

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Senator Yates**

A Bill

SENATE BILL 26

For An Act To Be Entitled

8 "AN ACT TO REQUIRE LISTED SUBCONTRACTORS TO PROVIDE A
9 PAYMENT AND PERFORMANCE BOND IF THEY ARE REQUIRED BY THE
10 STATE TO BE LISTED IN THE GENERAL CONTRACTOR_S BID AND THE
11 WORK VALUE OF THE LISTED SUBCONTRACTOR_S BID IS IN EXCESS
12 OF FIFTY THOUSAND DOLLARS (\$50,000); AND FOR OTHER
13 PURPOSES."

Subtitle

16 "AN ACT TO REQUIRE LISTED SUBCONTRACTORS TO PROVIDE A
17 PAYMENT AND PERFORMANCE BOND."

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

21 SECTION 1. Each subcontractor must provide the general contractor with
22 a payment and performance bond *made by a surety company qualified under*
23 *Arkansas Code §22-9-401, et seq.*, or a cash bond in a sum equal to the full
24 amount of the subcontractor_s bid on a portion of a public works contract
25 when:

26 (1) the subcontractor is the low responsible bidder for that portion of
27 the contract;

28 (2) the State, pursuant to Arkansas Code §22-9-204, requires the
29 general contractor to list the subcontractor in the general contractors bid;
30 and

31 (3) the work value of the subcontractor_s bid is in excess of fifty
32 thousand dollars (\$50,000).

34 SECTION 2. (a) The subcontractor shall provide the bond to the general
35 contractor within five (5) days after the award of the contract by the general

1 contractor to the subcontractor.

2 (b) If the subcontractor fails to provide a payment and performance
3 bond according to the provisions of this act, the subcontractor shall lose the
4 bid and shall pay to the general contractor a penalty equivalent to ten (10)
5 percent of the subcontractor_s bid. The purpose of this section is to
6 compensate the general contractor for the difference between the low bid and
7 the next responsible low bid.

8 (c) The general contractor may enforce this act by a civil action in
9 circuit court.

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11 SECTION 3. The provisions of this act shall not apply to contracts
12 awarded by the State Highway Commission for construction or maintenance of
13 public highways, roads or streets.

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

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

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

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28 SECTION 7. EMERGENCY CLAUSE. It is hereby found and determined by the
29 Seventy-Ninth General Assembly that subcontractors are not currently required
30 by law to insure their financial responsibility through the posting of a bond
31 with the State of Arkansas. It is not in the public interest to continue to
32 endure the resulting poor quality and workmanship which lead to increased
33 maintenance and replacement costs. This act establishes such a requirement
34 and should be given immediate effect. Therefore, an emergency is hereby
35 declared to exist and this act being necessary for the immediate preservation

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