

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  
(As Passed the House)

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 AND COUNTIES AND CITIES FROM CERTAIN LIABILITY INSURANCE  
4 REQUIREMENTS REGARDING CERTAIN PUBLIC CONTRACTS; AND FOR RELATED  
5 PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

98 (7) Any person entering into a formal contract with the  
99 state which exceeds Five Thousand Dollars (\$5,000.00), or with a  
100 county, city or other public authority which exceeds Twenty-five  
101 Thousand dollars (\$25,000.00), for the construction, alteration,  
102 or repair of any public building or public work, before entering  
103 into such contract, shall furnish to the public body proof of  
104 general liability insurance coverage in an amount not less than  
105 One Million Dollars (\$1,000,000.00) for bodily injury and property  
106 damage. Exempted from the provisions of this subsection are any  
107 persons who enter into a contract with the Mississippi Department  
108 of Rehabilitation Services for the construction, alteration or  
109 repair of the home of a disabled individual who has been  
110 determined eligible for services by the Mississippi Department of  
111 Rehabilitation Services.

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