

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

A BILL ACT 783 OF 1991
SENATE BILL 314

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
36 plants, chemical plants, power plants, electric, telephone, or any other type

1 of energy or message transmission lines or equipment, or any other kind of
2 improvement or structure.

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

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

12

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

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

26

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

29 "17-22-403. Preliminary notice - Emergency - Liability of customer.

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

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

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

8 (2) The notice shall state:

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

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

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

33

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

1 "17-22-404. Bond - Filing, terms.

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

6 (b) The bond shall be:

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

9 (2) Payable to the State of Arkansas;

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

16

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

19 "17-22-405. Bond - Exceptions - Certification notice.

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

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

27

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

30 "17-22-406. Notice of contract completion.

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

1 Contractors Licensing Board and the county collector of each county in which
2 the contract work or service has been performed.

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

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

10 "17-22-407. Release of bond - Action on bond.

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

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

34 (c) (1) Except as otherwise specifically provided in this subchapter,
35 the director shall serve solely as the depository of the bond filed under the

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

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

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

17

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

20 "17-22-408. Failure to comply - Penalties - Enforcement.

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

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

34 (c) Failure of a contractor to comply with the provisions of this
35 subchapter shall be grounds for revocation of any license issued to the

1 contractor by the Contractors Licensing Board.

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

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

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

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

17

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

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

27

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

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

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APPROVED: 3/26/91

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