

By: Senator(s) Horhn

To: Accountability,  
Efficiency, Transparency

SENATE BILL NO. 2295

1 AN ACT TO AMEND SECTION 31-5-51, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT A PERFORMANCE BOND IS NOT REQUIRED WHEN A CONTRACT  
3 FOR THE CONSTRUCTION, ALTERATION OR REPAIR OF ANY PUBLIC BUILDING  
4 OR PUBLIC WORK IS LESS THAN \$50,000.00 AND THE PUBLIC BODY ELECTS  
5 TO MAKE TWO PAYMENTS VALUED AT 50% OF THE CONTRACT AMOUNT; AND FOR  
6 RELATED PURPOSES.

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

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

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

17 (a) A performance bond payable to, in favor of or for  
18 the protection of \* \* \* the public body, as owner, for the work to  
19 be done in an amount not less than the amount of the contract,  
20 conditioned for the full and faithful performance of the contract;



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

26 (c) The bonds \* \* \* provided for in this section may be  
27 made by any surety company which is authorized to do business in  
28 the State of Mississippi and listed on the United States Treasury  
29 Department's list of acceptable sureties, or \* \* \* the bonds may  
30 be guaranteed by a personal surety as provided for \* \* \* in this  
31 section. The personal surety shall deposit with the State  
32 Treasurer cash or certificates of deposit in an amount not less  
33 than the amount of the contract, and the State Treasurer shall  
34 hold \* \* \* the cash or certificates of deposit in trust and on  
35 deposit for the benefit of the public body that is a party to the  
36 contract providing for the construction, alteration or repair of  
37 the public building or for the public work.

38 (2) Every person who has furnished labor or material used in  
39 the prosecution of the work provided for in \* \* \* the contract, in  
40 respect of which a payment bond is furnished and who has not been  
41 paid in full \* \* \* for the labor or material before the expiration  
42 of a period of ninety (90) days after the date on which the last  
43 of the labor was performed by him or the last of the materials was  
44 furnished by him and for which \* \* \* the claim is made, provided  
45 the \* \* \* labor or material has been approved, where required, by



46 the public authority or its architect or engineers, or \* \* \*  
47 approval is being withheld as a result of unreasonable acts of the  
48 contractor, shall have the right to sue on \* \* \* the payment bond  
49 for the amount, or the balance thereof that is due and payable,  
50 but unpaid at the time of institution of \* \* \* the suit and to  
51 prosecute \* \* \* the action to final execution and judgment.  
52 Notwithstanding anything to the contrary contained \* \* \* in this  
53 section, if the amount claimed in \* \* \* the action is subject to  
54 contractual provisions or conditions, between the parties involved  
55 in \* \* \* the action, the action shall be abated pending the  
56 performance of \* \* \* the provisions and the fulfillment of \* \* \*  
57 the conditions.

58 (3) Any person having direct contractual relationship with a  
59 subcontractor but no contractual relationship express or implied  
60 with the contractor furnishing \* \* \* the payment bond shall have a  
61 right of action upon the \* \* \* payment bond upon giving written  
62 notice to \* \* \* the contractor within ninety (90) days from the  
63 date on which \* \* \* the person did or performed the last of the  
64 labor or furnished or supplied the last of the material for  
65 which \* \* \* the claim is made, stating with substantial accuracy  
66 the amount claimed and the name of the party to whom the material  
67 was furnished or supplied or for whom the labor was done or  
68 performed. \* \* \* The notice shall be given in writing by the  
69 claimant to the contractor or surety at any place where the  
70 contractor or surety maintains an office or conducts



71 business. \* \* \* The notice may be personally delivered by the  
72 claimant to the contractor or surety, or it may be mailed by  
73 certified mail, return receipt requested, postage prepaid, to the  
74 contractor or surety. No such action may be maintained by any  
75 person not having a direct contractual relationship with the  
76 contractor-principal, unless the notice required by this  
77 section \* \* \* has been given.

78 (4) The only persons protected by \* \* \* the payment bond,  
79 subject to the notice provisions of this section are:

80 (a) Subcontractors and material suppliers of the  
81 contractor;

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

84 (c) Laborers who have performed work on the project  
85 site.

86 (5) Whenever a contract is less than \* \* \* Fifty Thousand  
87 Dollars (\$50,000.00), the owners may elect to make \* \* \* two (2)  
88 payments valued at fifty percent (50%) of the contract  
89 amount. \* \* \* The final payments will not be made until  
90 completion and acceptance by the governing agency. In such a  
91 case, a performance bond or payment bond will not be required.

92 (6) Except as otherwise provided in subsection (1)(c) for a  
93 personal surety, no surety or surety company shall be allowed to  
94 guarantee or write bonds for the benefit of the public body that  
95 is a party to a contract providing for the construction,



96 alteration or repair of a public building or for public work,  
97 unless that surety is listed on the United States Treasury  
98 Department's list of acceptable sureties. If the surety is not  
99 listed on the United States Treasury Department's list of  
100 acceptable sureties, the public body for which the public work is  
101 being performed shall be liable to the extent that the surety  
102 would be liable.

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

117 **SECTION 2.** This act shall take effect and be in force from  
118 and after July 1, 2019.

