HOUSE BILL NO. 1310

AN ACT TO PROVIDE PROTECTION FOR SUBCONTRACTORS AND CONTRACTORS PERFORMING WORK ON PROJECTS FOR OUT-OF-STATE CONTRACTORS; TO REQUIRE OUT-OF-STATE CONTRACTORS TO MAINTAIN A BANK ACCOUNT FOR PROJECTS; TO PROVIDE REMEDIES AND PENALTIES; TO AMEND SECTION 31-5-25, MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR RELATED PURPOSES.

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

SECTION 1. (1) Every out-of-state or nondomiciled contractor who undertakes a project in the state shall establish and maintain an account in a Mississippi bank for the purposes of the project. The account shall maintain the full balance due to all Mississippi contractors and subcontractors involved in the project. The account shall not be closed until the project is complete and written notice of such completion which shall contain documentation that all invoices are paid in full including any and all retainage. The Board of Contractors shall have a lien on an account required by this section to insure that all Mississippi contractors and subcontractors are paid for all work performed on a project. Any out-of-state or nondomiciled contractor who violates the provisions of this section shall, upon conviction, be punished by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment for not more than one (1) year, or both.

(2) The provisions of this section shall not apply to contractors or subcontractors who maintain primary offices in the state or to utilities and corporations who perform their own construction and who do not utilize independent contractors or subcontractors for such construction.
SECTION 2. 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.

(3) Out-of-state or nondomiciled contractors shall comply
with the provisions of this section and Section 1 of House Bill
No.____, 2003 Regular Session.

SECTION 3. This act shall take effect and be in force from
and after July 1, 2003.