

By: Representative Barnett (92nd)

To: Judiciary B

HOUSE BILL NO. 1310

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

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

8 **SECTION 1.** (1) Every out-of-state or nondomicled contractor
9 who undertakes a project in the state shall establish and maintain
10 an account in a Mississippi bank for the purposes of the project.
11 The account shall maintain the full balance due to all Mississippi
12 contractors and subcontractors involved in the project. The
13 account shall not be closed until the project is complete and
14 written notice of such completion which shall contain
15 documentation that all invoices are paid in full including any and
16 all retainage. The Board of Contractors shall have a lien on an
17 account required by this section to insure that all Mississippi
18 contractors and subcontractors are paid for all work performed on
19 a project. Any out-of-state or nondomicled contractor who
20 violates the provisions of this section shall, upon conviction, be
21 punished by a fine of not more than Ten Thousand Dollars
22 (\$10,000.00) or by imprisonment for not more than one (1) year, or
23 both.

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



29 **SECTION 2.** Section 31-5-25, Mississippi Code of 1972, is
30 amended as follows:

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

33 (a) Partial, progress or interim payments: All
34 partial, progress or interim payments or monies owed contractors
35 shall be paid when due and payable under the terms of the
36 contract. If they are not paid within sixty (60) calendar days
37 from the day they were due and payable, then they shall bear
38 interest from the due date until paid at the rate of one percent
39 (1%) per month until fully paid.

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

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

45 (ii) When the owner beneficially uses or occupies
46 the project except in the case where the project involves
47 renovation or alteration to an existing facility in which the
48 owner maintains beneficial use or occupancy during the course of
49 the project;

50 (iii) When the project is certified as having been
51 completed by the architect or engineer authorized to make such
52 certification; or

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

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



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

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

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

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

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

