

April 17, 2000

TO THE HOUSE OF REPRESENTATIVES:

GOVERNOR'S VETO MESSAGE FOR HOUSE BILL 1538

I am returning House Bill No. 1538: "AN ACT TO REQUIRE CONSTRUCTION CONTRACTS ENTERED INTO BY THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING AND STATE INSTITUTIONS OF HIGHER LEARNING TO INCLUDE A PENALTY PROVISION FOR UNTIMELY PERFORMANCE AND WARRANTY PROVISIONS; AND FOR RELATED PURPOSES" without my approval, and assign the following reasons for my veto:

House Bill Number 1538 states in pertinent part,

Each contract entered into by the Board of Trustees of State Institutions of Higher Learning or a state institution of higher learning for a construction, renovation or repair project, regardless of the source of funding used to defray the costs of the project, must include a provision establishing the date by which the project is to be completed and a clause requiring the assessment of a penalty for each day that the project is not certified as having been completed

Whether or not this provision in House Bill Number 1538 is enforceable remains a question. The Mississippi Supreme Court has spoken numerous times against the assessment of a contract penalty. Instead, the Supreme Court has approved liquidated damage clauses while finding penalty provisions unenforceable.

Promoting compliance with the terms of a contract with the state is of paramount importance to the protection of the public trust. Liquidated damage clauses are an effective mechanism for protecting the public and promoting contract compliance.

Because penalties are not favored at law or equity, I am asking the Legislature to return to me a bill that deletes the term "penalty" and instead uses the term "liquidated damages."

Respectfully submitted,

RONNIE MUSGROVE
GOVERNOR