

By: Representatives Taylor, McCoy, Barnett (92nd), Cameron, Cummings, Davis, Eads, Eakes, Ellzey, Green, Hamilton, Moody, Moss, Nicholson, Pierce, Robinson (84th), Rotenberry, Rushing, Shows, Smith (35th), Stringer, Wallace, Watson

To: Appropriations

HOUSE BILL NO. 803

1 AN ACT TO AMEND SECTION 31-5-51, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE AN EXEMPTION FOR THE DEPARTMENT OF REHABILITATION SERVICES  
3 FROM CERTAIN LIABILITY INSURANCE REQUIREMENTS REGARDING CERTAIN  
4 PUBLIC CONTRACTS; AND FOR RELATED PURPOSES.

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

6 SECTION 1. Section 31-5-51, Mississippi Code of 1972, is  
7 amended as follows:

8 31-5-51. (1) Any person entering into a formal contract  
9 with the state or any county, city or political subdivision  
10 thereof, or other public authority for the construction,  
11 alteration, or repair of any public building or public work,  
12 before entering into such contract, shall furnish to such public  
13 body, except as provided in subsection (5) of this section, bonds  
14 with good and sufficient surety as follows:

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

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

24 (c) The bonds herein provided for may be made by any  
25 surety company which is authorized to do business in the State of  
26 Mississippi and listed on the United States Treasury Department's  
27 list of acceptable sureties, or such bonds may be guaranteed by a

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

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

53 (3) Any person having direct contractual relationship with a  
54 subcontractor but no contractual relationship express or implied  
55 with the contractor furnishing said payment bond shall have a  
56 right of action upon the said payment bond upon giving written  
57 notice to said contractor within ninety (90) days from the date on  
58 which such person did or performed the last of the labor or  
59 furnished or supplied the last of the material for which such  
60 claim is made, stating with substantial accuracy the amount

61 claimed and the name of the party to whom the material was  
62 furnished or supplied or for whom the labor was done or performed.  
63 Such notice shall be given in writing by the claimant to the  
64 contractor or surety at any place where the contractor or surety  
65 maintains an office or conducts business. Such notice may be  
66 personally delivered by the claimant to the contractor or surety,  
67 or it may be mailed by certified mail, return receipt requested,  
68 postage prepaid, to the contractor or surety. No such action may  
69 be maintained by any person not having a direct contractual  
70 relationship with the contractor-principal, unless the notice  
71 required by this section shall have been given.

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

74 (a) Subcontractors and material suppliers of the  
75 contractor;

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

78 (c) Laborers who have performed work on the project  
79 site.

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

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

94 acceptable sureties, the public body for which the public work is  
95 being performed shall be liable to the extent that the surety  
96 would be liable.

97 (7) Any person entering into a formal contract which exceeds  
98 Five Thousand Dollars (\$5,000.00) with the state or any county,  
99 city or political subdivision thereof, or other public authority  
100 for the construction, alteration, or repair of any public building  
101 or public work, before entering into such contract, shall furnish  
102 to the public body proof of general liability insurance coverage  
103 in an amount not less than One Million Dollars (\$1,000,000.00) for  
104 bodily injury and property damage. Exempted from the provisions  
105 of this subsection are any persons who enter into a contract with  
106 the Mississippi Department of Rehabilitation Services for the  
107 construction, alteration or repair of the home of a disabled  
108 individual who has been determined eligible for services by the  
109 Mississippi Department of Rehabilitation Services.

110 SECTION 2. This act shall take effect and be in force from  
111 and after its passage.