

2 State of Arkansas
3 89th General Assembly
4 Regular Session, 2013

A Bill

DRAFT JAM/JAM
SENATE BILL

5
6 By: Senators G. Baker, M. Lamoureux

7 Filed with: Interim Senate Committee on State Agencies and Governmental Affairs
8 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

9
10 AN ACT TO REQUIRE THE ARKANSAS STATE HIGHWAY AND
11 TRANSPORTATION DEPARTMENT TO WITHHOLD PAYMENT FROM A
12 PRIME CONTRACTOR THAT HAS FAILED TO PAY MATERIAL
13 SUPPLIERS AND SUBCONTRACTORS WITHIN TEN (10) DAYS
14 AFTER THE CONTRACTOR RECEIVES PAYMENT FROM THE
15 DEPARTMENT AND IN ACCORDANCE WITH THE TERMS OF THE
16 SUBCONTRACT OR MATERIAL SUPPLY CONTRACT; TO AUTHORIZE
17 THE DEPARTMENT TO ISSUE JOINT PAYMENT TO
18 SUBCONTRACTORS OR MATERIAL SUPPLIERS AND THE PRIME
19 CONTRACTOR FROM FUNDS DUE TO THE PRIME CONTRACTOR
20 WHEN THE PRIME CONTRACTOR FAILS TO PAY SUBCONTRACTORS
21 AND MATERIAL SUPPLIERS WITHIN TEN (10) DAYS AFTER THE
22 CONTRACTOR RECEIVES PAYMENT FROM THE DEPARTMENT AND
23 IN ACCORDANCE WITH THE TERMS OF THE SUBCONTRACT OR
24 MATERIAL SUPPLY CONTRACT; TO PROHIBIT THE DEPARTMENT
25 FROM ACCEPTING OR CONSIDERING PROPOSALS FOR CONTRACTS
26 FROM PRIME CONTRACTORS THAT HAVE FAILED TO PAY OR
27 SATISFACTORILY SETTLE ALL BILLS DUE FOR LABOR AND
28 MATERIAL ON FORMER DEPARTMENT CONTRACTS; AND FOR
29 OTHER PURPOSES.

Subtitle

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33 TO ALLOW THE ARKANSAS STATE HIGHWAY AND
34 TRANSPORTATION DEPARTMENT TO WITHHOLD
35 PAYMENT FROM CONTRACTORS TO PAY MATERIAL
36 SUPPLIERS AND SUBCONTRACTORS; TO PROHIBIT

1 CONTRACTS WITH CONTRACTORS THAT HAVE NOT
2 PAID FOR LABOR AND MATERIAL.

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5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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7 SECTION 1. Arkansas Code Title 27, Chapter 67, Subchapter 2, is amended
8 to add a new section to read as follows:

9 27-67-225. Failure of contractor to pay subcontractor or material
10 supplier – Authority of State Highway and Transportation Department to issue
11 joint checks – No consideration of bids.

12 (a) As used in this section:

13 (1) “Contractor” means a person that contracts orally or in
14 writing directly with the Arkansas State Highway and Transportation
15 Department or the State Highway Commission for the construction, maintenance,
16 or improvement of the roads in the state highway system or for other projects
17 essential to the operation of the state highway system;

18 (2) “Material Supplier” means a person who supplies materials,
19 goods, fixtures, or any other tangible item to:

20 (A) A contractor or subcontractor; or

21 (B) A person that has direct contractual privity with a
22 contractor or subcontractor;

23 (3) “Person” includes an individual, a partnership, a
24 corporation, a limited liability organization, a trust, or any other business
25 entity recognized by law;

26 (4) “Second-Tier Subcontractor” means a person who supplies
27 labor or services pursuant to a contract with a subcontractor; and

28 (5) “Subcontractor” means a person who supplies labor or
29 services pursuant to a contract with the contractor.

30 (b)(1) The contractor shall pay a subcontractor or a material supplier
31 its respective subcontract or material contract amount within ten (10)
32 calendar days after the contractor receives payment from the department.

33 (2) The payment amount shall be according to the terms of the
34 subcontract or material contract.

35 (3) The contractor may withhold a retainage in the amount of ten
36 percent (10%) or less of the amount due to the subcontractor.

1 (4)(A) Moneys withheld as retainage from subcontractors must be
2 returned within thirty (30) calendar days after the subcontractor's work is
3 satisfactorily completed, whether the contractor's work is complete or not.

4 (B) For the purpose of the prompt return of retainage,
5 "satisfactorily completed" means that:

6 (i) The subcontractor's work has been completed in
7 accordance with the plans and specifications;

8 (ii) The required paperwork, including material
9 certifications, and payrolls have been received and approved by the Chief
10 Engineer of the Arkansas State Highway and Transportation Department;

11 (iii) The subcontractor does not have a past-due
12 balance with a material supplier for work associated with the project; and

13 (iv) The engineer has determined the final
14 quantities for the subcontractor's portion of the work.

15 (C) Delay or postponement of payment to a subcontractor
16 may only be effected after the contractor has established good cause and
17 received written approval from the engineer.

18 (c)(1) If the contractor fails to pay a subcontractor or material
19 supplier within ten (10) calendar days after the contractor receives payment
20 from the department and according to the terms of the subcontract or material
21 contract, all or any portion of subsequent payments due to the contractor may
22 be withheld by the engineer, department, or commission.

23 (2) The engineer, department, or commission may issue a joint
24 check from payment due to the contractor, made payable jointly to the
25 general contractor and the subcontractor or material supplier when the
26 contractor fails to pay a subcontractor or material supplier within ten (10)
27 calendar days after the contractor receives payment from the department and
28 according to the terms of the subcontract or material contract.

29 (d)(1) A contractor must include in its subcontract or material
30 contract notice to a subcontractor and material supplier of its right to
31 prompt payment and return of retainage.

32 (2) A contractor must also include in its subcontract notice to
33 a subcontractor that the contractor requires that the subcontractor pay
34 second-tier subcontractors and material suppliers within ten (10) calendar
35 days after the subcontractor receives payment from the contractor and
36 according to the terms of the second-tier subcontract or material contract.

1 (e) The department and commission shall not consider any proposal or
2 bid from a prime contractor for future contracts with the department when the
3 prime contractor has sublet its performance of a prior contract with the
4 department to a subcontractor or material supplier and failed to pay the
5 subcontractor or material supplier for work or materials provided pursuant to
6 the terms of the subcontract or material contract.

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11 Prepared by: JAM/BAT
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