

By: Representative McBride

To: Judiciary B;  
Appropriations

HOUSE BILL NO. 632

1 AN ACT TO AMEND SECTIONS 31-5-25, 31-5-27, 87-7-3 AND 87-7-5,  
2 MISSISSIPPI CODE OF 1972, TO REVISE THE TIME PERIOD FOR PAYMENT TO  
3 CONTRACTORS; TO PROVIDE FOR PAYMENT OF COLLECTION COSTS INCLUDING  
4 ATTORNEYS' FEES; 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 thirty (30) 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 and the party liable for payment  
17 shall also pay all costs of collection including attorneys' fees.

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

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

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

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

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

35           If the contractor is not paid in full within thirty (30)  
36 calendar days from the first occurrence of one (1) of the  
37 above-mentioned events, then said final payment shall bear  
38 interest from the date of said first occurrence at the rate of one  
39 percent (1%) per month until fully paid and the party liable for  
40 payment shall also pay all costs of collection including  
41 attorneys' fees.

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

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

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

58           **SECTION 2.** Section 31-5-27, Mississippi Code of 1972, is  
59 amended as follows:

60           31-5-27. When a contractor receives any payment under a  
61 public construction contract, the contractor shall, upon receipt  
62 of that payment, pay each subcontractor and material supplier in  
63 proportion to the percentage of work completed by each  
64 subcontractor and material supplier. If for any reason the  
65 contractor receives less than the full payment due under the  
66 public construction contract, the contractor shall be obligated to  
67 disburse on a pro rata basis those funds received, with the  
68 contractor, subcontractors and material suppliers each receiving a  
69 prorated portion based on the amount due on the payment. If the  
70 contractor without reasonable cause fails to make any payment to  
71 his subcontractors and material suppliers within fifteen (15) days  
72 after the receipt of payment under the public construction  
73 contract, the contractor shall pay to his subcontractors and  
74 material suppliers, in addition to the payment due them, a penalty  
75 in the amount of one-half of one percent (1/2 of 1%) per day of  
76 the delinquency, calculated from the expiration of the fifteen-day  
77 period until fully paid. The total penalty shall not exceed  
78 fifteen percent (15%) of the outstanding balance due. The  
79 contractor shall also be liable for all costs of collection  
80 including attorneys' fees.

81           **SECTION 3.** Section 87-7-3, Mississippi Code of 1972, is  
82 amended as follows:

83           87-7-3. All sums due prime contractors under all  
84 construction contracts, except public construction contracts,  
85 shall be paid as follows:

86           (a) Partial, progress or interim payments: All  
87 partial, progress or interim payments or monies owed contractors  
88 shall be paid when due and payable under the terms of the  
89 contract. If they are not paid within thirty (30) calendar days  
90 from the day they were due and payable, then they shall bear  
91 interest from the due date at the rate of one percent (1%) per

92 month until fully paid and the party liable for payment shall also  
93 pay all costs of collection including attorneys' fees.

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

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

99 (ii) When the owner beneficially uses or occupies  
100 the project except in the case where the project involves  
101 renovation or alteration to an existing facility in which the  
102 owner maintains beneficial use or occupancy during the course of  
103 the project; or

104 (iii) When the project is certified as having been  
105 completed by the architect or engineer authorized to make such  
106 certification, whichever event shall first occur.

107 If the contractor is not paid in full within thirty (30)  
108 calendar days from the first occurrence of one (1) of the  
109 above-mentioned events, then the final payment shall bear interest  
110 from the date of such first occurrence at the rate of one percent  
111 (1%) per month until fully paid and the party liable for payment  
112 shall also pay all costs of collection including attorneys' fees.

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

117 **SECTION 4.** Section 87-7-5, Mississippi Code of 1972, is  
118 amended as follows:

119 87-7-5. When a prime contractor receives any payment from  
120 the owner under a construction contract, other than a public  
121 construction contract, the prime contractor shall, upon receipt of  
122 that payment, pay each subcontractor and material supplier in  
123 proportion to the percentage of work completed by each such  
124 subcontractor and material supplier. If for any reason the prime

125 contractor receives less than the full payment due from the owner,  
126 the prime contractor shall be obligated to disburse on a pro rata  
127 basis those funds received, with the prime contractor,  
128 subcontractors and material suppliers each receiving a prorated  
129 portion based on the amount due on the payment. If the prime  
130 contractor without reasonable cause fails to make any payment to  
131 his subcontractors and material suppliers within fifteen (15) days  
132 after the receipt of payment from the owner under the construction  
133 contract, the prime contractor shall pay to his subcontractors and  
134 material suppliers, in addition to the payment due them, a penalty  
135 in the amount of one-half of one percent (1/2 of 1%) per day of  
136 the delinquency, calculated from the expiration of the fifteen-day  
137 period until fully paid. The total penalty shall not exceed  
138 fifteen percent (15%) of the outstanding balance due. The  
139 contractor shall also be liable for all costs of collection  
140 including attorneys' fees. The provisions of this section shall  
141 not be applicable to contracts for the construction of  
142 single-family dwellings.

143 **SECTION 5.** This act shall take effect and be in force from  
144 and after July 1, 2004.