

By: Representative Brown

To: Judiciary A

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 1290

1 AN ACT TO AMEND SECTIONS 85-7-187, 85-7-189, 85-7-191 AND  
2 85-7-193, MISSISSIPPI CODE OF 1972, TO CLARIFY THE RIGHTS OF  
3 CLAIMANTS ON PERFORMANCE AND PAYMENT BONDS AND THE TIME AND MANNER  
4 FOR BRINGING SUIT ON 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, is  
7 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 (6) 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. (1) Suit on a performance claim by an obligee on  
19 a bond given in accordance with this chapter shall be commenced as  
20 follows:

21 (a) If the obligee is the owner of the project being  
22 constructed, such obligee shall bring suit within one (1) year  
23 after the project has been completed and the owner can occupy or  
24 utilize the project for its intended use; or

25 (b) If the obligee is other than an owner of the  
26 project being constructed, such obligee shall bring suit within  
27 one (1) year after such obligee requests final payment with  
28 respect to the project.

29       (2) 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 (1) year after the day on which the last of  
32 the labor was performed or material was supplied by the person  
33 bringing the action and not later.

34       (3) Any suit on a bond given in accordance with this chapter  
35 shall be brought in the county in which the contract was formed or  
36 some part thereof was performed or in the county in which service  
37 of process may be obtained upon either the principal or the surety  
38 on such 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 with  
42 this chapter and if suit is \* \* \* instituted on said performance  
43 bond only one (1) action shall be brought for performance and  
44 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 (1) separate action for payment claims  
49 shall likewise be brought on the payment bond and intervention  
50 shall be allowed in accordance with this statute.

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

53       85-7-193. If only a performance bond is given in accordance  
54 with this chapter and the recovery on the performance bond should  
55 be inadequate to pay the full amount found due including amounts  
56 due the owner, judgment shall be given after the performance bond  
57 obligee is fully satisfied for all claims, demands, rights and  
58 damages to each person, including reasonable attorney's fees in an  
59 amount to be set by the judge, pro rata of the amount of the  
60 recovery. The surety on said performance bond may pay into court  
61 for distribution the full amount of its liability, less any amount

62 which may have been paid to the performance bond obligee by reason  
63 of the execution of said bond, and upon so doing the surety will  
64 be relieved from further liability.

65 \* \* \*

66 **SECTION 5.** This act shall take effect and be in force from  
67 and after July 1, 2005.