

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**  
4 **By: Senator Scott**

# A Bill

**SENATE BILL**

## For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE § 17-22-404 TO PERMIT THE  
9 BOND REQUIRED UNDER THE NONRESIDENT CONTRACTORS LAW TO  
10 SUBSTITUTE FOR THE BOND REQUIRED FOR CONTRACTORS UNDER THE  
11 COMPENSATING USE TAX LAW; TO AMEND ARKANSAS CODE § 17-22-  
12 407 TO REQUIRE THE DFA DIRECTOR TO NOT RELEASE A BOND  
13 UNTIL HE HAS VERIFIED THAT THE CONTRACTOR OWES NO SALES OR  
14 USE TAXES; TO AMEND ARKANSAS CODE § 26-53-206 TO PERMIT  
15 THE BOND REQUIRED UNDER THE NONRESIDENT CONTRACTORS LAW TO  
16 SUBSTITUTE FOR THE BOND REQUIRED FOR CONTRACTORS UNDER THE  
17 COMPENSATING USE TAX LAW; AND FOR OTHER PURPOSES."

18  
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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21 SECTION 1. Arkansas Code § 17-22-404 is hereby amended to read as  
22 follows:

23 "17-22-404. Bond - Filing, terms.

24 (a) Before commencing work or undertaking to perform any services or  
25 duties under a contract, a nonresident contractor shall file with the Director  
26 of the Department of Finance and Administration as the depository agency, a  
27 surety bond of a surety authorized to do business in this state or a cash  
28 bond.

29 (b) The bond shall be:

30 (1) In a penal sum of not less than ten percent (10%) of the  
31 amount of the contract;

32 (2) Payable to the State of Arkansas;

33 (3) Conditioned on the nonresident contractor and his  
34 subcontractors complying with the tax laws of the state of Arkansas, and when  
35 applicable, any city, county, school district, state agency, or other

1 political subdivision of the state, the Arkansas Employment Security Act,  
2 11-10-101 et seq., the Workers' Compensation Law, 11-9-101 et seq. and the  
3 provisions of this subchapter.

4 (c) The bond required under this subchapter may be in lieu of any bond  
5 now required by law to be filed with the Revenue Division of the Department of  
6 Finance and Administration with respect to payment of Arkansas gross receipts  
7 or gross proceeds taxes due and taxes due under the Compensating Use Tax Act,  
8 26-53-101 et seq., of this state."

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10 SECTION 2. Arkansas Code § 17-22-407 is hereby amended to read as  
11 follows:

12 "17-22-407. Release of bond - Action on bond.

13 (a) The Director of the Department of Finance and Administration shall  
14 not release the bond with respect to any tax liability that may be due the  
15 Revenue Division of the Department of Finance and Administration of the State  
16 of Arkansas for at least three (3) months after the nonresident contractor  
17 mails the completion notice of the contract, nor shall the director release  
18 the bond with respect to any tax liability that may be due the Employment  
19 Security Division, the Workers' Compensation Commission, or any city, county,  
20 school district, state agency, or other political subdivisions of the state,  
21 with respect to any such contract for at least three (3) months after the  
22 nonresident contractor mails a completion notice of the contract and the  
23 director receives written notice from the Employment Security Division, the  
24 Workers' Compensation Commission, the Contractors Licensing Board, and the  
25 county assessor of the affected county that the contractor owes no tax  
26 liability with respect to taxes due their respective cities, counties, school  
27 districts, state agencies, or other political subdivisions of the state.

28 (b) No action shall be commenced on the bond required by this  
29 subchapter after the expiration of one (1) year from the date of the mailing  
30 of the notice of the completion of the contract.

31 (c) (1) Except as otherwise specifically provided in this subchapter,  
32 the director shall serve solely as the depository of the bond filed under the  
33 provisions of this subchapter, and shall have no enforcement responsibilities  
34 with respect to the payment of taxes due the Employment Security Division, the  
35 Workers' Compensation Commission, any city, county, school district, state

1 agency, or other political subdivision of the state under the provisions of  
2 this subchapter.

3           (2) The director shall not release the bond of any nonresident  
4 contractor until specific written notice is received from the Employment  
5 Security Division, the Workers' Compensation Commission, any city, county,  
6 school district, state agency, or other political subdivision of the state,  
7 authorizing the release.

8           (d) In the event the director waives the bond now required by law to be  
9 filed with respect to payment of Arkansas gross receipts or gross proceeds  
10 taxes due and taxes due under the Compensating Use Tax Act, § 26-53-101 et  
11 seq., in lieu of the bond required under this subchapter, the director shall  
12 not release the bond with respect to any tax liability that may be due on  
13 these taxes until he has received notice of the completion of the contract and  
14 verified within the Department that the contractor owes no taxes under these  
15 laws."

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17           SECTION 3. Arkansas Code § 26-53-206 is hereby amended to read as  
18 follows:

19           "26-53-206. Nonresident contractors - Registration, bond, etc.

20           (a) Every nonresident contractor shall register with the Director of  
21 the Department of Finance and Administration prior to engaging in the  
22 performance of a contract in this state.

23           (b)(1) At the time of registration, the contractor shall deposit with  
24 the director five percent (5%) of the amount the contractor is to receive for  
25 the performance of the contract which shall be held within a Contractors Use  
26 Tax Fund pending the completion of the contract, the determination of the  
27 compensating tax due this state, and the payment of the tax.

28           (2) In lieu of the deposit, the contractor may provide a  
29 corporate surety bond to be approved by the director as to form, sufficiency,  
30 value, amount, stability, and other features necessary to provide a guarantee  
31 of payment of the compensating tax due this state.

32           (3) In lieu of the deposit or the bond required under this  
33 section, the contractor may substitute the bond required under Arkansas Code §  
34 17-22-404 when the Director of the Department of Finance and Administration  
35 determines the bond required there is sufficient to cover the potential

1 compensating tax liabilities.

2 (c) In addition, within thirty (30) days after registration, the  
3 contractor shall file a statement with the director itemizing the machinery,  
4 materials, supplies, and equipment that he has or will have on hand at the  
5 time he begins the fulfillment of the contract where such tangible personal  
6 property has been brought, shipped, or transported from outside the State of  
7 Arkansas upon which neither the gross receipts tax nor compensating tax has  
8 been paid and shall pay the tax due thereon at the time of filing and  
9 thereafter shall report and pay the tax as required by 26-53-125(b)."

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11 SECTION 4. All provisions of this act of a general and permanent nature  
12 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
13 Revision Commission shall incorporate the same in the Code.

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15 SECTION 5. If any provision of this act or the application thereof to  
16 any person or circumstance is held invalid, such invalidity shall not affect  
17 other provisions or applications of the act which can be given effect without  
18 the invalid provision or application, and to this end the provisions of this  
19 act are declared to be severable.

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21 SECTION 6. All laws and parts of laws in conflict with this act are  
22 hereby repealed.

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