

By: Representative Guice

To: Judiciary B

## HOUSE BILL NO. 217

1 AN ACT TO AMEND SECTION 31-3-1, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT IF CERTAIN PROJECTS ARE UNDERTAKEN BY A NONRESIDENT  
3 CONTRACTOR, THE CONTRACTOR SHALL BE REQUIRED TO OBTAIN A  
4 CERTIFICATE OF RESPONSIBILITY FROM THE STATE BOARD OF CONTRACTORS;  
5 TO AMEND SECTION 31-3-13, MISSISSIPPI CODE OF 1972, TO PROVIDE  
6 THAT THE STATE BOARD OF PUBLIC CONTRACTORS SHALL ESTABLISH AND  
7 ENFORCE MONETARY PENALTIES FOR ANY VIOLATION OF THE RULES AND  
8 REGULATIONS ESTABLISHED BY THE BOARD; TO PROVIDE FOR THE  
9 SUSPENSION OF ANY UNDERTAKING BY A CONTRACTOR, IF THERE ARE  
10 CONTINUOUS VIOLATIONS OF THE RULES AND REGULATIONS ESTABLISHED BY  
11 THE BOARD; AND FOR RELATED PURPOSES.

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

13 SECTION 1. Section 31-3-1, Mississippi Code of 1972, is  
14 amended as follows:

15 31-3-1. The following words, as used in this chapter, shall  
16 have the meanings specified below:

17 "Board": The State Board of Contractors created under this  
18 chapter.

19 "Contractor": Any person contracting or undertaking as prime  
20 contractor, subcontractor or sub-subcontractor of any tier to do  
21 any erection, building, construction, reconstruction, repair,  
22 maintenance or related work on any public or private project;  
23 however, "contractor" shall not include any owner of a dwelling or  
24 other structure to be constructed, altered, repaired or improved  
25 and not for sale, lease, public use or assembly. It is further  
26 provided that nothing in this chapter shall apply to:

27 (a) Any contract or undertaking on a public project by  
28 a prime contractor, subcontractor or sub-subcontractor of any tier  
29 involving erection, building, construction, reconstruction,  
30 repair, maintenance or related work where such contract,

31 subcontract or undertaking is less than Fifty Thousand Dollars  
32 (\$50,000.00);

33 (b) Any contract or undertaking on a private project by  
34 a prime contractor, subcontractor or sub-subcontractor of any tier  
35 involving erection, building, construction, reconstruction,  
36 repair, maintenance or related work where such contract,  
37 subcontract or undertaking is less than One Hundred Thousand  
38 Dollars (\$100,000.00);

39 (c) Highway construction, highway bridges, overpasses  
40 and any other project incidental to the construction of highways  
41 which are designated as federal aid projects and in which federal  
42 funds are involved;

43 (d) A residential project to be occupied by fifty (50)  
44 or fewer families and not more than three (3) stories in height;

45 (e) A residential subdivision where the contractor is  
46 developing either single-family or multi-family lots;

47 (f) A new commercial construction project not exceeding  
48 seventy-five hundred (7500) square feet and not more than two (2)  
49 stories in height; or

50 (g) Erection of a microwave tower built for the purpose  
51 of telecommunication transmissions.

52 However, if any of the projects or actions described in  
53 paragraphs (a) through (g) above are undertaken by a prime  
54 contractor, subcontractor or sub-subcontractor that is not a  
55 resident of the State of Mississippi, then the prime contractor,  
56 subcontractor or sub-subcontractor shall be required to obtain a  
57 certificate of responsibility under this chapter and shall be  
58 subject to all other provisions of this chapter.

59 "Certificate of responsibility": A certificate numbered and  
60 held by a contractor issued by the board under the provisions of  
61 this chapter after payment of the special privilege license tax  
62 therefor levied under this chapter.

63 "Person": Any person, firm, corporation, joint venture or  
64 partnership, association or other type of business entity.

65 "Private project": Any project for erection, building,  
66 construction, reconstruction, repair, maintenance or related work  
67 which is not funded in whole or in part with public funds.

68 "Public agency": Any board, commission, council or agency of  
69 the State of Mississippi or any district, county or municipality  
70 thereof, including school, hospital, airport and all other types  
71 of governing agencies created by or operating under the laws of  
72 this state.

73 "Public funds": Monies of public agencies, whether obtained  
74 from taxation, donation or otherwise; or monies being expended by  
75 public agencies for the purposes for which such public agencies  
76 exist.

77 "Public project": Any project for erection, building,  
78 construction, reconstruction, repair, maintenance or related work  
79 which is funded in whole or in part with public funds.

80 SECTION 2. Section 31-3-13, Mississippi Code of 1972, is  
81 amended as follows:

82 31-3-13. The board shall have the following powers and  
83 responsibilities:

84 (a) To receive applications for certificates of  
85 responsibility, to investigate and examine applicants for same by  
86 holding hearings and securing information, to conduct  
87 examinations, and to issue certificates of responsibility to such  
88 contractors as the board finds to be responsible. One-fourth  
89 (1/4) of the certificates scheduled for renewal on the last day of  
90 December 1980, shall be reviewed by the board on the first Tuesday  
91 in January 1981. The remaining certificates shall be subject to  
92 renewal in the following manner: One-fourth (1/4) on the first  
93 Tuesday in April 1981; one-fourth (1/4) on the first Tuesday in  
94 July 1981; and one-fourth (1/4) on the first Tuesday in October  
95 1981. The board is authorized to extend the dates of expiration  
96 of certificates to coincide with the scheduled date of review of  
97 individual contractors. Except for the certificates extended from  
98 December 31, 1980, to the first Tuesday in January, 1981, the  
99 board shall charge fees for the extension of certificates as  
100 follows:

101                   (i) Twenty-five Dollars (\$25.00) if the date of  
102 renewal of the extended certificate is the first Tuesday in April  
103 1981;

104                   (ii) Fifty Dollars (\$50.00) if the date of renewal  
105 of the extended certificate is the first Tuesday in July 1981; and

106                   (iii) Seventy-five Dollars (\$75.00) if the date of  
107 renewal of the extended certificate is the first Tuesday in  
108 October 1981.

109           The extended certificates renewed in compliance with this  
110 paragraph (a) and all original certificates and renewals thereof  
111 issued on or after July 1, 1980, shall expire one (1) year from  
112 the date of issuance. No certificate or any renewal thereof shall  
113 be issued until the application has been on file with the board  
114 for at least thirty (30) days. Application for renewal of  
115 certificates of responsibility, together with the payment of a fee  
116 of One Hundred Dollars (\$100.00) under the terms of this chapter,  
117 shall serve to extend the current certificate until the board  
118 either renews the certificate or denies the application.

119           No certificate of responsibility or any renewal thereof shall  
120 be issued until the applicant furnishes to the board his  
121 Mississippi state sales tax number or Mississippi state use tax  
122 number and his state income tax identification numbers.

123           The board shall conduct an objective, standardized  
124 examination of an applicant for a certificate to ascertain the  
125 ability of the applicant to make practical application of his  
126 knowledge of the profession or business of construction in the  
127 category or categories for which he has applied for a certificate  
128 of responsibility. The cost of the test and the cost of  
129 administering the test shall be paid for by applicants for  
130 certificates of responsibility at the time applications are filed.  
131 The board shall investigate thoroughly the past record of all  
132 applicants, which will include an effort toward ascertaining the  
133 qualifications of applicants in reading plans and specifications,

134 estimating costs, construction ethics, and other similar matters.  
135 The board shall take all applicants under consideration after  
136 having examined him or them and go thoroughly into the records and  
137 examinations, prior to granting any certificate of responsibility.  
138 If the applicant is an individual, examination may be taken by his  
139 personal appearance for examination or by the appearance for  
140 examination of one or more of his responsible managing employees;  
141 and if a copartnership or corporation or any other combination or  
142 organization, by the examination of one or more of the responsible  
143 managing officers or members of the executive staff of the  
144 applicant's firm, according to its own designation.

145           (b) To conduct thorough investigations of all  
146 applicants seeking renewal of their licenses and of all complaints  
147 filed with the board concerning the performance of a contractor on  
148 a public or private project.

149           (c) To obtain information concerning the responsibility  
150 of any applicant for a certificate of responsibility or a holder  
151 of a certificate of responsibility under this chapter. Such  
152 information may be obtained by investigation, by hearings, or by  
153 any other reasonable and lawful means. The board shall keep such  
154 information appropriately filed and shall disseminate same to any  
155 interested person. The board shall have the power of subpoena.

156           (d) To maintain a list of contractors to whom  
157 certificates of responsibility are issued, refused, revoked or  
158 suspended, which list shall be available to any interested person.  
159 Such list shall indicate the kind or kinds of works or projects  
160 for which a certificate of responsibility was issued, refused,  
161 revoked or suspended.

162           (e) To revoke by order entered on its minutes a  
163 certificate of responsibility upon a finding by the board that a  
164 particular contractor is not responsible, and to suspend such  
165 certificate of responsibility in particular cases pending  
166 investigation, upon cause to be stated in the board's order of

167 suspension. No such revocation or suspension shall be ordered  
168 without a hearing conducted upon not less than ten (10) days'  
169 notice to such certificate holder by certified or registered mail,  
170 wherein the holder of the certificate of responsibility shall be  
171 given an opportunity to present all lawful evidence which he may  
172 offer.

173 (f) To adopt rules and regulations setting forth the  
174 requirements for certificates of responsibility, the revocation or  
175 suspension thereof, and all other matters concerning same; rules  
176 and regulations governing the conduct of the business of the board  
177 and its employees; and such other rules and regulations as the  
178 board finds necessary for the proper administration of this  
179 chapter, including those for the conduct of its hearings on the  
180 revocation or suspension of certificates of responsibility. Such  
181 rules and regulations shall not conflict with the provisions of  
182 this chapter.

183 (g) The board shall have the power and responsibility  
184 to classify the kind or kinds of works or projects that a  
185 contractor is qualified and entitled to perform under the  
186 certificate of responsibility issued to him. Such classification  
187 shall be specified in the certificate of responsibility.

188 The powers of the State Board of Contractors shall not extend  
189 to fixing a maximum limit in the bid amount of any contractor, or  
190 the bonding capacity, or a maximum amount of work which a  
191 contractor may have under contract at any time, except as stated  
192 in paragraph (a) of this section; and the Board of Contractors  
193 shall not have jurisdiction or the power or authority to determine  
194 the maximum bond a contractor may be capable of obtaining. The  
195 board, in determining the qualifications of any applicant for an  
196 original certificate of responsibility or any renewal thereof,  
197 shall, among other things, take into consideration the following:  
198 (1) experience and ability, (2) character, (3) the manner of  
199 performance of previous contracts, (4) financial condition, (5)

200 equipment, (6) personnel, (7) work completed, (8) work on hand,  
201 (9) ability to perform satisfactorily work under contract at the  
202 time of an application for a certificate of responsibility or a  
203 renewal thereof, (10) default in complying with provisions of this  
204 law, or any other law of the state, and (11) the results of  
205 objective, standardized examinations. A record shall be made and  
206 preserved by the board of each examination of an applicant and the  
207 findings of the board thereon, and a certified copy of the record  
208 and findings shall be furnished to any applicant desiring to  
209 appeal from any order or decision of the board.

210 (h) The board shall enter upon its minutes an order or  
211 decision upon each application filed with it, and it may state in  
212 such order or decision the reason or reasons for its order or  
213 decision.

214 Upon failure of the board to enter an order or decision upon  
215 its minutes as to any application within one hundred eighty (180)  
216 days from the date of filing the application, the applicant shall  
217 have the right of appeal as otherwise provided by this chapter.

218 The holder of any valid certificate of responsibility issued  
219 by the Board of Public Contractors prior to January 1, 1986, shall  
220 be automatically issued a certificate of responsibility by the  
221 State Board of Contractors for the same classification or  
222 classifications of work which the holder was entitled to perform  
223 under the State Board of Public Contractors Act.

224 (i) To establish and enforce monetary penalties for any  
225 violations of the rules and regulations established by the board  
226 under this chapter and to suspend any contract or undertaking by a  
227 nonresident contractor, if there are continuous violations of such  
228 rules and regulations, as provided in Section 31-3-21(4).

229 SECTION 3. This act shall take effect and be in force from  
230 and after July 1, 1999.