HOUSE BILL NO. 1190

AN ACT TO AMEND SECTION 31-5-51, MISSISSIPPI CODE OF 1972, TO REVISE THE REQUIREMENT OF PROOF OF GENERAL LIABILITY INSURANCE BEFORE ENTERING INTO CERTAIN CONTRACTS WITH GOVERNMENTAL ENTITIES OR OTHER PUBLIC AUTHORITIES FOR THE CONSTRUCTION, ALTERATION OR REPAIR OF ANY PUBLIC BUILDING OR PUBLIC WORK; AND FOR RELATED PURPOSES.

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

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

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

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

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

(c) The bonds herein provided for may be made by any surety company which is authorized to do business in the State of Mississippi and listed on the United States Treasury Department's...
list of acceptable sureties, or such bonds may be guaranteed by a 
personal surety as provided for herein. The personal surety shall 
deposit with the State Treasurer cash or certificates of deposit 
in an amount not less than the amount of the contract, and the 
State Treasurer shall hold same in trust and on deposit for the 
benefit of the public body that is a party to the contract 
providing for the construction, alteration or repair of the public 
building or for the public work.

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

(3) Any person having direct contractual relationship with a 
subcontractor but no contractual relationship express or implied 
with the contractor furnishing said payment bond shall have a 
right of action upon the said payment bond upon giving written 
notice to said contractor within ninety (90) days from the date on 
which such person did or performed the last of the labor or 
furnished or supplied the last of the material for which such
claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be given in writing by the claimant to the contractor or surety at any place where the contractor or surety maintains an office or conducts business. Such notice may be personally delivered by the claimant to the contractor or surety, or it may be mailed by certified mail, return receipt requested, postage prepaid, to the contractor or surety. No such action may be maintained by any person not having a direct contractual relationship with the contractor-principal, unless the notice required by this section shall have been given.

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

(a) Subcontractors and material suppliers of the contractor;

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

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

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

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

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