

By: Senator(s) Tollison

To: Business and Financial  
Institutions

SENATE BILL NO. 3011

1 AN ACT TO AMEND SECTION 85-7-181, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE FOR THE PROTECTION OF PROPERTY OWNERS FROM A LIEN ON  
3 ALL MONIES ATTRIBUTED FOR THE AMOUNT DUE A SUBCONTRACTOR OR  
4 SUPPLIER OF THE CONTRACTOR FOR WORK PERFORMED OR MATERIALS  
5 FURNISHED IN MAKING IMPROVEMENTS THEREON; TO PRESCRIBE THE  
6 PROCEDURE BY WHICH SUCH LIEN MAY BE ENFORCED; TO PROVIDE FOR A  
7 PAYMENT OR PERFORMANCE BOND IN LIEU OF THE LIEN; AND FOR RELATED  
8 PURPOSES.

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

10 **SECTION 1.** Section 85-7-181, Mississippi Code of 1972, is  
11 amended as follows:

12 85-7-181. (1) Except as otherwise provided herein, there  
13 shall be a lien on all monies attributed to the improvements  
14 thereon, upon which any structure or other improvement is erected,  
15 constructed, altered or repaired, in favor of subcontractors of  
16 the contractor and suppliers of the contractor who perform work or  
17 furnish materials for such structure or other improvement. The  
18 lien rights afforded under this section shall not apply to claims  
19 of subcontractors or suppliers in any case in which the contract  
20 between the owner and contractor is less than Twenty-five Thousand  
21 Dollars (\$25,000.00), or in any case in which the structure or  
22 improvement is made to a one- to four-family dwelling, a water  
23 well, an oil and gas well or railroad or railroad embankment.

24 (2) The lien provided for in subsection (1) shall take  
25 effect, as to purchasers or encumbrances for a valuable  
26 consideration without notice thereof, only from the time of filing  
27 of a claim of lien in the office of the clerk of the chancery  
28 court as provided in this section, except that the lien of a deed  
29 of trust securing a construction loan recorded prior to the filing

30 of a claim of lien as provided herein shall have priority over any  
31 lien claimant under this section.

32 (3) Delivery of material to the job is prima facie evidence  
33 of its use therein.

34 (4) Every subcontractor or supplier who has furnished labor  
35 or material used in the construction of the structure or other  
36 improvement and who has not been paid before the expiration of a  
37 period of forty-five (45) days after the date of the last payment  
38 period for labor performed by him or materials furnished by him  
39 shall have the right to file suit to enforce a lien against all  
40 monies remaining on the structure or other improvement from which  
41 has been constructed in the amount due and owing for work  
42 performed or materials furnished or both work and materials;  
43 provided that:

44 (a) Within forty-five (45) days from commencing to  
45 perform work at or furnish materials to the construction site in  
46 accordance with the terms and provisions of the contract, such  
47 subcontractor or supplier provides the notice of lien right set  
48 forth in subsection (5) of this section to the owner or owners of  
49 the land, to any lender having a recorded mortgage or deed of  
50 trust on the land upon which such structure or other improvement  
51 is located, and to the contractor; and

52 (b) Within forty-five (45) days of the date the first  
53 payment draw was due, such subcontractor or supplier:

54 (i) Files a claim of lien in the office of the  
55 chancery clerk of the county where the project is located; and

56 (ii) Provides a copy of such claim of lien to the  
57 owner or owners of the land, to any lender having a recorded  
58 mortgage or deed of trust on the property upon which such  
59 structure or other improvement is located, and to the contractor;

60 provided, however, that no claim of lien may be filed prior to the  
61 date the labor is performed or material furnished to the property.

62       (5) The notice of lien right to the owner, lender and  
63 contractor required by subsection (4)(a) of this section shall be  
64 given in writing by the subcontractor or supplier to the owner, or  
65 one (1) of the owners if more than one (1), at the owner's  
66 residence or any place where the owner maintains an office or  
67 conducts business, to the lender at the address of the lender  
68 disclosed on the recorded mortgage or deed of trust, or if no such  
69 address appears, then at the principal office of the lender, and  
70 to the contractor at the contractor's principal office. Such  
71 notice may be personally delivered by the subcontractor or  
72 supplier or it may be mailed by certified mail, return receipt  
73 requested, postage prepaid, to the owner, or one of them, and to  
74 the lender and contractor. The failure to serve the notice of  
75 lien right, or to timely serve it, shall be a complete defense to  
76 enforcement of a lien by any person. The serving of the notice of  
77 lien right shall not dispense with recording the claim of lien  
78 required by subsection (4)(b) of this section. The notice of lien  
79 right shall not be a lien, cloud or encumbrance on the real  
80 property. Such notice of lien right may be given in the following  
81 form, which shall be sufficient:

82 "NOTICE TO OWNER

83       To \_\_\_\_\_, owner or lender:

84       Take notice, that the undersigned is about to furnish (or has  
85 within fifteen (15) days furnished) \_\_\_\_\_,  
86 your contractor, certain material or performed certain subcontract  
87 work or both for the construction, repair or alternation of the  
88 structure or other improvement being constructed on the following  
89 described property:

90 \_\_\_\_\_  
91 \_\_\_\_\_

92 and there will become due to the undersigned on account thereof  
93 the price of said material or subcontract work or both, for the  
94 payment of which the undersigned will claim a lien.

95 **IMPORTANT INFORMATION FOR YOUR PROTECTION:**

96 If your contractor fails to pay any and all  
97 subcontractors or material suppliers without just cause  
98 or neglects to make other legally required payments, you  
99 the land owner may be included in legal action to remedy  
100 payment. However, and to avoid such conflict, be it  
101 enacted with this legislation that if land owner is  
102 provided written affidavit from the prime contractor  
103 before subsequent payments are required that evidences  
104 prior payment to subcontractors for goods and/or  
105 services have been made such lien or further legal  
106 encumbrance that shall stem from such failure to pay  
107 said subcontractors and/or material suppliers shall be  
108 null and void.

109 Under Mississippi's laws, those who work on your  
110 property or provide materials and are not paid have a right  
111 to enforce their claim for payment AGAINST ALL MONIES DUE AT  
112 TIME OF LIEN. This claim is known as a construction lien."

113 (6) The claim of lien required by subsection (4)(b) of  
114 this section shall be filed and recorded in the chancery  
115 clerk's office where the land is located in accordance with  
116 Section 85-7-133, provided that there shall be no right nor  
117 requirement of a lienholder under this section to file a  
118 contract pursuant to Section 85-7-139.

119 (7) Notwithstanding anything to the contrary contained  
120 herein, the amount claimed in a suit to enforce a lien under  
121 this act is subject to contractual provisions or conditions  
122 imposed upon the lien claimant.

123 (8) No suit may be maintained by a subcontractor or  
124 supplier to enforce the lien provided hereunder unless the  
125 notices required by this section shall have been given and  
126 filed, respectively, within the time required.

127       (9) The persons protected by this lien statute, subject  
128 to the notice provisions set forth above, are the landowner,  
129 subcontractors and material suppliers of the contractor.

130       (10) This construction lien shall not eliminate the  
131 subcontractors and material suppliers right to stop payment.

132       (11) A suit to enforce a lien arising under this act  
133 shall be commenced within the time and in the manner provided  
134 by Section 85-7-141; shall be conducted in accordance with  
135 Sections 85-7-143, 85-7-145, 85-7-147, 85-7-149, 85-7-151,  
136 85-7-153, 85-7-155 and 85-7-157; and shall be maintainable  
137 even though the general or primary contractor has been paid  
138 in full if such contractor has not paid the person entitled  
139 to enforce lien rights under this section; provided that such  
140 lien shall take effect as to purchasers or encumbrancers for  
141 a valuable consideration without notice thereof, only from  
142 the time of filing the claim of lien in the office of the  
143 clerk of the chancery court as hereinabove stated, except  
144 that the lien of a deed of trust securing a construction loan  
145 recorded prior to the time of filing a claim of lien as  
146 provided herein shall have priority over the claim of any  
147 lien claimant under this section.

148       (12) If such structure or other improvement upon which  
149 a lien is claimed hereunder is erected, constructed altered  
150 or repaired at the instance of a tenant, guardian or other  
151 person not the owner of the land, only the building,  
152 structure or improvement, and the estate of the tenant or  
153 such other person, in the land, shall be subject to such  
154 lien, unless the same be done by the written consent of the  
155 owner. Whenever the contract is performed at the instance of  
156 a tenant, guardian or other person who is not the owner of  
157 the land, then the reference in this act to owner shall mean  
158 the tenant, guardian or other person who is not the owner of  
159 the land, as applicable.

160       (13) Venue on any suit under this section shall lie in  
161 the county in which the structure or other improvement is  
162 located or in the county in which service of process may be  
163 obtained upon the owner.

164       (14) As used in this section, "contractor" means the  
165 person or persons having a contract or contracts with the  
166 owner; "subcontractor" or "supplier" means any person or  
167 entity having a direct contract with the "contractor." No  
168 lien rights are afforded hereunder to anyone other than those  
169 defined herein as "subcontractor" or "supplier" to the  
170 contractor.

171       **SECTION 2.** If a payment or payment and performance bond  
172 with sufficient surety in an amount equal to the cost of  
173 construction of such structure or other improvement is  
174 provided by the contractor covering the claims of  
175 subcontractors and suppliers to the contractor, then  
176 subcontractors or suppliers to the contractor shall have a  
177 claim solely under the bond and not against the owner's  
178 property. In accordance with Section 85-7-185, Mississippi  
179 Code of 1972, such bond shall cover the claims of  
180 subcontractors or suppliers regardless of whether so  
181 expressly stated in the bond, and suit on the bond shall be  
182 brought by a subcontractor or supplier in accordance with the  
183 provisions of Sections 85-7-187 through 85-7-195, Mississippi  
184 Code of 1972. The bond herein provided for may be made by  
185 any surety company authorized to do business in the State of  
186 Mississippi; provided, however, that when separate payment  
187 and performance bonds are provided, the claims of  
188 subcontractors and suppliers shall be covered solely by the  
189 payment bond. Filing and recording of a bond claim is not  
190 required.

191 Any rights in favor of other parties provided in a bond  
192 shall be valid and enforceable in accordance with the terms  
193 of the bond.

194 A supplier or subcontractor supplying labor or materials  
195 or both for the structure or other improvement, upon request  
196 to the contractor and surety, shall be furnished with a  
197 certified copy of the contract between the contractor and  
198 owner and bonds executed by the contractor and surety.

199 **SECTION 3.** In the event that the contractor does not  
200 provide a bond in accordance with Section 2 of this act, and  
201 in the further event that a subcontractor or supplier  
202 claiming a lien for labor or materials upon any property  
203 shall submit a notice of lien right and file a lien within  
204 the time and in the manner prescribed above, then the owner  
205 of such property, or any mortgagee or other person asserting  
206 an interest in the property, or any contractor, subcontractor  
207 or other person who may be liable for the payment of said  
208 lien, shall have the right to file in the construction lien  
209 book in the land records of the chancery clerk where the  
210 project is constructed a bond for one and one-half (1-1/2)  
211 times the amount of said lien claimed with sufficient surety,  
212 conditioned upon the obligor's satisfying any judgment that  
213 may be rendered in favor of the person asserting said lien.  
214 The bond herein provided for may be made by any surety  
215 company authorized to do business in the State of  
216 Mississippi. Upon the filing of such bond, the lien upon the  
217 property covered by the bond shall be discharged. If the  
218 bond is filed, the person asserting the lien may make the  
219 obligor on the bond party to any action to enforce his claim  
220 and any judgment recovered by the claimant may be against the  
221 obligor on the bond, as well as against any other party  
222 liable to the claimant.

223           **SECTION 4.** Any attempted contractual waiver of the  
224 rights afforded by this act shall be void and unenforceable.  
225 The provisions of this act are cumulative and supplemental to  
226 all other laws of this state.

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