

By: Representative Fillingane

To: Judiciary B

HOUSE BILL NO. 789

1 AN ACT TO AMEND SECTIONS 87-7-3 AND 87-7-5, MISSISSIPPI CODE
2 OF 1972, TO REVISE CERTAIN PAYMENT PROVISIONS; TO REMOVE THE
3 REFERENCE TO PRIME CONTRACTORS; AND FOR RELATED PURPOSES.

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

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

7 87-7-3. All sums due * * * contractors under all
8 construction contracts, except public construction contracts,
9 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 at the rate of one percent (1%) per
16 month until fully paid.

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

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

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

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

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

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

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

41 87-7-5. When a * * * contractor receives any payment from
42 the owner under a construction contract, other than a public
43 construction contract, the * * * contractor shall, upon receipt of
44 that payment, pay each subcontractor and material supplier in
45 proportion to the percentage of work completed by each such
46 subcontractor and material supplier. If for any reason the * * *
47 contractor receives less than the full payment due from the owner,
48 the * * * contractor shall be obligated to disburse on a pro rata
49 basis those funds received, with the * * * contractor,
50 subcontractors and material suppliers each receiving a prorated
51 portion based on the amount due on the payment. If the * * *
52 contractor without reasonable cause fails to make any payment to
53 his subcontractors and material suppliers within fifteen (15) days
54 after the receipt of payment from the owner under the construction
55 contract, the * * * contractor shall pay to his subcontractors and
56 material suppliers, in addition to the payment due them, a penalty
57 in the amount of one-half of one percent (1/2 of 1%) per day of
58 the delinquency, calculated from the expiration of the fifteen-day
59 period until fully paid. The total penalty shall not exceed

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

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