

By: Representative McBride

To: Judiciary B

HOUSE BILL NO. 1562
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 31-5-25, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE CONTRACTORS TO SUBMIT REPORTS INDICATING PAYMENT TO
3 SUBCONTRACTORS; TO AMEND SECTION 31-5-33, MISSISSIPPI CODE OF
4 1972, TO REVISE RETAINAGE PROVISIONS; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 31-5-25, Mississippi Code of 1972, is
7 amended as follows:

8 31-5-25. (1) All sums due contractors under all public
9 construction contracts shall be paid as follows:

10 (a) Partial, progress or interim payments: All
11 partial, progress or interim payments or monies owed contractors
12 shall be paid when due and payable under the terms of the
13 contract. If they are not paid within sixty (60) calendar days
14 from the day they were due and payable, then they shall bear
15 interest from the due date until paid at the rate of one percent
16 (1%) per month until fully paid.

17 (b) Final payments: The final payment of all monies
18 owed contractors shall be due and payable:

19 (i) At the completion of the project or after the
20 work has been substantially completed in accordance with the terms
21 and provisions of the contract;

22 (ii) When the owner beneficially uses or occupies
23 the project except in the case where the project involves
24 renovation or alteration to an existing facility in which the
25 owner maintains beneficial use or occupancy during the course of
26 the project;



27 (iii) When the project is certified as having been
28 completed by the architect or engineer authorized to make such
29 certification; or

30 (iv) When the project is certified as having been
31 completed by the contracting authority representing the State of
32 Mississippi or any of its political subdivisions, whichever event
33 shall first occur.

34 If the contractor is not paid in full within sixty (60)
35 calendar days from the first occurrence of one (1) of the
36 above-mentioned events, then said final payment shall bear
37 interest from the date of said first occurrence at the rate of one
38 percent (1%) per month until fully paid.

39 In no event shall said final payment due the contractor be
40 made until the consent of the contractor's surety has been
41 obtained in writing and delivered to the proper contracting
42 authority.

43 (c) Contracts for the construction of prison facilities
44 let or approved by the State Prison Emergency Construction and
45 Management Board when exercising its emergency powers to remove
46 two thousand (2,000) inmates from county jails are exempt from
47 this section; however, this exemption does not apply to contracts
48 for the construction of private correctional facilities and
49 additional facilities at the South Mississippi Correctional
50 Institution and the Central Mississippi Correctional Facility.
51 This paragraph shall stand repealed from and after July 1, 1996.

52 (2) Contractors shall submit monthly certification to the
53 project engineer or architect indicating payments to
54 subcontractors on prior payment request.

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

57 31-5-33. (1) In any contract for the construction, repair,
58 alteration or demolition of any building, structure or facility
59 awarded by the State of Mississippi, or any agency, unit or



60 department of the State of Mississippi, or by any political
61 subdivision thereof, which contract provides for progress payments
62 in installments based upon an estimated percentage of completion
63 with a percentage of the contract proceeds to be retained by the
64 state agency, unit or department, or by the political subdivision
65 or contractor pending completion of the contract, such retainage
66 shall be five percent (5%), and the amount retained by the prime
67 contractor from each payment due the subcontractor shall not
68 exceed the percentage withheld by the state, or any agency, unit
69 or department of the state, or by any political subdivision
70 thereof, from the prime contractor.

71 On any contract as described herein, of which the total
72 amount is Two Hundred Fifty Thousand Dollars (\$250,000.00) or
73 greater, or on any contract with a subcontractor, regardless of
74 amount, five percent (5%) shall be retained until the work is at
75 least fifty percent (50%) complete, on schedule and satisfactory
76 in the architect's and/or engineer's opinion, at which time fifty
77 percent (50%) of the retainage held to date shall be returned to
78 the prime contractor for distribution to the appropriate
79 subcontractors and suppliers. Provided, however, that future
80 retainage shall be withheld at the rate of two and one-half
81 percent (2-1/2%).

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

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86 **SECTION 3.** This act shall take effect and be in force from
87 and after July 1, 2002.

