

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 VARIOUS SECTIONS OF SUBCHAPTER 4 OF TITLE  
9 17, CHAPTER 22 OF THE ARKANSAS CODE OF 1987 ANNOTATED  
10 REGARDING NONRESIDENT CONTRACTORS TO REMOVE THE  
11 DISTINCTION BETWEEN NONRESIDENT AND RESIDENT CONTRACTORS  
12 IN POSTING SURETY BONDS SO ALL CONTRACTORS WILL POST  
13 SURETY BONDS, TO REQUIRE CONTRACTORS TO GIVE NOTICES OF  
14 COMMENCEMENT AND COMPLETION OF WORK, TO DECREASE THE  
15 SURETY BOND REQUIREMENTS GUARANTEEING TAX PAYMENTS FROM  
16 TEN PERCENT (10%) TO FIVE PERCENT (5%) OF THE AMOUNT OF  
17 THE CONTRACT, TO PROVIDE FOR RELEASE AND ACTION ON THE  
18 BOND, AND TO PROVIDE AUTHORITY TO EXAMINE THE BOOKS OF THE  
19 CONTRACTOR; TO REPEAL ARKANSAS CODE §§ 26-53-204, 26-53-  
20 205, AND 26-53-206 TO ELIMINATE DUPLICATIVE BONDING  
21 REQUIREMENTS FOR CONTRACTORS; AND FOR OTHER PURPOSES."

22  
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

24  
25 SECTION 1. Arkansas Code § 17-22-401 is hereby amended to read as  
26 follows:

27 "17-22-401. Definitions.

28 (a) (1) 'Contractor' shall include all original, prime, and general  
29 contractors and all subcontractors. It is defined to be any person, firm,  
30 joint venture, partnership, copartnership, association, corporation, or other  
31 organization engaged in the business of the construction, alteration,  
32 dismantling, demolition, or repairing of roads, bridges, viaducts, sewers,  
33 water and gas mains, streets, disposal plants, water filters, tanks, towers,  
34 airports, buildings, dams, levees, canals, railways and rail facilities, oil  
35 and gas wells, water wells, pipelines, refineries, industrial or processing

1 plants, chemical plants, power plants, electric, telephone, or any other type  
2 of energy or message transmission lines or equipment, or any other kind of  
3 improvement or structure.

4 (2) The term 'contractor' shall include any contractor who is  
5 required to obtain a contractor's license under the state licensing law of  
6 this state, 17-22-101 et seq.

7 (b) However, when a person or entity acts as a contractor in the  
8 construction, erection, alteration, or repair of his own or its own property  
9 or of a single-family residence or if the cost of the work to be done,  
10 including, but not limited to, labor and materials, is less than twenty  
11 thousand dollars (\$20,000), the person or entity shall not be deemed a  
12 contractor under this chapter."

13

14 SECTION 2. Subsection (b) of Arkansas Code § 17-22-402 is hereby  
15 amended to read as follows:

16 "(b) All taxes, premiums, contributions, penalties, interest, and fines  
17 collected pursuant to this subchapter, except enforcement penalties, shall be  
18 distributed pro-rata, based upon the amount of taxes, premiums and  
19 contributions due to the Department of Finance and Administration, Employment  
20 Security Division, Workers' Compensation Commission, or any city, county, or  
21 school district, or any other state agency or other political subdivision of  
22 the state, first to the extent of any taxes, premiums, and contributions due  
23 with any remainder applied to interest, penalties, and fines, in that order.  
24 All enforcement penalties assessed to a contractor pursuant to the provisions  
25 of this subchapter shall be paid directly to the Contractors Licensing Board  
26 to defer the cost of enforcement."

27

28 SECTION 3. Arkansas Code § 17-22-403 is hereby amended to read as  
29 follows:

30 "17-22-403. Preliminary notice - Emergency - Liability of customer.

31 (a) Contractors desiring to engage in, prosecute, follow, or carry on  
32 the business of contracting in this state shall give written notice by  
33 certified mail, return receipt requested, to the Contractors Licensing Board  
34 before actually commencing work or undertaking to perform any duties under the  
35 contract. The Contractors Licensing Board shall then notify the Director of

1 the Department of Finance and Administration, the Director of the Employment  
2 Security Division, the Workers' Compensation Commission, and the county  
3 assessor of each county in which the contract work or service is to be  
4 performed that a contractor is commencing work or duties under a contract.

5 (b)(1) The notice, and a copy of the bond to be filed with the Director  
6 of the Department of Finance and Administration by the contractor under the  
7 provisions of 17-22-404, shall also be filed as a matter of record with the  
8 Contractors Licensing Board.

9 (2) The notice shall state:

- 10 (A) The amount of the contract price;
- 11 (B) The location of the work;
- 12 (C) The date the work is to commence;
- 13 (D) A description of the general nature of the work; and
- 14 (E) A list of subcontractors of the contractor who will be  
15 performing work or service.

16 (c) In the event that an emergency exists whereby a contractor must  
17 commence work immediately, the contractor shall notify the Contractors  
18 Licensing Board by phone within one (1) business day of the commencing of work  
19 on the site. The phone notification shall include the nature of the emergency  
20 situation demanding the immediate commencement of work, the day and time work  
21 commenced, and the estimated day and time of completion of the contract work.  
22 Within three (3) additional business days the contractor shall notify the  
23 Contractors Licensing Board as required in subsection (a) of this section and  
24 shall submit the appropriate bond as required in 17-22-404.

25 (d) In the event the contractor fails to honor its financial  
26 obligations to the State of Arkansas, any city, county, school district, state  
27 agency, or other political subdivision of the state, the customer for whom the  
28 work was being performed shall be responsible for all financial obligations of  
29 the contractor to the State of Arkansas, or any city, county, school district,  
30 state agency, or other political subdivision of the state, on that customer's  
31 project provided that the customer receives written notice of the contractor's  
32 failure to comply with this subchapter prior to final payment to the  
33 contractor."

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35 SECTION 4. Arkansas Code § 17-22-404 is hereby amended to read as

1 follows:

2 "17-22-404. Bond - Filing, terms.

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

7 (b) The bond shall be:

8 (1) In a penal sum of not less than five percent (5%) of the  
9 amount of the contract;

10 (2) Payable to the State of Arkansas;

11 (3) Conditioned on the contractor and his subcontractors  
12 complying with the tax laws of the state of Arkansas, and when applicable, any  
13 city, county, school district, state agency, or other political subdivision of  
14 the state, the Arkansas Employment Security Act, 11-10-101 et seq., the  
15 Workers' Compensation Law, 11-9-101 et seq. and the provisions of this  
16 subchapter."

17

18 SECTION 5. Arkansas Code § 17-22-405 is hereby amended to read as  
19 follows:

20 "17-22-405. Bond - Exceptions - Certification notice.

21 (a) A contractor shall post a certification notice at each project site  
22 showing that the contractor has complied with this section and 17-22-404. The  
23 certification notice shall be issued by the Director of the Department of  
24 Finance and Administration.

25 (b) A contractor who is a subcontractor shall be exempt from this  
26 section if the original prime or general contractor has filed a bond pursuant  
27 to this section and 17-22-404."

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29 SECTION 6. Arkansas Code § 17-22-406 is hereby amended to read as  
30 follows:

31 "17-22-406. Notice of contract completion.

32 (a) A contractor shall give written notice by certified mail, return  
33 receipt requested, to the Director of the Department of Finance and  
34 Administration immediately upon completion of the work and services required  
35 by the contract. The director shall then notify the Director of the

1 Employment Security Division, the Workers' Compensation Commission, the  
2 Contractors Licensing Board and the county collector of each county in which  
3 the contract work or service has been performed.

4 (b) The notice shall also list all subcontractors of the contractor who  
5 performed work or services. The date of mailing the notice shall, for the  
6 purposes of this subchapter, be considered the date of the completion of the  
7 contract."

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9 SECTION 7. Arkansas Code § 17-22-407 is hereby amended to read as  
10 follows:

11 "17-22-407. Release of bond - Action on bond.

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

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

35 (c) (1) Except as otherwise specifically provided in this subchapter,

1 the director shall serve solely as the depository of the bond filed under the  
2 provisions of this subchapter, and shall have no enforcement responsibilities  
3 with respect to the payment of liabilities due the Employment Security  
4 Division, the Workers' Compensation Commission, any city, county, or school  
5 district, or other state agency, or other political subdivision of the state  
6 under the provisions of this subchapter.

7           (2) The director shall have the authority to examine the books,  
8 records, papers, vouchers, accounts, and documents of any contractor for the  
9 purpose of ascertaining if the contractor has complied with the gross receipts  
10 tax, Arkansas Code §§ 26-52-101 et seq., and the compensating or use taxes,  
11 Arkansas Code §§ 26-53-101 et seq., prior to release of the bond under this  
12 subchapter.

13           (3) The director shall not release the bond of any contractor  
14 until specific written notice is received from the Employment Security  
15 Division, the Workers' Compensation Commission, any city, county, or school  
16 district, or other state agency, or other political subdivision of the state,  
17 authorizing the release."

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19           SECTION 8. Arkansas Code § 17-22-408 is hereby amended to read as  
20 follows;

21           "17-22-408. Failure to comply - Penalties - Enforcement.

22           (a) The fact that a contractor is performing or has performed work in  
23 Arkansas and prior notice as required by this subchapter has not been given  
24 shall constitute prima facie evidence of failure to comply.

25           (b) Upon notice to the contractor and a hearing thereon if requested by  
26 the contractor or if deemed appropriate by the board or any committee thereof,  
27 should it be determined that a violation exists, the board or committee may  
28 assess a penalty for non-compliance in a sum not to exceed five percent (5%)  
29 of the value of the contract performed, and upon conviction for a second or  
30 subsequent violation, the contractor may be punished by a fine equal to ten  
31 percent (10%) of the value of the contract performed. Further, any contractor  
32 found guilty of a second or subsequent violation of this subchapter may lose  
33 its contractors license for a period of one (1) year. The board or committee  
34 may also issue an order to cease and desist the work pending compliance.

35           (c) Failure of a contractor to comply with the provisions of this

1 subchapter shall be grounds for revocation of any license issued to the  
2 contractor by the Contractors Licensing Board.

3 (d) Enforcement of the notice and bond posting requirements contained  
4 herein shall be the responsibility of the Contractors Licensing Board.

5 (e) The board shall have the power to make such rules and regulations  
6 for enforcement as it may consider appropriate and not in conflict with  
7 Arkansas law."

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9 SECTION 9. Subsection (c) of Arkansas Code § 17-22-409 is hereby  
10 amended to read as follows:

11 "(c) The Contractors Licensing Board shall have the power to file suit  
12 in the Circuit Court of Pulaski County to enforce any cease and desist order  
13 not complied with within fifteen (15) days, excluding Saturdays, Sundays, and  
14 legal holidays, of service on the contractor of the order. If the Circuit  
15 Court finds the order to have been properly issued, it may enforce it by any  
16 means by which injunctions are ordinarily enforced. However, nothing shall be  
17 construed herein to diminish the contractor's right to appeal."

18

19 SECTION 10. All provisions of this act of general and permanent nature  
20 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
21 Revision Commission shall incorporate the same in the Code.

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23 SECTION 11. If any provisions of this act or the application thereof to  
24 any person or circumstance is held invalid, the invalidity shall not affect  
25 other provisions or applications of the act which can be given effect without  
26 the invalid provisions or application, and to this end the provisions of this  
27 act are declared to be severable.

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29 SECTION 12. (a) Arkansas Code of 1987 Annotated §§ 26-53-204, 26-  
30 53-205, and 26-53-206 are hereby repealed.

31 (b) All other laws and parts of laws in conflict with this act are  
32 hereby repealed.

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