

By: Kirby, Hewes

To: Insurance

SENATE BILL NO. 3147

1 AN ACT TO AMEND SECTION 31-5-51, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE PROOF OF GENERAL LIABILITY INSURANCE BEFORE ENTERING INTO
3 CERTAIN FORMAL CONTRACTS WITH THE STATE OR ANY COUNTY, CITY OR
4 POLITICAL SUBDIVISION THEREOF, OR OTHER PUBLIC AUTHORITY FOR THE
5 CONSTRUCTION, ALTERATION, OR REPAIR OF ANY PUBLIC BUILDING OR
6 PUBLIC WORK; AND FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 SECTION 1. Section 31-5-51, Mississippi Code of 1972, is
9 amended as follows:[JMR1]

10 31-5-51. (1) Any person entering into a formal contract
11 with the state or any county, city or political subdivision
12 thereof, or other public authority for the construction,
13 alteration, or repair of any public building or public work,
14 before entering into such contract, shall furnish to such public
15 body, except as provided in subsection (5) of this section, bonds
16 with good and sufficient surety as follows:

17 (a) A performance bond payable to, in favor of or for
18 the protection of such public body, as owner, for the work to be
19 done in an amount not less than the amount of the contract,
20 conditioned for the full and faithful performance of the contract;

21 (b) A payment bond payable to such public body but
22 conditioned for the prompt payment of all persons supplying labor
23 or material used in the prosecution of the work under said
24 contract, for the use of each such person, in an amount not less
25 than the amount of the contract; and

26 (c) The bonds herein provided for may be made by any
27 surety company which is authorized to do business in the State of
28 Mississippi and listed on the United States Treasury Department's

29 list of acceptable sureties, or such bonds may be guaranteed by a
30 personal surety as provided for herein. The personal surety shall
31 deposit with the State Treasurer cash or certificates of deposit
32 in an amount not less than the amount of the contract, and the
33 State Treasurer shall hold same in trust and on deposit for the
34 benefit of the public body that is a party to the contract
35 providing for the construction, alteration or repair of the public
36 building or for the public work.

37 (2) Every person who has furnished labor or material used in
38 the prosecution of the work provided for in such contract, in
39 respect of which a payment bond is furnished and who has not been
40 paid in full therefor before the expiration of a period of ninety
41 (90) days after the date on which the last of the labor was
42 performed by him or the last of the materials was furnished by him
43 and for which such claim is made, provided the same has been
44 approved, where required, by the public authority or its architect
45 or engineers, or such approval is being withheld as a result of
46 unreasonable acts of the contractor, shall have the right to sue
47 on such payment bond for the amount, or the balance thereof that
48 is due and payable, but unpaid at the time of institution of such
49 suit and to prosecute said action to final execution and judgment.
50 Notwithstanding anything to the contrary contained herein, if the
51 amount claimed in such action is subject to contractual provisions
52 or conditions, between the parties involved in such action, the
53 action shall be abated pending the performance of such provisions
54 and the fulfillment of such conditions.

55 (3) Any person having direct contractual relationship with a
56 subcontractor but no contractual relationship express or implied
57 with the contractor furnishing said payment bond shall have a
58 right of action upon the said payment bond upon giving written
59 notice to said contractor within ninety (90) days from the date on
60 which such person did or performed the last of the labor or
61 furnished or supplied the last of the material for which such
62 claim is made, stating with substantial accuracy the amount
63 claimed and the name of the party to whom the material was
64 furnished or supplied or for whom the labor was done or performed.
65 Such notice shall be given in writing by the claimant to the

66 contractor or surety at any place where the contractor or surety
67 maintains an office or conducts business. Such notice may be
68 personally delivered by the claimant to the contractor or surety,
69 or it may be mailed by certified mail, return receipt requested,
70 postage prepaid, to the contractor or surety. No such action may
71 be maintained by any person not having a direct contractual
72 relationship with the contractor-principal, unless the notice
73 required by this section shall have been given.

74 (4) The only persons protected by such payment bond, subject
75 to the notice provisions of this section are:

76 (a) Subcontractors and material suppliers of the
77 contractor;

78 (b) Sub-subcontractors and material suppliers of those
79 subcontractors named in subsection (4)(a) of this section; and

80 (c) Laborers who have performed work on the project
81 site.

82 (5) Whenever a contract is less than Twenty-five Thousand
83 Dollars (\$25,000.00) the owners may elect to make a lump sum
84 payment at the completion of the job. Lump sum payments will not
85 be made until completion and acceptance by the governing agency.
86 In such a case a performance bond or payment bond will not be
87 required.

88 (6) Except as otherwise provided in subsection (1)(c) for a
89 personal surety, no surety or surety company shall be allowed to
90 guarantee or write bonds for the benefit of the public body that
91 is a party to a contract providing for the construction,
92 alteration or repair of a public building or for public work,
93 unless that surety is listed on the United States Treasury
94 Department's list of acceptable sureties. If the surety is not
95 listed on the United States Treasury Department's list of
96 acceptable sureties, the public body for which the public work is
97 being performed shall be liable to the extent that the surety
98 would be liable.

99 (7) Any person entering into a formal contract which exceeds
100 Twenty-five Thousand Dollars (\$25,000.00) with the state or any
101 county, city or political subdivision thereof, or other public
102 authority for the construction, alteration, or repair of any
103 public building or public work, before entering into such
104 contract, shall furnish to the public body proof of general
105 liability insurance.

106 SECTION 2. This act shall take effect and be in force from
107 and after July 1, 2000.