

By: Senator(s) Horhn

To: Accountability,
Efficiency, Transparency

SENATE BILL NO. 2848

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 completion
90 and acceptance by the governing agency. In such a case, a
91 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, 2023.

