

By: Wallace

To: Judiciary B

## HOUSE BILL NO. 1454

1 AN ACT TO AMEND SECTIONS 31-5-27, 31-5-33 AND 87-7-5,  
2 MISSISSIPPI CODE OF 1972, TO REQUIRE A CONTRACTOR TO PAY A  
3 SUBCONTRACTOR WITHIN FORTY-FIVE DAYS OF SUBMISSION OF AN  
4 APPLICATION FOR PAYMENT TO THE CONTRACTOR; TO REVISE RETAINAGE  
5 PROVISIONS; AND FOR RELATED PURPOSES.

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

7 SECTION 1. Section 31-5-27, Mississippi Code of 1972, is  
8 amended as follows:

9 31-5-27. When a contractor receives any payment under a  
10 public construction contract, the contractor shall, upon receipt  
11 of that payment, pay each subcontractor and material supplier in  
12 proportion to the percentage of work completed by each  
13 subcontractor and material supplier. If for any reason the  
14 contractor receives less than the full payment due under the  
15 public construction contract, the contractor shall be obligated to  
16 disburse on a pro rata basis those funds received, with the  
17 contractor, subcontractors and material suppliers each receiving a  
18 prorated portion based on the amount due on the payment.  
19 Notwithstanding nonpayment from the owner to the contractor, the  
20 contractor shall pay the subcontractor within forty-five (45) days  
21 of the subcontractor's submission of an application for payment to  
22 the subcontractor. If the contractor without reasonable cause  
23 fails to make any payment to his subcontractors and material  
24 suppliers within fifteen (15) days after the receipt of payment  
25 under the public construction contract, or within for forty-five  
26 (45) days of the subcontractor's submission of an application for  
27 payment to the contractor, the contractor shall pay to his

28 subcontractors and material suppliers, in addition to the payment  
29 due them, a penalty in the amount of one-half of one percent (1/2  
30 of 1%) per day of the delinquency, calculated from the expiration  
31 of the 15-day period until fully paid. The total penalty shall  
32 not exceed fifteen percent (15%) of the outstanding balance due.

33 SECTION 2. Section 31-5-33, Mississippi Code of 1972, is  
34 amended as follows:

35 31-5-33. (1) In any contract for the construction, repair,  
36 alteration or demolition of any building, structure or facility  
37 awarded by the State of Mississippi, or any agency, unit or  
38 department of the State of Mississippi, or by any political  
39 subdivision thereof, which contract provides for progress payments  
40 in installments based upon an estimated percentage of completion  
41 with a percentage of the contract proceeds to be retained by the  
42 state agency, unit or department, or by the political subdivision  
43 or contractor pending completion of the contract, such retainage  
44 shall be five percent (5%), and the amount retained by the prime  
45 contractor from each payment due the subcontractor shall not  
46 exceed the percentage withheld by the state, or any agency, unit  
47 or department of the state, or by any political subdivision  
48 thereof, from the prime contractor.

49 On any contract as described herein, of which the total  
50 amount is Two Hundred Fifty Thousand Dollars (\$250,000.00) or  
51 greater, five percent (5%) shall be retained until the work is at  
52 least fifty percent (50%) complete, on schedule and satisfactory  
53 in the architect's and/or engineer's opinion, at which time fifty  
54 percent (50%) of the retainage held to date shall be returned to  
55 the prime contractor for distribution to the appropriate  
56 subcontractors and suppliers. Provided, however, that future  
57 retainage shall be withheld at the rate of two and one-half  
58 percent (2½%).

59 (2) The provisions of this section shall not apply to  
60 contracts let by the Mississippi Transportation Commission for the  
61 construction, improvement or maintenance of roads and bridges.

62 \* \* \*

63 SECTION 3. Section 87-7-5, Mississippi Code of 1972, is  
64 amended as follows:[BD1]

65           87-7-5. When a prime contractor receives any payment from  
66 the owner under a construction contract, other than a public  
67 construction contract, the prime contractor shall, upon receipt of  
68 that payment, pay each subcontractor and material supplier in  
69 proportion to the percentage of work completed by each such  
70 subcontractor and material supplier. If for any reason the prime  
71 contractor receives less than the full payment due from the owner,  
72 the prime contractor shall be obligated to disburse on a pro rata  
73 basis those funds received, with the prime contractor,  
74 subcontractors and material suppliers each receiving a prorated  
75 portion based on the amount due on the payment. Notwithstanding  
76 payment from the owner to the contractor, the contractor shall pay  
77 the subcontractor within forty-five (45) days of the  
78 subcontractor's submission of an application for payment to the  
79 subcontractor. If the prime contractor without reasonable cause  
80 fails to make any payment to his subcontractors and material  
81 suppliers within fifteen (15) days after the receipt of payment  
82 from the owner under the construction contract, or within  
83 forty-five (45) days of the subcontractor's submission of any  
84 application for payment to the contractor, the prime contractor  
85 shall pay to his subcontractors and material suppliers, in  
86 addition to the payment due them, a penalty in the amount of  
87 one-half of one percent (1/2 of 1%) per day of the delinquency,  
88 calculated from the expiration of the 15-day period until fully  
89 paid. The total penalty shall not exceed fifteen percent (15%) of  
90 the outstanding balance due. The provisions of this section shall  
91 not be applicable to contracts for the construction of  
92 single-family dwellings.

93           SECTION 4. This act shall take effect and be in force from  
94 and after July 1, 2000.