

Act 487 of the 1989 Regular Session.

Act 487

SB235

By: Senators Scott, Ingram and Gordon

"AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS CODE
REGARDING NONRESIDENT CONTRACTORS; AND FOR OTHER PURPOSES."

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

SECTION 1. Arkansas Code Annotated 17-22-401 is amended to read as follows:

"(a) "Contractor" shall include all original, prime, and general contractors and all subcontractors. It is defined to be any person, firm, joint venture, partnership, copartnership, association, corporation, or other organization engaged in the business of the construction, alteration, dismantling, demolition, or repairing of roads, bridges, viaducts, sewers, water and gas mains, streets, disposal plants, water filters, tanks, towers, airports, buildings, dams, levees, canals, railways and rail facilities, oil and gas wells, water wells, pipelines, refineries, industrial or processing plants, chemical plants, power plants, electric, telephone, or any other type of energy or message transmission lines or equipment, or any other kind of improvement or structure. The term "contractor" shall include any contractor who is required to obtain a contractor's license from the State Licensing Law of this state, (17-22-101 et seq.).

(b) "Nonresident contractor" means any contractor who does not maintain his principal place of business in Arkansas."

SECTION 2. Arkansas Code Annotated 17-22-403 is hereby amended to read as follows:

"(a) Nonresident contractors desiring to engage in, prosecute, follow, or carry on the business of contracting in this state shall give written notice by certified mail, return receipt requested, to the Contractors Licensing Board before actually commencing work or undertaking to perform any duties under the contract. The Contractors Licensing Board shall then notify the Director of the Department of Finance and Administration, the Director of the Employment Security Division, the Workers' Compensation Commission, and the county assessor of each county in which the contract work or service is to be performed that a nonresident contractor is commencing work or duties under a contract.

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

(2) The notice shall state:

(A) The amount of the contract price;

(B) The location of the work;

(C) The date the work is to commence;

(D) A description of the general nature of the work; and

(E) A list of subcontractors of the nonresident contractor who will be performing work or service.

(c) In the event that an emergency exists whereby a nonresident contractor must commence work immediately, the nonresident contractor shall notify the Contractors Licensing Board by phone within one (1) business day of

the commencing of work on the site. The phone notification shall include the nature of the emergency situation demanding the immediate commencement of work, the day and time work commenced, and the estimated day and time of completion of the contract work. Within three (3) additional business days the nonresident contractor shall notify the Contractors Licensing Board as required in subsection (a) of this section and shall submit the appropriate bond as required in 17-22-404.

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

SECTION 3. Arkansas Code Annotated 17-22-404 is amended to read as follows:

"Before commencing work or undertaking to perform any services or duties under a contract, a nonresident contractor shall file with the Commissioner of Revenues, as the depository agency, a surety bond of a surety authorized to do business in this state or a cash bond. The bond shall be in a penal sum of not less than ten percent (10%) of the amount of the contract and shall be payable to the State of Arkansas. The bond shall be conditioned on the nonresident contractor and his subcontractors complying with the tax laws of the state of Arkansas, and when applicable, any city, county, school district, state agency, or other political subdivision of the state, the Arkansas Employment Security Act, the Workers' Compensation Law, and the provisions of this act. The bond required under this act shall be in addition to any bond now required by law to be filed with the Department of Revenue of the Department of Finance and Administration with respect to payment of Arkansas gross receipts or gross proceeds taxes due and taxes due under the Compensating Tax Act of this state."

SECTION 4. Arkansas Code Annotated 17-22-405 is amended to read as follows:

"(a) If the Commissioner of Revenues, after making an investigation at the request of a nonresident contractor, finds that the nonresident contractor has and will continue to have property within Arkansas, and has regularly engaged in business in this state and will continue to do so, and the Commissioner of Revenues determines in writing that the nonresident contractor's financial responsibility is sufficient to cover his tax liability and the other obligations covered by this act, then the nonresident contractor shall not be required to make and file the bond required by this section but shall continue to give the notices required by this act.

(b) A nonresident contractor shall post a certification notice at each project site showing that the nonresident contractor has complied with this section. The certification notice shall be issued by the Commissioner of Revenues.

(c) A nonresident contractor who is a subcontractor shall be exempt from this section if the original prime or general contractor has filed a bond pursuant to this section.

(d) A nonresident contractor shall be required to give notice if the nonresident contractor is performing work for a person or company who makes sales and use tax payments by means of a direct pay sales and use tax permit. However, a nonresident contractor shall not be required to post a surety bond

if the nonresident contractor is performing work for a person or company who makes sales and use tax payments by means of a direct pay sales and use tax permit and all employees or subcontractors performing work under the contract are nonresidents of the state of Arkansas."

SECTION 5. Arkansas Code Annotated 17-22-406 is amended to read as follows:

"A nonresident contractor shall give written notice by certified mail, return receipt requested, to the Commissioner of Revenues, immediately upon completion of the work and services required by the contract (the Commissioner of Revenue shall then notify the Director of the Employment Security Division, the Workers' Compensation Commission, the Contractors Licensing Board and the county assessor of each county in which the contract work or service has been performed.) The notice shall also list all subcontractors of the nonresident contractor who performed work or services. The date of mailing the notice shall, for the purposes of this act, be considered the date of the completion of the contract."

SECTION 6. Arkansas Code Annotated 17-22-407 is amended to read as follows:

"(a) The Commissioner of Revenues shall not release the bond with respect to any tax liability that may be due the Revenue Department of the Department of Finance and Administration of the state of Arkansas for at least three (3) months after the nonresident contractor mails the completion notice of the contract, nor shall the Commissioner of Revenues release the bond with respect to any tax liability that may be due the Employment Security Division, the Workers' Compensation Commission, or any city, county, school district, state agency, or other political subdivisions of the state, with respect to any such contract for at least three (3) months after the nonresident contractor mails a completion notice of the contract and the Commissioner of Revenues receives written notice from the Employment Security Division, the Workers' Compensation Commission, and the Contractors Licensing Board and the county assessor of the affected county that the contractor owes no tax liability with respect to taxes due their respective cities, counties, school districts, state agencies, or other political subdivisions of the state. No action shall be commenced on the bond required by this act after the expiration of one (1) year from the date of the mailing of the notice of the completion of the contract. Except as otherwise specifically provided in this act, the Commissioner of Revenues shall serve solely as the depository of the bond filed under the provisions of this act, and shall have no enforcement responsibilities with respect to the payment of taxes due the Employment Security Division, the Workers' Compensation Commission, any city, county, school district, state agency, or other political subdivision of the state under the provisions of this act, nor shall the Commissioner of Revenues release the bond of any nonresident contractor until specific written notice is received from the Employment Security Division, the Workers' Compensation Commission, any city, county, school district, state agency, or other political subdivision of the state, authorizing the release.

(b) Enforcement of the notice and bond posting requirements contained herein shall be the responsibility of the Contractors Licensing Board. The board shall have the power to make such rules and regulations for enforcement as it may consider appropriate and not in conflict with Arkansas law.

(c) All expenses incurred by the board for the administration of this chapter are authorized to be paid by the board. The board may employ such additional professional and clerical employees as may be necessary and pay salaries thereto as authorized by law.

(d) Each member of the board shall receive fifty dollars (\$50.00) per

diem in addition to the per diem provided for in Arkansas Code 17-22-201(e)."

SECTION 7. Arkansas Code Annotated 17-22-408 is amended to read as follows:

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

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

(c) Failure of a nonresident contractor to comply with the provisions of this subchapter shall be grounds for revocation of any license issued to the nonresident contractor by the Contractors Licensing Board.

(d) Regarding any violation of this subchapter, the board shall have the power to issue subpoenas and bring before the board as a witness any person in the state and may require the witness to bring with him any book, writing, or other thing under his control which he is bound by law to produce in evidence.

(e) All hearings and appeals therefrom under this section shall be pursuant to the provisions of the Administrative Procedure Act, as amended, 25-15-201 et seq.

(f) No proceedings under this section may be commenced by the Contractors Licensing Board after three (3) years from the date on which the act or omission which is the basis for the proceeding occurred.

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

SECTION 8. Arkansas Code 17-22-402 is hereby repealed.

SECTION 9. All penalties assessed to a nonresident contractor pursuant to the provisions of this act shall be paid directly to the Contractors Licensing Board to defer the cost of enforcement.

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

SECTION 11. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 12. EMERGENCY. It is hereby found and determined by the General Assembly of the State of Arkansas that the present law pertaining to non-resident contractors is insufficient; that this act corrects deficiencies in the law; and that this act should become effective immediately to provide

for the adequate protection of the public. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

APPROVED: March 10, 1989
