

Chapter No. 372
10/SS01/R998
JW / AS/SG

SENATE BILL NO. 2800

Originated in Senate *Jennalyn Synges* Secretary

SENATE BILL NO. 2800

AN ACT TO AMEND SECTIONS 85-7-131, 85-7-135, 85-7-181, 85-7-185 AND 85-7-189, MISSISSIPPI CODE OF 1972, TO INCLUDE RENTAL AND LEASE EQUIPMENT AND THE SUPPLIERS THEREOF IN THE LIEN LAWS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 85-7-131, Mississippi Code of 1972, is amended as follows:

85-7-131. Every house, building, water well or structure of any kind, and any fixed machinery, gearing or other fixture that may or may not be used or connected therewith, railroad embankment, erected, constructed, altered or repaired, and every subdivision of property or subdivided property which required services, designs or construction in designing or laying out of streets or subdividing or construction of streets, sewerage, water or other utilities to be furnished by the said subdivision or by the various owners or holders or creators of said subdivision or subdivided property or individual lot or lots in connection therewith, whether inside of a municipality or outside thereof, shall be liable for the debt contracted and owing, for labor done or materials furnished or equipment rented or leased, or architectural engineers' and surveyors' or contractors' service rendered about the erection, construction, alteration or repairs thereof; and debt for such services or construction shall be a lien thereon. The architects, engineers, surveyors, laborers, rental or lease equipment suppliers and materialmen and/or contractors who rendered services and constructed the improvements shall have a lien therefor. Further, as to oil and gas wells, the

operator thereof shall have such a lien upon the interest of each nonoperator owner of an interest in the mineral leasehold estate for such nonoperator's proportionate part of such labor, material and services rendered by the operator or for the operator's account in behalf of each nonoperator in the drilling, completion, recompletion, reworking or other operations of such oil and gas well. If such house, building, structure, or fixture be in a city, town or village, the lien shall extend to and cover the entire lot of land on which it stands and the entire curtilage thereto belonging; or, if not in a city, town or village, the lien shall extend to and cover one (1) acre of land on which the same may stand, if there be so much, to be selected by the holder of the lien. If the structure be a water well, the lien shall extend only to all pumps, pipes, equipment therein and all water well appurtenances. If the structure be an oil or gas well, the lien shall extend to the nonoperator's interest in the mineral estate and the fixtures and equipment in the producing unit assigned such well by the State Oil and Gas Board. If the structure be a railroad or railroad embankment, the lien shall extend to and cover the entire roadbed and right-of-way, depots and other buildings used or connected therewith. If the services of the architect, surveyor, engineer, laborers, materialmen, rental or lease equipment suppliers or of the contractors shall be upon the whole subdivision, the lien shall extend to and cover the entire subdivision; but if a part only of the land is subdivided and laborers', materialmen's, rental or lease equipment supplier's, architects', surveyors' or engineers' services are required and contractors are employed, then the lien shall extend to only that portion of said property upon which the services were required or upon which or in connection with which the work was done or the materials or rental or lease equipment were furnished. Such lien shall take effect as to purchasers or encumbrancers for a valuable consideration without notice thereof, only from the time of

commencing suit to enforce the lien, or from the time of filing the contract under which the lien arose, or notice thereof, in the office of the clerk of the chancery court, as hereinafter stated; delivery of material to the job is prima facie evidence of its use therein, and use of water from a water well is prima facie evidence of acceptability of the well. In the case of oil and gas wells, such lien shall take effect as to purchasers or encumbrancers for a valuable consideration without notice thereof, only from the time of filing notice of such lien as provided by Section 85-7-133.

SECTION 2. Section 85-7-135, Mississippi Code of 1972, is amended as follows:

85-7-135. The lien declared in Section 85-7-131 shall exist only in favor of the person employed, or with whom the contract is made to perform such labor or furnish such materials or furnish such rental or lease of equipment or render such architectural service, and his assigns, and when the contract or employment is made by the owner, or by his agent, representative, guardian or tenant authorized, either expressly or impliedly, by the owner.

SECTION 3. Section 85-7-181, Mississippi Code of 1972, is amended as follows:

85-7-181. When any contractor or master workman shall not pay any person who may have furnished materials, labor or rental or lease equipment used in the erection, construction, alteration, or repair of any house, building, structure, fixture, boat, water craft, railroad, railroad embankment, the amount due by him to any subcontractor therein, or the wages of any journeyman, rental or lease equipment supplier or laborer employed by him therein, any such person, subcontractor, journeyman, laborer or rental or lease equipment supplier may give notice in writing to the owner thereof of the amount due him and claim the benefit of this section; and, thereupon the amount that may be due upon the date of the service of such notice by such owner to the contractor or master workman,

shall be bound in the hands of such owner for the payment in full, or if insufficient then pro rata, of all sums due such person, subcontractor, journeyman, rental or lease equipment supplier or laborer who might lawfully have given notice in writing to the owner hereunder, and if after such notice, the contractor or master workman shall bring suit against the owner, the latter may pay into court, the amount due on the contract; and thereupon all persons entitled hereunder, so far as known, shall be made parties and summoned into court to protect their rights, contest the demands of such contractor or master workman and other claimants; and the court shall cause an issue to be made up and tried and direct the payment of the amount found due in accordance with the provisions hereof; or in case any person entitled to the benefits hereof, shall sue the contractor or master workman, such person so suing shall make the owner and all other persons interested, either as contractors, master workmen, subcontractors, laborers, journeymen, rental or lease equipment suppliers or materialmen, so far as known, parties to the suit (and any such party not made a party in any suit hereunder authorized may intervene by petition), and, thereupon the owner may pay into the court the amount admitted to be due on the contract or sufficient to pay the sums claimed, and the court shall cause an issue to be made up and award the same to the person lawfully entitled; in either case the owner shall not be liable for costs; but if the owner, when sued, with the contractor or master workman, shall deny any indebtedness sufficient to satisfy the sums claimed and all costs, the court shall, at the instance of any party interested, cause an issue to be made up to ascertain the true amount of such indebtedness and shall give judgment and award costs, and reasonable attorney's fees, according to the rights of the several parties in accordance herewith. In case judgment shall be given against such owner, such judgment shall be a lien, from the date of the original notice, and shall be enforced as other liens provided in this

chapter. The owner shall not be liable in any event for a greater amount than the amount contracted for with the contractor.

The provisions of this section allowing the award of attorney's fees shall only apply to actions the cause of which accrued on or after July 1, 1987.

SECTION 4. Section 85-7-185, Mississippi Code of 1972, is amended as follows:

85-7-185. When any contractor or subcontractor entering into a formal contract with any person, firm or corporation, for the construction of any building or work or the doing of any repairs, shall enter into a bond with such person, firm or corporation guaranteeing the faithful performance of such contract and containing such provisions and penalties as the parties thereto may insert therein, such bond shall also be subject to the additional obligations that such contractor or subcontractor, shall promptly make payments to all persons furnishing labor or material or rental or lease equipment under said contract; and in the event such bond does not contain any such provisions for the payment of the claims of persons furnishing labor or material or rental or lease equipment under said contract, such bond shall nevertheless inure to the benefit of such person furnishing labor or material under said contract, the same as if such stipulation had been incorporated in said bond, and any such person who has furnished labor or materials or rental or lease equipment used therein; for which payment has not been made, shall have the right to intervene and be made a party to any action instituted on such bond, and to have his rights adjudicated in such action and judgment rendered thereon, subject, however, to the priority of the rights or claim for damages or otherwise, of the obligee. The bond herein provided for may be made by any surety company authorized to do business in the State of Mississippi.

SECTION 5. Section 85-7-189, Mississippi Code of 1972, is amended as follows:

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

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

(b) If the obligee is other than an owner of the project being constructed, such obligee shall bring suit within one (1) year after such obligee receives final payment with respect to the project.

(2) When suit is instituted on a claim for payment 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 or rental or lease equipment was supplied by the person bringing the action and not later.

(3) Any suit on a 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.

SECTION 6. This act shall take effect and be in force from and after July 1, 2010.

PASSED BY THE SENATE
February 3, 2010



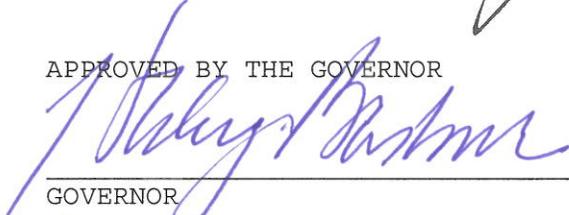
PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 3, 2010



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR

3/17/10

12:17 p