



28 **14-2-5 (Effective 05/01/05)**, as last amended by Chapters 30 and 250, Laws of Utah  
29 2004

30 ENACTS:

31 **14-2-6**, Utah Code Annotated 1953



33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section **14-2-1** is amended to read:

35 **14-2-1. Definitions -- Payment bond or irrevocable letter of credit required --**

36 **Right of action -- Attorneys' fees.**

37 (1) For purposes of this chapter:

38 (a) "Commercial contract" means a contract for the construction, alteration, or repair of  
39 the following if it is not residential construction:

40 (i) a building;

41 (ii) a structure; or

42 (iii) an improvement upon land that is not associated with a single family detached  
43 housing.

44 (b) "Contractor" means any person who is or may be awarded an original commercial  
45 contract for the construction, alteration, or repair of any building, structure, or improvement  
46 upon land.

47 (c) "Major electric plant construction project" means a project for the construction,  
48 alteration, or repair of an electric plant as defined in Section 54-2-1 that has a total cost that  
49 exceeds \$50,000,000.

50 [~~(c)~~] (d) "Owner" means any person contracting with the original contractor for  
51 construction, alteration, or repair of the following if it is not residential construction:

52 (i) a building;

53 (ii) a structure; or

54 (iii) an improvement upon land.

55 [~~(d)~~] (e) (i) "Residential construction" means the construction, alteration, or repair of:

56 (A) single family detached housing; or

57 (B) multifamily attached housing up to and including a fourplex.

58 (ii) "Residential construction" includes rental housing.

59 (2) ~~Before~~ (a) Except as provided in Subsection (2)(b), before any original  
60 commercial contract exceeding \$50,000 in amount for the construction, alteration, or repair of  
61 any building, structure, or improvement upon land is awarded to any contractor, the owner  
62 shall obtain from the contractor a payment bond~~[-]~~ that complies with Subsection (3).

63 ~~[(a) complying with Subsection (3); and]~~

64 ~~[(b) that becomes binding upon the award of the original commercial contract to the~~  
65 ~~contractor.]~~

66 (b) Notwithstanding Subsection (2)(a), an owner is not required to obtain a payment  
67 bond from a contractor if:

68 (i) the contractor is bidding on a major electric plant construction project;

69 (ii) the owner obtains an irrevocable letter of credit from the contractor; and

70 (iii) the irrevocable letter of credit described in Subsection (2)(b)(ii) complies with  
71 Subsection (3).

72 (3) The payment bond or irrevocable letter of credit required by Subsection (2) shall  
73 be:

74 (a) binding upon the award of the original commercial contract to the contractor;

75 ~~[(a)]~~ (b) (i) in the case of a payment bond, with a surety or sureties satisfactory to the  
76 owner for the protection of all persons supplying labor, services, equipment, or material in the  
77 prosecution of the work provided for in the commercial contract; ~~and~~ or

78 (ii) in the case of an irrevocable letter of credit, issued by a financial institution whose  
79 deposits are federally insured; and

80 ~~[(b)]~~ (c) in a sum equal to the original commercial contract price.

81 (4) A person shall have a right of action on a payment bond or irrevocable letter of  
82 credit under this chapter for any unpaid amount due that person if that person:

83 (a) has furnished labor, services, equipment, or material in the prosecution of the work  
84 provided for in the commercial contract for which the payment bond or irrevocable letter of  
85 credit is furnished under this chapter; and

86 (b) has not been paid in full within 90 days after the last day on which that person:

87 (i) performed the labor or service for which a claim is made; or

88 (ii) supplied the equipment or material for which the claim is made.

89 (5) (a) An action under this section shall be brought in a court of competent jurisdiction

90 in the county where the commercial contract was to be performed and not elsewhere.

91 (b) An action under this section is barred if not commenced within one year after the  
92 last day on which the claimant:

93 (i) performed the labor or service on which the claim is based; or

94 (ii) supplied the equipment or material on which the claim is based.

95 (c) The obligee named in the payment bond or irrevocable letter of credit need not be  
96 joined as a party to an action under this section.

97 (d) In any action upon a payment bond or irrevocable letter of credit under this section,  
98 the court may award reasonable attorneys' fees to the prevailing party, which attorneys' fees  
99 shall be taxed as costs in the action.

100 (6) The payment bond or irrevocable letter of credit shall be exhibited to any interested  
101 person upon request.

102 [~~(7) In any suit upon a payment bond under this chapter, the court shall award~~  
103 ~~reasonable attorneys' fees to the prevailing party.]~~

104 Section 2. Section **14-2-2** is amended to read:

105 **14-2-2. Failure of owner to obtain payment bond or irrevocable letter of credit --**  
106 **Liability.**

107 (1) An owner who fails to obtain a payment bond or irrevocable letter of credit required  
108 under Section 14-2-1 is liable to each person who performed labor or service or supplied  
109 equipment or materials under the commercial contract for the reasonable value of the labor or  
110 service performed or the equipment or materials furnished up to but not exceeding the  
111 commercial contract price.

112 (2) An action to recover on the liability described in Subsection (1) may not be  
113 commenced after the expiration of one year after the day on which:

114 (a) the last of the labor or service was performed; or

115 (b) the equipment or material was supplied by the person.

116 (3) In an action for failure to obtain a payment bond or irrevocable letter of credit, the  
117 court shall award reasonable attorneys' fees to the prevailing party. These attorneys' fees shall  
118 be taxed as costs in the action.

119 Section 3. Section **14-2-5 (Effective 05/01/05)** is amended to read:

120 **14-2-5 (Effective 05/01/05). Preliminary notice requirement.**

121 (1) Any person furnishing labor, service, equipment, or material for which a payment  
122 bond or irrevocable letter of credit claim may be made under this chapter shall provide  
123 preliminary notice to the designated agent as prescribed by Section 38-1-32, except that this  
124 section does not apply:

125 (a) to a person performing labor for wages; or

126 (b) if a notice of commencement is not filed as prescribed in Section 38-1-31 for the  
127 project or improvement for which labor, service, equipment, or material is furnished.

128 (2) Any person who fails to provide the preliminary notice required by Subsection (1)  
129 may not make a payment bond or irrevocable letter of credit claim under this chapter.

130 (3) The preliminary notice required by Subsection (1) must be provided prior to  
131 commencement of any action on the payment bond or irrevocable letter of credit.

132 Section 4. Section **14-2-6** is enacted to read:

133 **14-2-6. Major electric plant construction project.**

134 An owner of a major electric plant construction project may not:

135 (1) (a) if the bidding contractor obtains a payment bond meeting the conditions of  
136 Section 14-2-1, require as a condition of making a bid related to the major electric plant  
137 construction project that the bidding contractor have an irrevocable line of credit; or

138 (b) if the bidding contractor obtains an irrevocable letter of credit meeting the  
139 conditions of Section 14-2-1, require as a condition of making a bid related to the major  
140 electric plant construction project that the bidding contractor have a payment bond; and

141 (2) reject a bid related to the major electric plant construction project on the basis of  
142 whether the contractor pursuant to Section 14-2-1 offers:

143 (a) a payment bond; or

144 (b) an irrevocable letter of credit.

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### Legislative Review Note

as of 12-13-04 3:18 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

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**Fiscal Note**  
**Bill Number HB0082**

**Contractors Bonds and Letters of Credit**

*21-Jan-05*

*8:50 AM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

Enforcement is through private right of action.

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**Office of the Legislative Fiscal Analyst**