

HB 1724 -- CONTRACTS WITH PUBLIC ENTITIES

SPONSOR: Falkner

COMMITTEE ACTION: Voted "Do Pass" by the Standing Committee on Financial Institutions by a vote of 13 to 0.

This bill adds the definition of a "public official" to Section 107.170, RSMo, regarding bonds and public works contractors and modifies the definition of "public entity" to include any municipality.

This bill makes it the duty of all public entities in making contracts over \$50,000 for public works exempt from attachment and execution to require the contractor to furnish a bond.

Currently, a school board member is not required to independently confirm that a bond company exists and is solvent if a contractor represents that it is, but the school board member is not exempt from liability if he or she has actual knowledge of the insolvency or does not in good faith comply with the law in requiring the contractor to have a sufficient lawful bond. The bill expands both the lack of duty to verify the status of the bond company and the lack of exemption from liability for actual knowledge regarding a bond company from a school board member to all public officials.

No public official who would be personally liable under law or at equity to a contractor, subcontractor, or supplier at any tier, because of a public entity's failure to require a contractor to furnish a payment bond will be liable unless the contractor provides to the presiding official and secretary of the public entity a written notice identifying the persons who will have personal liability for payment if no payment bond meeting the statutory requirements is furnished. Compliance with this written notice requirement is a condition precedent to the personal liability of any public official for a claim of payment. Any original contractor who fails to provide the written notice described in the bill, with intent to defraud, will be guilty of a class B misdemeanor. If consent that meets the requirements of Section 513.455, as specified below, is acknowledged and recorded as required, no bond is required. A lessee of a public entity contracting for a public works project to be used for nongovernmental purposes is not required to furnish a bond when the contractor furnishes a bond.

Currently, courthouses, jails, clerks' offices, and other buildings and the lots on which they stand owned by a county or municipality, as well as all burial grounds, are exempt from attachment and execution. This bill expands the exemption to other lands owned by

the state; any public body corporate and politic; any county, city, town, municipality; any road, water, sewer, fire, library, hospital, or school district; and any other political subdivision of this state.

The bill also provides that the state or any political subdivision, as specified, may consent to have certain projects and the lands thereon become subject to the attachment of mechanics' liens filed under Chapter 429 if the consent is in writing, contains a legal description of the property subject to the attachment, and is acknowledged by an authorized official in a form that can be and is recorded in the office of the recorder of deeds for the county where the property is located.

This bill is the same as HB 926 (2023).

PROPOSERS: Allowing the use of mechanics' liens lowers the cost to the public when a construction project on public property has a nongovernmental purpose, by giving the option to require a payment bond or to consent to mechanic's liens being filed against an industrial revenue bond project.

Testifying in person for the bill were Representative Falkner; Brad Lau, St. Joseph Chamber of Commerce & St. Joseph Economic Development Partnership; Missouri Economic Development Council; Missouri Chamber of Commerce & Industry; Missouri Municipal League; Missouri Economic Development Financing Association.

OPPOSERS: Those who oppose the bill say that the law currently makes the individuals who had the duty to obtain the bond and failed to do so personally liable for failing to perform their duty as governmental officials, so the change in this bill weakens this remedy. Some school districts do not need bonds for construction projects.

Testifying in person against the bill were American Subcontractors Association Midwest Council; and Arnie C. Dienoff.

Written testimony has been submitted for this bill. The full written testimony and witnesses testifying online can be found under Testimony on the bill page on the House website.