

By: Representative Stevens

To: Appropriations

HOUSE BILL NO. 274

1 AN ACT TO AMEND SECTION 31-5-51, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE TIME FOR NOTICE OF ACTION AGAINST PERFORMANCE AND
3 PAYMENT BONDS; AND FOR RELATED PURPOSES.

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

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

7 31-5-51. (1) Any person entering into a formal contract
8 with the state or any county, city or political subdivision
9 thereof, or other public authority for the construction,
10 alteration, or repair of any public building or public work,
11 before entering into such contract, shall furnish to such public
12 body, except as provided in subsection (5) of this section, bonds
13 with good and sufficient surety as follows:

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

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

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

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

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

52 (3) Any person having direct contractual relationship with a
53 subcontractor but no contractual relationship express or implied
54 with the contractor furnishing said payment bond shall have a
55 right of action upon the said payment bond upon giving written
56 notice to said contractor within one (1) year from the date on
57 which such person did or performed the last of the labor or
58 furnished or supplied the last of the material for which such
59 claim is made, stating with substantial accuracy the amount
60 claimed and the name of the party to whom the material was

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

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

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

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

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

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

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

94 being performed shall be liable to the extent that the surety
95 would be liable.

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

110 **SECTION 2.** This act shall take effect and be in force from
111 and after July 1, 2004.