

By: Representatives Remak, Burnett, Hall,
Harris, Keen, Kinkade, McCray

To: Ways and Means

HOUSE BILL NO. 1060
(As Passed the House)

1 AN ACT TO AMEND SECTION 31-5-51, MISSISSIPPI CODE OF 1972, TO
2 INCREASE THE THRESHOLD FOR PERFORMANCE BONDS IN PUBLIC WORKS
3 CONTRACTS FROM \$25,000.00 TO \$75,000.00; TO PROVIDE THAT FOR ANY
4 CONTRACT WITH THE STATE WHICH EXCEEDS \$5,000.00, OR WITH A COUNTY,
5 CITY OR OTHER PUBLIC AUTHORITY WHICH EXCEEDS \$75,000.00, FOR THE
6 CONSTRUCTION, ALTERATION, OR REPAIR OF ANY PUBLIC BUILDING OR
7 PUBLIC WORK, IF A SUBCONTRACTOR OF THE GENERAL CONTRACTOR FOR THE
8 CONTRACT DOES NOT HAVE GENERAL LIABILITY INSURANCE COVERAGE IN THE
9 REQUIRED MINIMUM AMOUNT, THEN THE GENERAL CONTRACTOR SHALL BE
10 LIABLE FOR ANY AMOUNT UNDER SUCH MINIMUM AMOUNT OF COVERAGE FOR
11 WHICH THE SUBCONTRACTOR IS UNDERINSURED OR NOT INSURED; AND FOR
12 RELATED PURPOSES.

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

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

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



23 (a) A performance bond payable to, in favor of or for
24 the protection of such public body, as owner, for the work to be
25 done in an amount not less than the amount of the contract,
26 conditioned for the full and faithful performance of the contract;

27 (b) A payment bond payable to such public body but
28 conditioned for the prompt payment of all persons supplying labor
29 or material used in the prosecution of the work under said
30 contract, for the use of each such person, in an amount not less
31 than the amount of the contract; and

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

43 (2) Every person who has furnished labor or material used in
44 the prosecution of the work provided for in such contract, in
45 respect of which a payment bond is furnished and who has not been
46 paid in full therefor before the expiration of a period of ninety
47 (90) days after the date on which the last of the labor was



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

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



73 maintains an office or conducts business. Such notice may be
74 personally delivered by the claimant to the contractor or surety,
75 or it may be mailed by certified mail, return receipt requested,
76 postage prepaid, to the contractor or surety. No such action may
77 be maintained by any person not having a direct contractual
78 relationship with the contractor-principal, unless the notice
79 required by this section shall have been given.

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

82 (a) Subcontractors and material suppliers of the
83 contractor;

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

86 (c) Laborers who have performed work on the project
87 site.

88 (5) Whenever a contract is less than * * * Seventy-five
89 Thousand Dollars (\$75,000.00) the owners may elect to make a
90 lump-sum payment at the completion of the job. Lump-sum payments
91 will not be made until completion and acceptance by the governing
92 agency. In such a case a performance bond or payment bond will
93 not be required.

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



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

105 (7) Any person entering into a formal contract with the
106 state which exceeds Five Thousand Dollars (\$5,000.00), or with a
107 county, city or other public authority which exceeds * * *
108 Seventy-five Thousand Dollars (\$75,000.00), for the construction,
109 alteration, or repair of any public building or public work,
110 before entering into such contract, shall furnish to the public
111 body proof of general liability insurance coverage in an amount
112 not less than One Million Dollars (\$1,000,000.00) for bodily
113 injury and property damage. For any such contract, if a
114 subcontractor of the general contractor for the contract does not
115 have general liability insurance coverage in the minimum amount
116 required by this subsection, then the general contractor shall be
117 liable for any amount under such minimum amount of coverage for
118 which the subcontractor is underinsured or not insured. Exempted
119 from the provisions of this subsection are any persons who enter
120 into a contract with the Mississippi Department of Rehabilitation
121 Services for the construction, alteration or repair of the home of



122 a disabled individual who has been determined eligible for
123 services by the Mississippi Department of Rehabilitation Services.

124 **SECTION 2.** This act shall take effect and be in force from
125 and after July 1, 2024.

