

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
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As Engrossed: H4/15/21
A Bill

HOUSE BILL 1855

By: Representative Cozart
By: Senator K. Hammer

For An Act To Be Entitled

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

Subtitle

TO AMEND THE LAW CONCERNING THE BONDING
PROCEDURE FOR PAYMENT OR PERFORMANCE
BONDS ISSUED UNDER CONTRACTS FOR THE
CONSTRUCTION, ERECTION, ALTERATION,
DEMOLITION, OR REPAIR OF ANY BUILDING,
STRUCTURE, OR IMPROVEMENT.

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

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

18-44-501. Purpose - Definitions.

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

As used in this subchapter:

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



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

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

- (A) Levee;
- (B) Sewer;
- (C) Drain;
- (D) Road;
- (E) Street;
- (F) Highway; or
- (G) Bridge; and

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

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

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

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

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

(a) A public construction contract in a sum exceeding ~~the amount stated in § 22-9-203~~ fifty thousand dollars (\$50,000) ~~providing for the repair, alteration, or erection of any public building, public structure, or public improvement~~ shall not be entered into by the State of Arkansas or any subdivision of the state, by any county, municipality, school district, or other local taxing unit, or by any agency of the state, a subdivision of the state, a county, a municipality, a school district, or any other local taxing unit, unless the contractor ~~shall furnish~~ furnishes to the party letting the contract a payment bond in a sum equal to the amount of the public construction contract.

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

- (1) Wages of construction workers under the public construction contract;
- (2) Wages or salaries of supervisory and administrative personnel under the public construction contract;
- (3) Use of temporary facilities;
- (4) Purchase or rental of any machinery, equipment, or hand tools not customarily owned by construction workers;
- (5) Purchase of building permits;
- (6) Payment of construction testing fees;
- (7) Purchase of fuel oil and gasoline;
- (8) Payment of premiums for bonds and liability and workers' compensation insurance;
- (9) Taxes or payments due to the state or any political subdivision of the state arising from the wages earned by construction workers under the public construction contract or in connection with the public construction contract; and
- (10) Wages earned by workers on the public construction contract covered by the payment bond.

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

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

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

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

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

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

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

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

18-44-505. Option for private construction.

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

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

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

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

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

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

SECTION 5. Arkansas Code 18-44-506 is amended to read as follows:

18-44-506. Surety and conditions.

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

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

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

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

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

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

18-44-507. Filing.

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

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

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

(1) Files the payment bond; and

(2) Provides a file marked copy of the payment bond to the person letting the construction contract, public construction contract, or real estate construction contract.

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

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

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

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

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

(c) An action shall not be brought on a performance bond after two (2) years from whichever of the following occurs first, the date a principal contractor on the performance bond:

(1) Receives final payment under the construction contract, public construction contract, or real estate construction contract; or

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

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

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

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

(B) Be served:

(i) By any means that provides written third-party verification of delivery to the contractor's residence or to any place the contractor maintains an office or conducts business; or

(ii) In any manner appropriate under the rules of

civil procedure for the service of process in a civil action.

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

SECTION 8. Arkansas Code § 22-9-403 is amended to read as follows:

22-9-403. Statutory liability as integral part of bond – Limitation of action.

~~(a) The liability imposed by § 22-9-401 on any bond furnished by a public works contractor shall be deemed an integral part of the bond, whether or not the liability is explicitly set out or assumed therein.~~

~~(b)(1) No action shall be brought on a bond after one (1) year from the date final payment is made on the contract, nor shall an action be brought outside the State of Arkansas.~~

~~(2) However, with respect to public works contracts where final approval for payment is given by the Building Authority Division or by an institution of higher education exempt from construction review and approval by the division, all persons, firms, associations, and corporations having valid claims against the bond may bring an action on the bond against the corporate surety, provided that no action shall be brought on the bond after twelve (12) months from the date on which the division or the public institution of higher education approves final payment on the state contract, nor shall any action be brought outside the State of Arkansas in accordance with § 18-44-503.~~

/s/Cozart