

By: Senator(s) Mettetal

To: Business and Financial
Institutions

SENATE BILL NO. 2727

1 AN ACT TO AMEND SECTIONS 87-7-3 AND 87-7-5, MISSISSIPPI CODE
2 OF 1972, TO REVISE THE TIME PERIOD FOR PAYMENT TO CONTRACTORS AND
3 TO EXPAND THE SCOPE OF THE STATUTES TO ALL CONTRACTORS; AND FOR
4 RELATED PURPOSES.

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

6 **SECTION 1.** Section 87-7-3, Mississippi Code of 1972, is
7 amended as follows:

8 87-7-3. All sums due * * * contractors under all
9 construction contracts, except public construction contracts,
10 shall be paid as follows:

11 (a) Partial, progress or interim payments: all
12 partial, progress or interim payments or monies owed contractors
13 shall be paid when due and payable under the terms of the
14 contract. If they are not paid within thirty (30) calendar days
15 from the day they were due and payable, then they shall bear
16 interest from the due date at the rate of one percent (1%) per
17 month until fully paid.

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; or

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

31 If the contractor is not paid in full within thirty (30)
32 calendar days from the first occurrence of one (1) of the
33 above-mentioned events, then the final payment shall bear interest
34 from the date of such first occurrence at the rate of one percent
35 (1%) per month until fully paid.

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

40 **SECTION 2.** Section 87-7-5, Mississippi Code of 1972, is
41 amended as follows:

42 87-7-5. When a * * * contractor receives any payment from
43 the owner under a construction contract, other than a public
44 construction contract, the * * * contractor shall, upon receipt of
45 that payment, pay each subcontractor and material supplier in
46 proportion to the percentage of work completed by each such
47 subcontractor and material supplier. If for any reason the * * *
48 contractor receives less than the full payment due from the owner,
49 the * * * contractor shall be obligated to disburse on a pro rata
50 basis those funds received, with the * * * contractor,
51 subcontractors and material suppliers each receiving a prorated
52 portion based on the amount due on the payment. If the * * *
53 contractor without reasonable cause fails to make any payment to
54 his subcontractors and material suppliers within fifteen (15) days
55 after the receipt of payment from the owner under the construction
56 contract, the * * * contractor shall pay to his subcontractors and
57 material suppliers, in addition to the payment due them, a penalty
58 in the amount of one-half of one percent (1/2 of 1%) per day of
59 the delinquency, calculated from the expiration of the fifteen-day
60 period until fully paid. The total penalty shall not exceed

61 fifteen percent (15%) of the outstanding balance due. The
62 provisions of this section shall not be applicable to contracts
63 for the construction of single-family dwellings.

64 **SECTION 3.** This act shall take effect and be in force from
65 and after July 1, 2006.