

State of Arkansas

76th General Assembly

Regular Session, 1987

SENATE BILL 246

By: Senator's Ingram and Gordon

As engrossed 3-3-87

"AN ACT TO REQUIRE NON RESIDENT CONTRACTORS TO FILE A NOTICE  
AND BOND; AND FOR OTHER PURPOSES."

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

SECTION 1. For the purpose of this Act:

(A) "Contractor" shall include all original prime, and general contractors, and all subcontractors and is defined to be any person, firm, joint venture, partnership, co-partnership, 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 or 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 Board for Contractors under the provisions of the Contractors Licensing Law of this State (Act 150 of 1965, as amended).

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

SECTION 2. 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, with return receipt requested, to the Commissioner of Revenues of the Department of Finance and Administration, the Director of the Employment Security Division, the Worker's Compensation Commission and the county assessor of each county in which such contract work

or service is to be performed before actually commencing work or undertaking to perform any duties under any such contract. A copy of such notice, and a copy of the bond to be filed with the Commissioner of Revenues by the nonresident contractor under the provisions of subsection (A) of Section 3 of this Act, shall also be filed as a matter of record, with the State Licensing Board for Contractors of this State. The notice shall state the approximate amount of the contract price, the location where work is to be performed, the approximate date work is to be commenced, a description of the general nature of the work to be performed and a list of subcontractors of the nonresident contractor who will be performing work or service.

SECTION 3. (A) 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 of the subdivisions of the State, the Arkansas Employment Security Act, the Worker's Compensation Law and the provision 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 Revenues 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.

(B) If the Commissioner of Revenues, after making an investigation at the request of a nonresident contractor, finds that such 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, 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.

(C) 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.

(D) 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.

SECTION 4. (A) A nonresident contractor shall give written notice by certified mail, with return receipt requested, to the Commissioner of Revenues, the Director of the Employment Security Division, the Worker's Compensation Commission and the county assessor of each county in which the contract work or service has been performed, immediately upon completion of the work and services required by the contract. 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.

(B) 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 Worker's Compensation Commission or any county in this 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 Worker's Compensation Commission, and the county assessor of the affected county that the contractor owes no tax liability with respect to taxes due their respective agencies or the county. 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 Worker's Compensation Commission or to any county 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 Worker's Compensation Commission or the county authorizing such release.

SECTION 5. A nonresident contractor who fails to give notice or execute the bond required by this Act shall be denied the right to perform a contract until he complies with the requirements of this Act with respect to the filing of notice and execution of a bond. Failure of a nonresident contractor to comply with the provisions of this Act shall be grounds for revocation of any license issued to such nonresident contractor by the State Licensing Board for Contractors.

SECTION 6. Any nonresident contractor who fails to comply with this Act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00).

SECTION 7. (A) Act 174 of 1967, the same being Arkansas Statutes 71-721 through 71-723, relating to bonds by out-of-state contractors is hereby repealed.

SECTION 8. All laws and parts of laws in conflict with this Act are hereby repealed.

/s/ Ingram and Gordon

