

By: Representative Brown

To: Judiciary A

HOUSE BILL NO. 1582

1 AN ACT TO AMEND SECTIONS 85-7-187 TO 85-7-193, MISSISSIPPI
2 CODE OF 1972, TO CLARIFY THE RIGHTS OF CLAIMANTS ON PERFORMANCE
3 AND PAYMENT BONDS AND THE TIME AND MANNER FOR BRINGING SUIT ON
4 SUCH BONDS; AND FOR RELATED PURPOSES.

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

6 SECTION 1. Section 85-7-187, Mississippi Code of 1972,
7 is amended as follows:

8 85-7-187. If only a performance bond has been provided in
9 accordance with the Chapter and if no suit shall be brought by the
10 obligee within six months from the * * * date of final payment to
11 the bond principal, then any person supplying * * * labor or
12 materials shall have a right of action on said bond for his use
13 and benefit against said contractors and the sureties thereon and
14 to prosecute same to final judgment and execution, subject to the
15 rights and demands of the * * * bond obligee.

16 SECTION 2. Section 85-7-189, Mississippi Code of 1972, is
17 amended as follows:

18 85-7-189. (a) Suit * * * on a performance claim by an
19 obligee on a bond given in accordance with this Chapter shall be
20 commenced as follows:

21 (i) if the obligee is the owner of the project being
22 constructed, such obligee shall bring suit within one year after
23 the project has been sufficiently completed so that the owner can
24 occupy or utilize the project for its intended use; or

25 (ii) if the obligee is other than an owner of the
26 project being constructed, such obligee shall bring suit within
27 one year after such obligee requests final payment with respect to
28 the project.

29 (b) When suit is instituted on a claim for payment on a
30 payment bond given in accordance with this Chapter, it shall be
31 commenced within one year after the day on which the last of the
32 labor was performed or material was supplied by the person
33 bringing the action and not later. * * *

34 (c) Any suit on a bond given in accordance with this Chapter
35 shall be brought in the county in which the contract or some part
36 thereof was performed or in the county in which service of process
37 may be obtained upon either the principal or the surety on such
38 bond.

39 **SECTION 3.** Section 85-7-191, Mississippi Code of 1972, is
40 amended as follows:

41 85-7-191. * * *If only a performance is given in accordance
42 with this Chapter and if suit is instituted * * * on said
43 performance bond only one action shall be brought for performance
44 and payment claims and any person entitled to sue may upon
45 application intervene and be made a party to said suit and such
46 intervention must occur within the time limited for such person to
47 bring an original action; provided, however, if a separate payment
48 bond is given then only one separate action for payment claims
49 shall likewise be brought on the payment bond and * * *
50 intervention * * * shall be allowed in accordance with this
51 statute.

52 **SECTION 4.** Section 85-7-193, Mississippi Code of 1972, is
53 amended as follows:

54 85-7-193. If only a performance bond is given in accordance
55 with this Chapter and the recovery on the performance bond should
56 be inadequate to pay the full amount found due including amounts
57 due the owner, judgment shall be given after the performance bond
58 obligee is fully satisfied for all claims, demands, rights and
59 damages to each person, including reasonable attorney's fees in an
60 amount to be set by the judge, pro rata of the amount of the
61 recovery. The surety on said performance bond may pay into court

62 for distribution the full amount of * * * its liability, less any
63 amount which may have been paid to the performance bond obligee by
64 reason of the execution of said bond, and upon so doing the surety
65 will be relieved from further liability.

66 * * *

67 **SECTION 5.** This act shall take effect and be in force from
68 and after July 1, 2004.