

MISSISSIPPI LEGISLATURE  
2019 Regular Session  
To: Judiciary A  
By: Representative Baker

# House Bill 869

## (As Sent to Governor)

AN ACT TO CREATE NEW CODE SECTION 85-7-432, MISSISSIPPI CODE OF 1972, TO REGULATE PRIVATE PROJECT CONSTRUCTION BONDS; TO AUTHORIZE ANY PERSON WHO HAS PERFORMED WORK ON A PRIVATE PROJECT, BUT HAS NOT BEEN PAID WITHIN A CERTAIN TIME, TO SUE; TO CREATE A RIGHT OF ACTION UPON A PRIVATE WORK PAYMENT BOND FOR CERTAIN PERSONS; TO LIST THE PERSONS PROTECTED BY A PAYMENT BOND; TO PROVIDE A TIME PERIOD FOR COMMENCING A SUIT ON A PERFORMANCE BOND; TO PROVIDE THAT ANY PERSON SUPPLYING LABOR OR MATERIALS FOR EXECUTING OF WORK ON PRIVATE PROJECT CONSTRUCTION SHALL BE FURNISHED THE CONTRACT AND BONDS WITHIN A CERTAIN PERIOD OF TIME; TO AUTHORIZE A TRIAL JUDGE HEARING AN ACTION REGARDING SUCH BONDS TO AWARD ATTORNEY'S FEES; TO AMEND SECTIONS 85-7-431 AND 31-5-55, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING SECTION; AND FOR RELATED PURPOSES.

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

**SECTION 1.** The following shall be codified as Section 85-7-432, Mississippi Code of 1972:

85-7-432. (1) Any person entering into a formal contract for the construction, alteration, or repair of any private building or other private work, before entering into such contract, may furnish to the owner, bonds with good and sufficient surety in which case the bonds shall conform to the requirements of this chapter as follows:

(a) A performance bond shall be payable to, in favor of or for the protection of such 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 shall be payable to the owner but conditioned for the prompt payment of all persons supplying labor or

material used in the execution of the work under the 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.

(2) Every person who has furnished labor or material used in the execution of the private work provided for in such contract, in respect of which a payment bond is furnished, and who has not been paid in full for such before the expiration of a period of ninety (90) days after the date on which the last of the labor was performed by him or her or the last of the materials was furnished by him or her and for which such claim is made, provided the same has been approved, where required, by the owner or its architect or engineers, or such approval is being withheld as a result of unreasonable acts of the contractor, shall have the right to sue on such payment bond for the amount, or the balance thereof that is due and payable, but unpaid at the time of institution of such suit and to prosecute said action to final execution and judgment. Notwithstanding anything to the contrary contained herein, if the amount claimed in such action is subject to contractual provisions or conditions, between the parties involved in such action, the action shall be abated pending the performance of such provisions and the fulfillment of such conditions.

(3) Any person having direct contractual relationship with a subcontractor, but no contractual relationship express or implied with the contractor furnishing the private work payment bond shall

have a right of action upon the said payment bond upon giving written notice to said contractor within ninety (90) days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount 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, or emailed with a receipt of a read receipt, 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 subsection; and

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

(5) (a) When suit is instituted on a performance bond given in accordance with this chapter, it shall be commenced within one (1) year after the obligee shall have made final payment on the contract; provided, however, if the contract is abandoned by the general contractor as bond principal or is terminated by the bond

obligee, suit shall be commenced within one (1) year after the earlier of the abandonment by the bond principal or termination by the bond obligee.

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

(c) Any suit brought on a performance or payment bond given in accordance with this chapter shall be brought in the county in which the contract or some part thereof was performed or in the county in which service of process may be obtained upon either the principal or the surety on such bond. Service of process on the surety through the Commissioner of Insurance does not satisfy the venue requirement of this section.

(6) Any person supplying labor or materials for the execution of the work shall, upon a written request to the owner/obligee, or to the contractor/principal, be furnished promptly with a true and correct copy of the contract and bonds within thirty (30) days of the request or the recipient of the request shall thereafter become liable for reasonable attorney's fees and costs in any subsequent action under this section. The written request may be evidenced by any reliable means of delivery.

(7) Whenever any person supplying labor or material in the execution of the work brings an action on such payment bond and the trial judge finds that the defense raised to such action by the contractor or surety was not reasonable, or not in good faith, or merely for the purpose of delaying payment, then the trial judge

may, in his discretion, award the claimant a reasonable amount to be determined by the trial judge as claimant's attorney's fees in bringing such successful action. Likewise, if the trial judge finds that such action was brought by claimant without just cause or in bad faith, the trial judge may, in his discretion, award the contractor or surety a reasonable amount to be determined by the trial judge as attorney's fees for defending such action; provided, however, this section shall not affect the right of any person to recover attorney's fees where provided by contract or bond.

**SECTION 2.** Section 85-7-431, Mississippi Code of 1972, is amended as follows:

85-7-431. Where a contractor gives a payment bond providing payment protection to subcontractors and material suppliers to the full extent provided by the Mississippi Little Miller Act found at Section 31-5-51 or the private project bond provision at Section 85-7-432, the payment bond shall be in substitution for the liens provided for a subcontractor or materialman in this article. The contractor's right to a lien is not affected by the provision of a bond.

**SECTION 3.** Section 31-5-55, Mississippi Code of 1972, is amended as follows:

31-5-55. Any person supplying labor or materials for the prosecution of the work shall, upon request to the owner or obligee, or to the contractor or principal, be furnished \* \* \* promptly with a true and correct copy of the contract and bonds within thirty (30) days of the request or the recipient of the request shall thereafter become liable for reasonable attorney's fees and costs in any

subsequent action under this section. The written request may be evidenced by any reliable means of delivery.

**SECTION 4.** This act shall take effect and be in force from and after July 1, 2019.

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