~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 13, 2014

**S. 1026**

Introduced by Senator Alexander

S. Printed 3/13/14--S.

Read the first time February 18, 2014.

**THE COMMITTEE ON BANKING AND INSURANCE**

To whom was referred a Bill (S. 1026) to amend Section 29‑5‑440, Code of Laws of South Carolina, 1976, relating to suits on contractor payment bonds, so as to provide that certain written notice, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, deleting all after the enacting words and inserting:

/ SECTION 1. Section 29‑5‑440 of the 1976 Code is amended to read:

“Section 29‑5‑440. Every person who has furnished labor, material, or rental equipment to a bonded contractor or its subcontractors in the prosecution of work provided for in any contract for construction, and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or material or rental equipment was furnished or supplied by him for which such claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of the institution of such suit and to prosecute such action to final execution and judgment for the sum or sums justly due him.

A remote claimant shall have a right of action on the payment bond only upon giving written notice by certified or registered mail to the bonded contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material or rental equipment upon which such claim is made. However, in no event shall the aggregate amount of any claim against such payment bond by a remote claimant exceed the amount due by the bonded contractor to the person to whom the remote claimant has supplied labor, materials, rental equipment, or services, unless the remote claimant has provided notice of furnishing labor, materials, or rental equipment to the bonded contractor. Such written notice to the bonded contractor ~~shall be personally served or sent by fax or sent by electronic mail or sent by registered or certified mail, postage prepaid,~~ must generally conform to the requirements of Section 29‑5‑20(B) and sent by certified or registered mail to the bonded contractor at any place the bonded contractor maintains a permanent office for the conduct of its business, or at the current address as shown on the records of the Department of Labor, Licensing and Regulation. After receiving the notice of furnishing labor, materials, or rental equipment, no payment by the bonded contractor shall lessen the amount recoverable by the remote claimant. However, in no event shall the aggregate amount of claims on the payment bond exceed the penal sum of the bond.

No suit under this section shall be commenced after the expiration of one year after the last date of furnishing or providing labor, services, materials, or rental equipment.

For purposes of this section, ‘bonded contractor’ means a contractor or subcontractor furnishing a payment bond, and ‘remote claimant’ means a person having a direct contractual relationship with a subcontractor or supplier of a bonded contractor, but no contractual relationship expressed or implied with the bonded contractor. Any payment bond surety for the bonded contractor must have the same rights and defenses of the bonded contractor as provided in this section.

This section shall apply to any payment bond, whether statutory, public, common law, or private in nature, that is issued in connection with a construction project or other improvements to real property within South Carolina when such payment bonds are not otherwise required or governed by any other applicable section of the South Carolina Code of Laws.

For the purposes of this section:

(1) ‘Statutory bonds’ or ‘public bonds’ means bonds that are either:

(a) provided because required by statute and in accordance with the minimum guidelines set forth in this section; or

(b) contain either express or implied reference to the provisions of this section.

(2) ‘Common law bonds’ or ‘private bonds’ means bonds that are either:

(a) not required by statute, such as a bond voluntarily provided to meet a contractual agreement between parties; or

(b) required by statute but that specifically deviates from the statutory requirements to provide broader protection.”

SECTION 2. Section 11‑1‑120 of the 1976 Code is amended to read:

“Section 11‑1‑120. When the State or a county, city, public service district, or other political subdivision thereof, or other public entity contracts for construction and requires the person or entity performing the work to furnish a payment bond not governed by Section 11‑35‑3030(2)(c) or Section 57‑5‑1660(b), for the protection of persons who furnish labor, material, or rental equipment to the contractor or its subcontractors for the work specified in the contract, the following provisions shall apply.

Every person who has furnished labor, material, or rental equipment to a bonded contractor or its subcontractors in the prosecution of the work provided for in the contract for construction, and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or material or rental equipment was furnished or supplied by him for which such claim is made, shall have the right to sue on such bond for the amount, or the balance thereof, unpaid at the time of the institution of such suit and to prosecute such action to final execution and judgment for the sum or sums justly due him.

A remote claimant shall have a right of action on the payment bond only upon giving written notice by certified or registered mail to the bonded contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material or rental equipment upon which such claim is made. However, in no event shall the aggregate amount of any claim against such payment bond by a remote claimant exceed the amount due by the bonded contractor to the person to whom the remote claimant has supplied labor, materials, rental equipment, or services, unless the remote claimant has provided notice of furnishing labor, materials, or rental equipment to the bonded contractor. Such written notice to the bonded contractor ~~shall be personally served or sent by fax or sent by electronic mail or sent by registered or certified mail, postage prepaid,~~ must generally conform to the requirements of Section 29‑5‑20(B) and sent by certified mail or registered mail to the bonded contractor at any place the bonded contractor maintains a permanent office for the conduct of its business, or at the current address as shown on the records of the Department of Labor, Licensing and Regulation. After receiving the notice of furnishing labor, materials, or rental equipment, no payment by the bonded contractor shall lessen the amount recoverable by the remote claimant. However, in no event shall the aggregate amount of claims on the payment bond exceed the penal sum of the bond.

No suit under this section shall be commenced after the expiration of one year after the last date of providing or furnishing labor, materials, rental equipment, or services.

For purposes of this section, "bonded contractor" means a contractor or subcontractor furnishing a payment bond, and ‘remote claimant’ means a person having a direct contractual relationship with a subcontractor or supplier of a bonded contractor, but no contractual relationship expressed or implied with the bonded contractor. Any payment bond surety for the bonded contractor must have the same rights and defenses of the bonded contractor as provided in this section.

If the State, or county, city, public service district, or other political subdivision of the State, or other public entity contracts for construction and requires the contractor to furnish a payment bond pursuant to this section, the State, political subdivision of this State, or other public entity of this State may not exact that the payment bond be furnished by a particular surety company or through a particular agent or broker.”

SECTION 3. Section 11‑35‑3030(2)(c) of the 1976 Code is amended to read:

“(c) Suits on Payment Bonds‑Right to Institute. A person who has furnished labor, material, or rental equipment to a bonded contractor or his subcontractors for the work specified in the contract, and who has not been paid in full for it before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by the person or material or rental equipment was furnished or supplied by the person for which the claim is made, has the right to sue on the payment bond for the amount, or the balance of it, unpaid at the time of institution of the suit and to prosecute the action for the sum or sums justly due the person. A remote claimant has a right of action on the payment bond only upon giving written notice to the contractor within ninety days from the date on which the person did or performed the last of the labor or furnished or supplied the last of the material or rental equipment upon which the claim is made, stating with substantial accuracy the amount claimed as unpaid and the name of the party to whom the material or rental equipment was furnished or supplied or for whom the labor was done or performed. The written notice to the bonded contractor must be served personally or served by mailing the notice by registered or certified mail, postage prepaid, in an envelope addressed to the bonded contractor at any place the bonded contractor maintains a permanent office for the conduct of its business, or at the current address as shown on the records of the Department of Labor, Licensing and Regulation. The aggregate amount of a claim against the payment bond by a remote claimant may not exceed the amount due by the bonded contractor to the person to whom the remote claimant has supplied labor, materials, rental equipment, or services, unless the remote claimant has provided notice of furnishing labor, materials, or rental equipment to the bonded contractor. The written notice to the bonded contractor must ~~be served personally or sent by fax or by electronic mail or by registered or certified mail, postage prepaid,~~ generally conform to the requirements of Section 29‑5‑20(B) and sent by certified or registered mail to the bonded contractor at any place the bonded contractor maintains a permanent office for the conduct of its business, or at the current address as shown on the records of the Department of Labor, Licensing and Regulation. After receiving the notice of furnishing labor, materials, or rental equipment, payment by the bonded contractor may not lessen the amount recoverable by the remote claimant. The aggregate amount of claims on the payment bond may not exceed the penal sum of the bond. A suit under this section must not be commenced after the expiration of one year after the last date of furnishing or providing labor, services, materials, or rental equipment.

A suit under this section must not be commenced after the expiration of one year after the last date of furnishing or providing labor, services, materials, or rental equipment.

For purposes of this section, ‘bonded contractor’ means the contractor or subcontractor furnishing the payment bond, and ‘remote claimant’ means a person having a direct contractual relationship with a subcontractor or supplier of a bonded contractor, but no expressed or implied contractual relationship with the bonded contractor. Any payment bond surety for the bonded contractor must have the same rights and defenses of the bonded contractor as provided in this section.”

SECTION 4. Section 57‑5‑1660(b) of the 1976 Code is amended to read:

“(b) Every person who has furnished labor, material, or rental equipment in the prosecution of the work provided for in such contract, in respect of which such a bond has been furnished under this section and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or material or rental equipment was furnished or supplied by him for which such claim is made, shall have the right to sue on such bond for the amount, or the balance thereof, unpaid at the time of the institution of such suit and to prosecute such action to final execution and judgment for the sum or sums justly due him. A remote claimant shall have a right of action upon the bond only upon giving written notice by certified or registered mail to the contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material or rental equipment for which claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom material or rental equipment was furnished or supplied or for whom labor was done or performed. However, in no event shall the aggregate amount of any claim against such payment bond by a remote claimant exceed the amount due by the bonded contractor to the person to whom the remote claimant has supplied labor, materials, rental equipment, or services, unless the remote claimant has provided notice of furnishing labor, materials, or rental equipment to the bonded contractor. Such written notice to the bonded contractor ~~shall be personally served or sent by fax or sent by electronic mail or sent by registered or certified mail, postage prepaid,~~ must generally conform to the requirements of Section 29‑5‑70(B) and sent by certified or registered mail to the bonded contractor at any place the bonded contractor maintains a permanent office for the conduct of his business, or at the current address as shown on the records of the Department of Labor, Licensing and Regulation. After receiving the notice of furnishing labor, materials, or rental equipment, no payment by the bonded contractor shall lessen the amount recoverable by the remote claimant. However, in no event shall the aggregate amount of claims on the payment bond exceed the penal sum of the bond.

For purposes of this section, ‘bonded contractor’ means the contractor or subcontractor furnishing the payment bond, and ‘remote claimant’ means a person having a direct contractual relationship with a subcontractor or supplier, but no contractual relationship expressed or implied with the bonded contractor. No suit under this section shall be commenced after the expiration of one year after the date of the final settlement of the contract. Any payment bond surety for the bonded contractor must have the same rights and defenses of the bonded contractor as provided in this section.”

SECTION 5. This act takes effect upon approval by the Governor.

Renumber sections to conform.

Amend title to conform.

ROBERT W. HAYES, JR. for Committee.

**A** **BILL**

TO AMEND SECTION 29‑5‑440, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO SUITS ON CONTRACTOR PAYMENT BONDS, SO AS TO PROVIDE THAT CERTAIN WRITTEN NOTICE REQUIRED OF A REMOTE CLAIMANT MUST BE SENT BY CERTIFIED OR REGISTERED MAIL, AND MUST GENERALLY CONFORM WITH STATUTORY LIMITS ON THE AGGREGATE AMOUNT OF LIENS FILED BY A SUB‑SUBCONTRACTOR OR SUPPLIER; TO PROVIDE ANY PAYMENT BOND SURETY FOR THE BONDED CONTRACTOR SHALL HAVE THE SAME RIGHTS AND DEFENSES OF THE BONDED CONTRACTOR; TO MAKE THE LANGUAGE APPLICABLE TO ANY PAYMENT BOND WHETHER PRIVATE, COMMON LAW, PUBLIC, OR STATUTORY IN NATURE, WHEN THE BONDS ARE NOT OTHERWISE REQUIRED OR GOVERNED BY STATUTE; AND TO PROVIDE NECESSARY DEFINITIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 29‑5‑440 of the 1976 Code is amended to read:

“Section 29‑5‑440. Every person who has furnished labor, material, or rental equipment to a bonded contractor or its subcontractors in the prosecution of work provided for in any contract for construction, and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or material or rental equipment was furnished or supplied by him for which such claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of the institution of such suit and to prosecute such action to final execution and judgment for the sum or sums justly due him.

A remote claimant shall have a right of action on the payment bond only upon giving written notice by certified or registered mail to the bonded contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material or rental equipment upon which such claim is made. However, in no event shall the aggregate amount of any claim against such payment bond by a remote claimant exceed the amount due by the bonded contractor to the person to whom the remote claimant has supplied labor, materials, rental equipment, or services, unless the remote claimant has provided notice of furnishing labor, materials, or rental equipment to the bonded contractor. Such written notice to the bonded contractor ~~shall be personally served or sent by fax or sent by electronic mail or sent by registered or certified mail, postage prepaid,~~ must generally conform to the requirements of Section 29‑5‑20(B) and sent by certified or registered mail to the bonded contractor at any place the bonded contractor maintains a permanent office for the conduct of its business, or at the current address as shown on the records of the Department of Labor, Licensing and Regulation. After receiving the notice of furnishing labor, materials, or rental equipment, no payment by the bonded contractor shall lessen the amount recoverable by the remote claimant. However, in no event shall the aggregate amount of claims on the payment bond exceed the penal sum of the bond.

No suit under this section shall be commenced after the expiration of one year after the last date of furnishing or providing labor, services, materials, or rental equipment.

For purposes of this section, ‘bonded contractor’ means a contractor or subcontractor furnishing a payment bond, and ‘remote claimant’ means a person having a direct contractual relationship with a subcontractor or supplier of a bonded contractor, but no contractual relationship expressed or implied with the bonded contractor. Any payment bond surety for the bonded contractor must have the same rights and defenses of the bonded contractor as provided in this section.

This section shall apply to any payment bond, whether statutory, public, common law, or private in nature, that is issued in connection with a construction project or other improvements to real property within South Carolina when such payment bonds are not otherwise required or governed by any other applicable section of the South Carolina Code of Laws.

For the purposes of this section:

(1) ‘Statutory bonds’ or ‘public bonds’ means bonds that are either:

(a) provided because required by statute and in accordance with the minimum guidelines set forth in this section; or

(b) contain either express or implied reference to the provisions of this section.

(2) ‘Common law bonds’ or ‘private bonds’ means bonds that are either:

(a) not required by statute, such as a bond voluntarily provided to meet a contractual agreement between parties; or

(b) required by statute but that specifically deviates from the statutory requirements to provide broader protection.”

SECTION 2. This act takes effect upon approval by the Governor.

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