

By: Representative Guice

To: Judiciary B

HOUSE BILL NO. 1424

1 AN ACT TO AMEND SECTIONS 85-7-141, 85-7-131 AND 85-7-133,
2 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IF A CONSTRUCTION LIEN
3 HAS BEEN FILED AND NO SUIT TO ENFORCE THE LIEN HAS BEEN COMMENCED
4 WITHIN TWELVE MONTHS OF FILING THE LIEN, THEN THE LIEN SHALL BE
5 CANCELLED BY OPERATION OF LAW; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 85-7-141, Mississippi Code of 1972, is
8 amended as follows:

9 85-7-141. (1) Any person entitled to and desiring to have
10 the benefit of a lien under Sections 85-7-131 through 85-7-157
11 shall commence a suit to enforce the lien in the circuit court of
12 the county in which the property or some part thereof is situated,
13 if the principal of his demand exceeds Two Hundred Dollars
14 (\$200.00), within twelve (12) months next after the time when the
15 money due and claimed by the suit became due and payable, and not
16 after. The suit shall be commenced by petition, describing with
17 reasonable certainty the property upon which the lien is averred
18 to exist, * * * setting out the nature of the contract and
19 indebtedness and the amount thereof. Notice of any suit filed in
20 the appropriate circuit court to enforce a lien under this section
21 shall be transmitted to the chancery clerk of the county in which
22 property subject to the lien is located. The plaintiff shall file
23 therewith in all cases, except where the whole work or materials,
24 or both, were furnished in pursuance of a written contract for an
25 aggregate price, a bill of particulars exhibiting the amount and
26 kind of labor performed, and of materials furnished, and the
27 prices at which and times when the same were performed and

28 furnished. Such suits shall be docketed and conducted as other
29 suits in said court, and may be tried at the first term.

30 (2) If a lien has been filed under Sections 85-7-131 through
31 85-7-157 and no suit to enforce the lien has been commenced within
32 twelve (12) months of filing the lien, then the lien shall be
33 cancelled by operation of law. The chancery clerk of the county
34 in which the property subject to the lien is located shall cancel
35 the lien from the land records of the county when twelve (12)
36 months have expired from the date that the money allegedly due and
37 claimed by the lien became due and payable, unless the clerk has
38 received a notice that a suit has been filed in the appropriate
39 circuit court to enforce a lien under subsection (1) of this
40 section.

41 **SECTION 2.** Section 85-7-131, Mississippi Code of 1972, is
42 amended as follows:

43 85-7-131. Every house, building, water well or structure of
44 any kind, and any fixed machinery, gearing or other fixture that
45 may or may not be used or connected therewith, railroad
46 embankment, erected, constructed, altered or repaired, and every
47 subdivision of property or subdivided property which required
48 services, designs or construction in designing or laying out of
49 streets or subdividing or construction of streets, sewerage, water
50 or other utilities to be furnished by the said subdivision or by
51 the various owners or holders or creators of said subdivision or
52 subdivided property or individual lot or lots in connection
53 therewith, whether inside of a municipality or outside thereof,
54 shall be liable for the debt contracted and owing, for labor done
55 or materials furnished, or architectural engineers' and surveyors'
56 or contractors' service rendered about the erection, construction,
57 alteration or repairs thereof; and debt for such services or
58 construction shall be a lien thereon. The architects, engineers,
59 surveyors, laborers, and materialmen and/or contractors who
60 rendered services and constructed the improvements shall have a

61 lien therefor. Further, as to oil and gas wells, the operator
62 thereof shall have such a lien upon the interest of each
63 nonoperator owner of an interest in the mineral leasehold estate
64 for such nonoperator's proportionate part of such labor, material
65 and services rendered by the operator or for the operator's
66 account in behalf of each nonoperator in the drilling, completion,
67 recompletion, reworking or other operations of such oil and gas
68 well. If such house, building, structure, or fixture be in a
69 city, town or village, the lien shall extend to and cover the
70 entire lot of land on which it stands and the entire curtilage
71 thereto belonging; or, if not in a city, town or village, the lien
72 shall extend to and cover one (1) acre of land on which the same
73 may stand, if there be so much, to be selected by the holder of
74 the lien. If the structure be a water well, the lien shall extend
75 only to all pumps, pipes, equipment therein and all water well
76 appurtenances. If the structure be an oil or gas well, the lien
77 shall extend to the nonoperator's interest in the mineral estate
78 and the fixtures and equipment in the producing unit assigned such
79 well by the state oil and gas board. If the structure be a
80 railroad or railroad embankment, the lien shall extend to and
81 cover the entire roadbed and right-of-way, depots and other
82 buildings used or connected therewith. If the services of the
83 architect, surveyor, engineer, laborers, materialmen or of the
84 contractors shall be upon the whole subdivision, the lien shall
85 extend to and cover the entire subdivision; but if a part only of
86 the land is subdivided and laborers', materialmen's, architects',
87 surveyors' or engineers' services are required and contractors are
88 employed, then the lien shall extend to only that portion of said
89 property upon which the services were required or upon which or in
90 connection with which the work was done or the materials were
91 furnished.

92 Such lien shall take effect as to purchasers or encumbrancers
93 for a valuable consideration without notice thereof, only from the

94 time of commencing suit to enforce the lien, or from the time of
95 filing the contract under which the lien arose, or notice thereof,
96 in the office of the clerk of the chancery court, as hereinafter
97 stated, and the lien shall have no effect if it has been cancelled
98 in accordance with the provisions of Section 85-7-141(2).

99 Delivery of material to the job is prima facie evidence of its use
100 therein, and use of water from a water well is prima facie
101 evidence of acceptability of well. In the case of oil and gas
102 wells, such lien shall take effect as to purchasers or
103 encumbrancers for a valuable consideration without notice thereof,
104 only from the time of filing notice of such lien as provided by
105 Section 85-7-133.

106 **SECTION 3.** Section 85-7-133, Mississippi Code of 1972, is
107 amended as follows:

108 85-7-133. Each of the several chancery clerks of this state
109 shall provide in his office, as a part of the land records of his
110 county, a record entitled "Notice of Construction Liens and of
111 Lien Cancellations" wherein:

112 (a) Notices under Section 85-7-131 shall be filed and
113 recorded, and such liens, as provided hereunder, shall not take
114 effect unless and until some notation thereof shall be filed and
115 recorded in said record showing a description of the property
116 involved, the name of the lienor or lienors, the date of filing,
117 if and where suit is filed, and if and where contract is filed or
118 recorded;

119 (b) A record shall be maintained of liens that have
120 been cancelled under Section 85-7-141 because no suit to enforce
121 the lien has been commenced within twelve (12) months of filing
122 the lien. The chancery clerk of the county in which the property
123 subject to the lien is located shall cancel the lien from the land
124 records of the county when twelve (12) months have expired from
125 the date that the money allegedly due and claimed by the lien
126 became due and payable, unless the clerk has received a notice

127 that a suit has been filed in the appropriate circuit court to
128 enforce a lien under subsection (1) of Section 85-7-141.

129 **SECTION 4.** This act shall take effect and be in force from
130 and after its passage.