

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

A Bill

HOUSE BILL 1855

5 By: Representative Cozart
6 By: Senator K. Hammer
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW CONCERNING THE BONDING
10 PROCEDURE FOR PAYMENT OR PERFORMANCE BONDS ISSUED
11 UNDER CONTRACTS FOR THE CONSTRUCTION, ERECTION,
12 ALTERATION, DEMOLITION, OR REPAIR OF ANY BUILDING,
13 STRUCTURE, OR IMPROVEMENT; AND FOR OTHER PURPOSES.
14

Subtitle

15
16 TO AMEND THE LAW CONCERNING THE BONDING
17 PROCEDURE FOR PAYMENT OR PERFORMANCE
18 BONDS ISSUED UNDER CONTRACTS FOR THE
19 CONSTRUCTION, ERECTION, ALTERATION,
20 DEMOLITION, OR REPAIR OF ANY BUILDING,
21 STRUCTURE, OR IMPROVEMENT.
22
23
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Arkansas Code § 18-44-501 is amended to read as follows:

28 18-44-501. Purpose - Definitions.

29 (a) ~~The bond required or authorized in this subchapter shall in itself~~
30 ~~be a full compliance with all other statutes of this state in effect relating~~
31 ~~to bond requirements on contracts for the repair, alteration, or erection of~~
32 ~~any building, structure, or improvement, public or private, it being the~~
33 ~~intention of this subchapter to provide a uniform bonding procedure in~~
34 ~~conjunction with such contracts~~

35 As used in this subchapter:

36 (1) "Construction contract" means a contract for the



1 construction, erection, alteration, demolition, or repair of a building,
 2 structure, or improvement;

3 (2) "Public construction contract" means a contract for the
 4 construction, erection, alteration, demolition, or repair of a public
 5 building, public structure, or public improvement, including without
 6 limitation a:

- 7 (A) Levee;
- 8 (B) Sewer;
- 9 (C) Drain;
- 10 (D) Road;
- 11 (E) Street;
- 12 (F) Highway; or
- 13 (G) Bridge; and

14 (3) "Real estate construction contract" means a contract for the
 15 construction, erection, alteration, demolition, or repair of a building,
 16 structure, or improvement located on privately owned real estate.

17 (b) Liability imposed under this subchapter on any surety furnishing a
 18 payment bond or a performance bond is an integral part of the bond whether or
 19 not the liability is explicitly set out or assumed in the bond.

20 (c) The purpose of this subchapter is to provide a uniform bonding
 21 procedure for payment bonds and performance bonds issued under contracts for
 22 the construction, erection, alteration, demolition, or repair of any
 23 building, structure, or improvement.

24
 25 SECTION 2. Arkansas Code § 18-44-503 is amended to read as follows:

26 18-44-503. Public buildings and improvements - Definition.

27 (a) A public construction contract in a sum exceeding ~~the amount~~
 28 ~~stated in § 22-9-203~~ twenty thousand dollars (\$20,000) ~~providing for the~~
 29 ~~repair, alteration, or erection of any public building, public structure, or~~
 30 ~~public improvement~~ shall not be entered into by the State of Arkansas or any
 31 subdivision of the state, by any county, municipality, school district, or
 32 other local taxing unit, or by any agency of the state, a subdivision of the
 33 state, a county, a municipality, a school district, or any other local taxing
 34 unit, unless the contractor ~~shall furnish~~ furnishes to the party letting the
 35 contract a payment bond in a sum equal to the amount of the public
 36 construction contract.

1 (b) ~~All persons, firms, associations, and corporations who have valid~~
 2 ~~claims against the bond may bring an action on the bond against the corporate~~
 3 ~~surety, provided that no action shall be brought on the bond after twelve~~
 4 ~~(12) months from the date on which the Building Authority Division or~~
 5 ~~institutions exempt from construction review and approval by the division~~
 6 ~~approve final payment on the state contract, nor shall any action be brought~~
 7 ~~outside the State of Arkansas~~ A payment bond required under subsection (a) of
 8 this section shall cover all claims for labor and materials necessary or used
 9 for the public construction contract, including without limitation a claim
 10 for the:

11 (1) Wages of construction workers under the public construction
 12 contract;

13 (2) Wages or salaries of supervisory and administrative
 14 personnel under the public construction contract;

15 (3) Use of temporary facilities;

16 (4) Purchase or rental of any machinery, equipment, or hand
 17 tools not customarily owned by construction workers;

18 (5) Purchase of building permits;

19 (6) Payment of construction testing fees;

20 (7) Purchase of fuel oil and gasoline;

21 (8) Payment of premiums for bonds and liability and workers'
 22 compensation insurance;

23 (9) Taxes or payments due to the state or any political
 24 subdivision of the state arising from the wages earned by construction
 25 workers under the public construction contract or in connection with the
 26 public construction contract; and

27 (10) Wages earned by workers on the public construction contract
 28 covered by the payment bond.

29
 30 SECTION 3. Arkansas Code § 18-44-504 is amended to read as follows:

31 18-44-504. Construction by religious or charitable organizations.

32 (a) ~~No~~ A construction contract in any sum exceeding one thousand
 33 ~~dollars (\$1,000)~~ twenty thousand dollars (\$20,000) providing for the repair,
 34 ~~alteration, or erection of any building, structure, or improvement shall not~~
 35 ~~be entered into by any church, religious organization, charitable~~
 36 ~~institution, or by any agency of the foregoing church, religious~~

1 organization, or charitable institution, unless the contractor ~~shall furnish~~
 2 furnishes to the party letting the construction contract a payment bond in a
 3 sum equal to the amount of the contract.

4 ~~(b)(1) The bond shall be filed in the office of the clerk of the~~
 5 ~~circuit court in the county in which the property is situated.~~

6 ~~(2) Any person or his or her assigns to whom there is due any~~
 7 ~~sum for labor or material furnished may bring an action on the bond for the~~
 8 ~~recovery of the indebtedness. No action shall be brought after six (6) months~~
 9 ~~from the completion of the church, hospital, orphanage, charitable~~
 10 ~~institution, or benevolent institution.~~

11 ~~(3) If the bond is not filed~~ furnished as ~~provided in~~ required
 12 by this subsection, any person performing labor or furnishing material,
 13 except the principal contractor, shall have ~~a~~ the right to assert and enforce
 14 a lien upon the property for the unpaid amount of the claim under § 18-44-101
 15 et seq.

16
 17 SECTION 4. Arkansas Code § 18-44-505 is amended to read as follows:

18 18-44-505. Option for private construction.

19 ~~Any person, firm, corporation, or association entering into a contract~~
 20 ~~for the repair, alteration, or erection of any building, structure, or~~
 21 ~~improvement may, at his or her or its option, require the contractor to~~
 22 ~~furnish a bond in a sum equal to the amount of the contract~~

23 (a) A real estate construction contract between private parties may
 24 require the contractor to furnish to the party letting the real estate
 25 construction contract a:

26 (1) Payment bond in a sum equal to the amount of the real estate
 27 construction contract for the benefit of all persons and entities that can
 28 claim a lien under § 18-44-101 et seq.; and

29 (2) Performance bond in a sum equal to the amount of the real
 30 estate construction contract for the benefit of the real estate owner.

31 (b) If a payment bond or performance bond is filed as provided under §
 32 18-44-507 before a lien or lien claim has been filed under § 18-44-101 et
 33 seq., then the real estate and improvements that otherwise would be subject
 34 to any lien under § 18-44-101 et seq. by reason of work or services provided
 35 or material or equipment supplied under the real estate construction contract
 36 shall not be subject to the lien.

1 (c) A civil action may be brought in circuit court on a payment bond
 2 or performance bond furnished under this section as provided in § 18-44-508.

3
 4 SECTION 5. Arkansas Code 18-44-506 is amended to read as follows:
 5 18-44-506. Surety and conditions.

6 The payment bond or performance bond required or authorized in this
 7 subchapter shall be:

8 (1) ~~executed~~ Executed by a solvent corporate surety company
 9 authorized to do business in the State of Arkansas; and

10 (2) ~~The bond shall be conditioned~~ Conditioned that the
 11 contractor shall:

12 (A) ~~faithfully perform~~ Perform his or her obligations
 13 under the construction contract, public construction contract, or real estate
 14 contract; and

15 (B) ~~shall pay~~ Pay all indebtedness amounts owed for labor
 16 and materials furnished or performed in under the construction contract,
 17 public construction contract, or real estate construction contract repair,
 18 alteration, or erection.

19
 20 SECTION 6. Arkansas Code § 18-44-507 is amended to read as follows:
 21 18-44-507. Filing.

22 ~~Before any work is performed under the contract, the bond shall be~~
 23 ~~filed with the clerk of the circuit court of the county in which the repairs,~~
 24 ~~alterations, or erection of any building, structure, or improvements are made~~

25 (a) A contractor shall file the payment bond or performance bond with
 26 the circuit clerk of the county in which the construction work is to take
 27 place before the commencement of the construction work required under the
 28 construction contract, public construction contract, or real estate
 29 construction contract.

30 (b) If the contractor fails to file the payment bond or performance
 31 bond as required by subsection (a) of this section, the person letting the
 32 construction contract, public construction contract, or real estate
 33 construction contract is not required to pay the contractor until the
 34 contractor:

35 (1) Files the payment bond or performance bond; and

36 (2) Provides a file marked copy of the payment bond or

1 performance bond to the person letting the construction contract, public
 2 construction contract, or real estate construction contract.

3
 4 SECTION 7. Arkansas Code § 18-44-508 is amended to read as follows:
 5 18-44-508. Actions – Limitations.

6 (a) All persons, firms, associations, and corporations who have valid
 7 claims against the payment bond or performance bond may bring an action
 8 thereon against the corporate surety.

9 (b) ~~No~~ An action shall not be brought on ~~the~~ a payment bond after ~~six~~
 10 ~~(6) months~~ one (1) year from the date of whichever of the following occurs
 11 first, the date the:

12 (1) ~~final~~ Final payment is made on the construction contract,
 13 public construction contract, or real estate construction contract; or

14 (2) ~~nor outside the State of Arkansas~~ The principal contractor
 15 on the payment bond ceases work on the construction contract, public
 16 construction contract, or real estate construction contract.

17 (c) An action shall not be brought on a performance bond after two (2)
 18 years from the date a principal contractor on the performance bond:

19 (1) Substantially completes the construction work on the
 20 construction contract, public construction contract, or real estate
 21 construction contract; or

22 (2) Ceases work on the construction contract, public
 23 construction contract, or real estate construction contract.

24 (d)(1) Before bringing a civil action concerning a payment bond under
 25 this subchapter, a person having no contractual relationship with the
 26 contractor furnishing the bond, express or implied, shall give written notice
 27 to the contractor and his or her surety within ninety (90) days after the
 28 last date labor was performed or the last of the material or services for
 29 which the claim is based were furnished or supplied.

30 (2) Notice required by subdivision (d)(1) of this section shall:

31 (A) State the amount claimed and the name of the party to
 32 whom the material was furnished or supplied or for whom the labor was done or
 33 performed; and

34 (B) Be served:

35 (i) By any means that provides written third-party
 36 verification of delivery to the contractor's residence or to any place the

1 contractor maintains an office or conducts business; or

2 (ii) In any manner appropriate under the rules of
3 civil procedure for the service of process in a civil action.

4 (e) A civil action under this subchapter shall not be brought outside
5 the State of Arkansas.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36