

By: Representative Brown

To: Judiciary A

HOUSE BILL NO. 1290
(As Sent to Governor)

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 this chapter and if no suit shall be brought by
10 the obligee within six (6) months from the date of the earlier of
11 final completion or actual use or occupancy of the project for its
12 intended purpose, then any person supplying * * * labor or
13 materials to the bond principal on the project shall have a right
14 of action on said bond for his use and benefit against said bond
15 principal and the sureties thereon and to prosecute same to final
16 judgment and execution, subject to the rights and demands of the
17 bond obligee.

18 **SECTION 2.** Section 85-7-189, Mississippi Code of 1972, is
19 amended as follows:

20 85-7-189. (1) * * * Suit on a performance claim by an
21 obligee on a bond given in accordance with this chapter shall be
22 commenced as follows:

23 (a) If the obligee is the owner of the project being
24 constructed, such obligee shall bring suit within one (1) year
25 after the earlier of final completion or actual use or occupancy
26 of the project for its intended purpose; or

27 (b) If the obligee is other than an owner of the
28 project being constructed, such obligee shall bring suit within

29 one (1) year after such obligee receives final payment with
30 respect to the project.

31 (2) When suit is instituted on a claim for payment on a
32 payment bond given in accordance with this chapter, it shall be
33 commenced within one (1) year after the day on which the last of
34 the labor was performed or material was supplied by the person
35 bringing the action and not later.

36 (3) Any suit on a bond given in accordance with this chapter
37 shall be brought in the county in which the contract or some part
38 thereof was performed or in the county in which service of process
39 may be obtained upon either the principal or the surety on such
40 bond.

41 **SECTION 3.** Section 85-7-191, Mississippi Code of 1972, is
42 amended as follows:

43 85-7-191. If only a performance bond is given in accordance
44 with this chapter and if suit is * * * instituted on said
45 performance bond only one (1) action shall be brought for
46 performance and payment claims and any person * * * entitled to
47 sue may upon application intervene and be made a party to said
48 suit and such intervention must occur within the time limited for
49 such person to bring an original action; provided, however, if a
50 separate payment bond is given then only one (1) separate action
51 for payment claims shall likewise be brought on the payment bond
52 and intervention shall be allowed in accordance with this statute.

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

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

62 of the recovery. The surety on said performance bond may pay into
63 court for distribution the full amount of its liability, less any
64 amount which may have been paid to the performance bond obligee by
65 reason of the execution of said bond, and upon so doing the surety
66 will be relieved from further liability.

67 * * *

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