

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

A Bill

ACT 190 OF 1993
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

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

18
19 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:**
20

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

- 25 **(1) the subcontractor is the low responsible bidder for that portion of the contract;**
26 **(2) the State, pursuant to Arkansas Code §22-9-204, requires the general contractor**
27 **to list the subcontractor in the general contractors bid; and**
28 **(3) the work value of the subcontractor_s bid is in excess of fifty thousand dollars**
29 **(\$50,000).**
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31 **SECTION 2. (a) The subcontractor shall provide the bond to the general contractor**
32 **within five (5) days after the award of the contract by the general contractor to the**
33 **subcontractor.**

34 **(b) If the subcontractor fails to provide a payment and performance bond according to**
35 **the provisions of this act, the subcontractor shall lose the bid and shall pay to the general**
36 **contractor a penalty equivalent to ten (10) percent of the subcontractor_s bid. The purpose of**

1 **this section is to compensate the general contractor for the difference between the low bid and**
2 **the next responsible low bid.**

3 **(c) The general contractor may enforce this act by a civil action in circuit court.**
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5 **SECTION 3. The provisions of this act shall not apply to contracts awarded by the**
6 **State Highway Commission for construction or maintenance of public highways, roads or**
7 **streets.**
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9 **SECTION 4. All provisions of this act of a general and permanent nature are**
10 **amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision**
11 **Commission shall incorporate the same in the Code.**
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13 **SECTION 5. If any provision of this act or the application thereof to any person or**
14 **circumstance is held invalid, such invalidity shall not affect other provisions or applications of**
15 **the act which can be given effect without the invalid provision or application, and to this end**
16 **the provisions of this act are declared to be severable.**
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18 **SECTION 6. All laws and parts of laws in conflict with this act are hereby repealed.**
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20 **SECTION 7. EMERGENCY CLAUSE. It is hereby found and determined by the**
21 **Seventy-Ninth General Assembly that subcontractors are not currently required by law to**
22 **insure their financial responsibility through the posting of a bond with the State of Arkansas.**
23 **It is not in the public interest to continue to endure the resulting poor quality and**
24 **workmanship which lead to increased maintenance and replacement costs. This act**
25 **establishes such a requirement and should be given immediate effect. Therefore, an**
26 **emergency is hereby declared to exist and this act being necessary for the immediate**
27 **preservation of the public peace, health and safety shall be in full force and effect from and**
28 **after its passage and approval.**

29 */s/ Senator Yates*
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31 **APPROVED: 2/24/93**
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