

By: Representative Remak

To: Judiciary A

## HOUSE BILL NO. 496

1 AN ACT TO AMEND SECTION 31-5-51, MISSISSIPPI CODE OF 1972, TO  
2 INCREASE FROM \$25,000.00 TO \$75,000.00 THE THRESHOLD AMOUNT FOR  
3 PUBLIC WORKS CONTRACTS UNDER WHICH AN OWNER MAY ELECT TO MAKE A  
4 LUMP-SUM PAYMENT AT COMPLETION OF THE CONTRACT INSTEAD OF  
5 REQUIRING A PERFORMANCE BOND OR PAYMENT BOND; TO INCREASE FROM  
6 \$25,000.00 TO \$75,000.00 THE THRESHOLD AMOUNT UNDER WHICH ANY  
7 PERSON ENTERING INTO A FORMAL CONTRACT WITH A COUNTY, CITY OR  
8 OTHER PUBLIC AUTHORITY FOR THE CONSTRUCTION, ALTERATION, OR REPAIR  
9 OF ANY PUBLIC BUILDING OR PUBLIC WORK, MUST FURNISH PROOF OF  
10 GENERAL LIABILITY INSURANCE COVERAGE IN AN AMOUNT NOT LESS THAN  
11 \$1,000,000.00 FOR BODILY INJURY AND PROPERTY DAMAGE; TO PROVIDE  
12 THAT FOR ANY CONTRACT WITH THE STATE WHICH EXCEEDS \$5,000.00, OR  
13 WITH A COUNTY, CITY OR OTHER PUBLIC AUTHORITY WHICH EXCEEDS  
14 \$75,000.00, FOR THE CONSTRUCTION, ALTERATION OR REPAIR OF ANY  
15 PUBLIC BUILDING OR PUBLIC WORK, IF A SUBCONTRACTOR OF THE GENERAL  
16 CONTRACTOR FOR THE CONTRACT DOES NOT HAVE GENERAL LIABILITY  
17 INSURANCE COVERAGE IN THE REQUIRED MINIMUM AMOUNT, THEN THE  
18 GENERAL CONTRACTOR SHALL BE LIABLE FOR ANY AMOUNT UNDER SUCH  
19 MINIMUM AMOUNT OF COVERAGE FOR WHICH THE SUBCONTRACTOR IS  
20 UNDERINSURED OR NOT INSURED; AND FOR RELATED PURPOSES.

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

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

24 31-5-51. (1) Any person entering into a formal contract  
25 with the state or any county, city or political subdivision  
26 thereof, or other public authority for the construction,  
27 alteration or repair of any public building or public work, before



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

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

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

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

(2) Every person who has furnished labor or material used in the prosecution of the work provided for in such contract, in



53 respect of which a payment bond is furnished and who has not been  
54 paid in full therefor before the expiration of a period of ninety  
55 (90) days after the date on which the last of the labor was  
56 performed by him or the last of the materials was furnished by him  
57 and for which such claim is made, provided the same has been  
58 approved, where required, by the public authority or its architect  
59 or engineers, or such approval is being withheld as a result of  
60 unreasonable acts of the contractor, shall have the right to sue  
61 on such payment bond for the amount, or the balance thereof that  
62 is due and payable, but unpaid at the time of institution of such  
63 suit and to prosecute said action to final execution and judgment.  
64 Notwithstanding anything to the contrary contained herein, if the  
65 amount claimed in such action is subject to contractual provisions  
66 or conditions, between the parties involved in such action, the  
67 action shall be abated pending the performance of such provisions  
68 and the fulfillment of such conditions.

69 (3) Any person having direct contractual relationship with a  
70 subcontractor but no contractual relationship express or implied  
71 with the contractor furnishing said payment bond shall have a  
72 right of action upon the said payment bond upon giving written  
73 notice to said contractor within ninety (90) days from the date on  
74 which such person did or performed the last of the labor or  
75 furnished or supplied the last of the material for which such  
76 claim is made, stating with substantial accuracy the amount  
77 claimed and the name of the party to whom the material was



furnished or supplied or for whom the labor was done or performed. Such notice shall be given in writing by the claimant to the contractor or surety at any place where the contractor or surety maintains an office or conducts business. Such notice may be personally delivered by the claimant to the contractor or surety, or it may be mailed by certified mail, return receipt requested, postage prepaid, to the contractor or surety. No such action may be maintained by any person not having a direct contractual relationship with the contractor-principal, unless the notice required by this section shall have been given.

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

(a) Subcontractors and material suppliers of the contractor;

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

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

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



102           (6) Except as otherwise provided in subsection (1)(c) for a  
103 personal surety, no surety or surety company shall be allowed to  
104 guarantee or write bonds for the benefit of the public body that  
105 is a party to a contract providing for the construction,  
106 alteration or repair of a public building or for public work,  
107 unless that surety is listed on the United States Treasury  
108 Department's list of acceptable sureties. If the surety is not  
109 listed on the United States Treasury Department's list of  
110 acceptable sureties, the public body for which the public work is  
111 being performed shall be liable to the extent that the surety  
112 would be liable.

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



127 provisions of this subsection are any persons who enter into a  
128 contract with the Mississippi Department of Rehabilitation  
129 Services for the construction, alteration or repair of the home of  
130 a disabled individual who has been determined eligible for  
131 services by the Mississippi Department of Rehabilitation Services.

132       **SECTION 2.** This act shall take effect and be in force from  
133 and after July 1, 2026.

