HOUSE BILL NO. 1562
(As Sent to Governor)

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

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

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

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

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

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

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

(ii) When the owner beneficially uses or occupies the project except in the case where the project involves renovation or alteration to an existing facility in which the owner maintains beneficial use or occupancy during the course of the project;
(iii) When the project is certified as having been completed by the architect or engineer authorized to make such certification; or

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

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

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

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

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

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

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

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

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

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