official may not require that the surety bond be given through a guaranty corporation or through any particular guaranty corporation." (31 U.S.C. Section 9304)

III. Effect of Proposed Changes:

Section 1 amends s. 235.32, F.S., to prohibit district school boards, a community college board, and the Board of Trustees for the Florida School for the Deaf and the Blind, or other public entity from requiring that contractors building public facilities obtain surety bonds from a specific agent or bonding company.

Section 2 amends s. 255.05, F.S., to prohibit a public entity from requiring that contractors building public facilities obtain surety bonds from a specific agent or bonding company.

Section 3 provides that the bill will become effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

By prohibiting a public entity from requiring that contractors building public facilities obtain surety bonds from a specific agent or bonding company, such contractors will have the flexibility to purchase surety bonds from any agent or bonding company they choose.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.