

By: Senator(s) Horhn

To: Accountability,  
Efficiency, Transparency

SENATE BILL NO. 2584

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, before  
14 entering into such contract, shall furnish to such public body,  
15 except as provided in subsection (5) of this section, bonds with  
16 good and sufficient surety as follows:

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

38 (2) Every person who has furnished labor or material used in  
39 the prosecution of the work provided for in such 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 her or the last of the  
44 materials was furnished by him or her and for which such claim is  
45 made, provided the \* \* \* labor or material has been approved,



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

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



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

76 (4) The only persons protected by such payment bond, subject  
77 to the notice provisions of this section are:

78 (a) Subcontractors and material suppliers of the  
79 contractor;

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

82 (c) Laborers who have performed work on the project  
83 site.

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

90 (6) Except as otherwise provided in subsection (1)(c) for a  
91 personal surety, no surety or surety company shall be allowed to  
92 guarantee or write bonds for the benefit of the public body that  
93 is a party to a contract providing for the construction,  
94 alteration or repair of a public building or for public work,  
95 unless that surety is listed on the United States Treasury



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

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

115 **SECTION 2.** This act shall take effect and be in force from  
116 and after July 1, 2025.

