

CONSTRUCTION BOND AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael T. Morley

LONG TITLE

General Description:

This bill modifies provisions related to private contractors bonds.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ makes the requirement that the owner obtain a bond from the contractor apply only to commercial contracts;
- ▶ increases the contract price amount to \$50,000 for requiring the owner to obtain a bond from the contractor;
- ▶ deletes exemption related to the Residence Lien Restriction and Lien Recovery

Fund Act; **h** [and]

- ▶ **ADDRESSES THE AWARD OF ATTORNEYS' FEES; AND h**

▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

14-2-1, as last amended by Chapter 308, Laws of Utah 1994

14-2-2, as last amended by Chapter 308, Laws of Utah 1994



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

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

30 **14-2-1. Definitions -- Payment bond required -- Right of action -- Notice --**

31 **Attorneys' fees.**

32 (1) For purposes of this chapter:

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

35 (i) a building;

36 (ii) a structure; or

37 (iii) an improvement upon land ~~that is not associated with a single family~~

37a ~~DETACHED HOUSING~~ § ~~[OR A RESIDENTIAL SUBDIVISION]~~ § ~~h~~ .

38 ~~[(a)]~~ (b) "Contractor" means any person who is or may be awarded ~~h~~ [a] AN ORIGINAL h
38a commercial

39 contract for the construction, alteration, or repair of any building, structure, or improvement
40 upon land.

41 ~~[(b)]~~ (c) "Owner" means any person contracting ~~h~~ WITH THE ORIGINAL CONTRACTOR h for
41a construction, alteration, or repair of

42 ~~[any building, structure, or improvement upon land.]~~ the following if it is not residential
43 construction:

44 (i) a building;

45 (ii) a structure; or

46 (iii) an improvement upon land.

47 (d) (i) "Residential construction" means the construction, alteration, or repair of:

48 (A) single family detached housing; or

49 (B) multifamily attached housing up to and including a h [duplex] FOURPLEX h .

50 (ii) "Residential construction" includes rental housing § ~~[h AND RESIDENTIAL~~
50a SUBDIVISIONS h] § .

51 (2) ~~[(a) Except as provided in Subsection (2)(b), before]~~ Before any h ORIGINAL h
51a commercial

52 contract exceeding ~~[\$2,000]~~ \$50,000 in amount for the construction, alteration, or repair of any
53 building, structure, or improvement upon land is awarded to any contractor, the owner shall
54 obtain from the contractor a payment bond:

55 (a) complying with Subsection (3)[~~The bond shall become]; and~~

56 (b) that becomes binding upon the award of the h ORIGINAL h commercial contract to the
56a contractor.

57 ~~[(b) An owner is exempted from the requirements of this section if a person otherwise~~
58 ~~eligible to file a lien under Title 38, Chapter 1, Mechanics' Liens, is barred from filing a~~

59 ~~mechanics' lien under Section 38-11-107.]~~

60 (3) The payment bond shall be:

61 (a) with a surety or sureties satisfactory to the owner for the protection of all persons
62 supplying labor, services, equipment, or material in the prosecution of the work provided for in
63 the commercial contract; and

64 (b) in a sum equal to the ~~h~~ **ORIGINAL** ~~h~~ commercial contract price.

65 (4) A person shall have a right of action on a payment bond under this chapter for any
66 unpaid amount due ~~him~~ that person if that person:

67 (a) ~~he~~ has furnished labor, services, equipment, or material in the prosecution of the
68 work provided for in the commercial contract for which the payment bond is furnished under
69 this chapter; and

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

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

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

74 (5) (a) An action under this section shall be brought in a court of competent jurisdiction
75 in the county where the commercial contract was to be performed and not elsewhere. ~~The~~

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

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

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

80 (c) The obligee named in the payment bond need not be joined as a party to ~~the~~ an
81 action under this section.

82 (d) In any action upon a payment bond under this section, the court may award
83 reasonable attorneys' fees to the prevailing party, which attorneys' fees shall be taxed as costs in
84 the action.

85 (6) The payment bond shall be exhibited to any interested person upon request.

86 (7) In any suit upon a payment bond under this chapter, the court shall award
87 reasonable attorneys' fees to the prevailing party.

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

89 **14-2-2. Failure of owner to obtain payment bond -- Liability.**

90 (1) [~~Unless exempted under Section 14-2-1, an~~] An owner who fails to obtain a
 91 payment bond required under Section 14-2-1 is liable to each person who performed labor or
 92 service or supplied equipment or materials under the commercial contract for the reasonable
 93 value of the labor or service performed or the equipment or materials furnished up to but not
 94 exceeding the commercial contract price.

95 (2) [~~No~~] An action to recover on [~~this~~] the liability described in Subsection (1) may not
 96 be commenced after the expiration of one year after the day on which:

- 97 (a) the last of the labor or service was performed; or
- 98 (b) the equipment or material was supplied by the person.

99 (3) In an action for failure to obtain a bond, the court ~~h~~ [~~may~~] **SHALL** ~~h~~ award reasonable
 99a attorneys'
 100 fees to the prevailing party. These attorneys' fees shall be taxed as costs in the action.

Legislative Review Note
 as of 1-8-04 12:47 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

State Impact

No fiscal impact.

Individual and Business Impact

Business and individual impacts are expected to be small since the vast majority of projects are already bonded

Office of the Legislative Fiscal Analyst