

By: Representative Stevens

To: Judiciary A

HOUSE BILL NO. 332
(As Passed the House)

1 AN ACT TO REENACT SECTIONS 73-2-1, 73-2-3, 73-2-5, 73-2-7,
2 73-2-9, 73-2-11, 73-2-13, 73-2-15, 73-2-16, 73-2-17, 73-2-19,
3 73-2-21, 73-2-23 AND 73-2-25, MISSISSIPPI CODE OF 1972, WHICH
4 REGULATE THE PRACTICE OF LANDSCAPE ARCHITECTURE; TO REPEAL SECTION
5 73-2-27, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE REPEAL
6 OF SECTIONS 73-2-1 THROUGH 73-2-25, MISSISSIPPI CODE OF 1972; AND
7 FOR RELATED PURPOSES.

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

9 SECTION 1. Section 73-2-1, Mississippi Code of 1972, is
10 reenacted as follows:

11 73-2-1. This chapter shall be known and may be cited as the
12 "Landscape Architectural Practice Law."

13 SECTION 2. Section 73-2-3, Mississippi Code of 1972, is
14 reenacted as follows:

15 73-2-3. As used in this chapter:

16 (a) "Landscape architect" means a person who is
17 licensed to practice landscape architecture in this state under
18 the authority of this chapter.

19 (b) "Landscape architecture" means any service or
20 creative work, the adequate performance of which requires
21 landscape architectural education, training and experience; the
22 performance of professional services such as consultation,
23 investigation, research, associated planning, design, preparation
24 of drawings, specifications and contract documents, and
25 responsible supervision or construction management in connection
26 with the development of land areas where, and to the extent that,
27 dominant purpose of such services is the preservation, enhancement
28 or determination of proper land uses, natural land features,
29 ground cover and plantings, naturalistic and aesthetic values; the

30 determination of settings, grounds and approaches for buildings
31 and structures or other improvements; the determination of
32 environmental problems of land relating to erosion, flooding,
33 blight and other hazards; the shaping and contouring of land and
34 water forms; the setting of grades, determination of drainage and
35 providing for storm drainage systems where such systems do not
36 require structural design of system components, and determination
37 of landscape irrigation; the design of such tangible objects and
38 features as are necessary to the purpose outlined herein, but
39 shall not include the design of buildings or structures with
40 separate and self-contained purposes such as are ordinarily
41 included in the practice of architecture or engineering.

42 (c) "Board" means the Mississippi State Board of
43 Architecture as established by Section 73-1-3 et seq.

44 (d) "License" means a certificate granted by the
45 Mississippi State Board of Architecture authorizing its holder to
46 practice landscape architecture.

47 (e) "Mississippi chapter" means the Mississippi Chapter
48 of the American Society of Landscape Architects.

49 SECTION 3. Section 73-2-5, Mississippi Code of 1972, is
50 reenacted as follows:

51 73-2-5. No person shall use the title "landscape architect"
52 on any sign, title, card or device to indicate that such person is
53 practicing landscape architecture or is a landscape architect,
54 unless such person shall have secured from the board a license as
55 landscape architect in the manner hereinafter provided, and shall
56 thereafter comply with the provisions of this chapter. Every
57 holder of a current license shall display it in a conspicuous
58 place in his principal office or place of employment.

59 SECTION 4. Section 73-2-7, Mississippi Code of 1972, is
60 reenacted as follows:

61 73-2-7. In order to qualify for a license as a landscape
62 architect, an applicant must:

63 (a) Submit evidence of his good moral character and
64 integrity to the examining board.

65 (b) Have received a degree in landscape architecture
66 from a college or university having a minimum four-year curriculum
67 in landscape architecture approved by the board or have completed

68 seven (7) years of work in the practice of landscape architecture
69 of a grade and character suitable to the board. Graduation in a
70 curriculum other than landscape architecture from a college or
71 university shall be equivalent to two (2) years' experience of the
72 seven (7) specified above in this section, except that no
73 applicant shall receive credit for more than two (2) years'
74 experience for any scholastic training.

75 (c) Pass such written examination as required in
76 Section 73-2-9.

77 Each application or filing made under this section shall
78 include the Social Security number(s) of the applicant in
79 accordance with Section 93-11-64, Mississippi Code of 1972.

80 SECTION 5. Section 73-2-9, Mississippi Code of 1972, is
81 reenacted as follows:

82 73-2-9. Examinations for the license shall be held by the
83 board annually. The board shall adopt rules and regulations
84 covering the subjects and scope of the examinations, publish
85 appropriate announcements, and conduct the examinations at the
86 times designated. Except as otherwise provided in this chapter,
87 every applicant shall be required, in addition to all other
88 requirements, to take and pass a written examination. Each
89 written examination may be supplemented by such oral examinations
90 as the board shall determine.

91 SECTION 6. Section 73-2-11, Mississippi Code of 1972, is
92 reenacted as follows:

93 73-2-11. The board may exempt from examination any applicant
94 who holds a license or certificate to practice landscape
95 architecture issued to him upon examination by a legally
96 constituted board of examiners of any other state or Washington,
97 D.C., or any other territory or possession under the control of
98 the United States, provided that such requirements of the state in
99 which the applicant is registered are equivalent to those of this
100 state.

101 An applicant who is a licensed landscape architect but who

102 was admitted in a jurisdiction which did not offer a written
103 examination acceptable to the board or was admitted without the
104 requirement of passing a written examination may be issued a
105 license to practice landscape architecture in this state upon the
106 taking and passing of any examination or procedure as may be
107 adopted by the board, provided that such applicant meets all other
108 requirements for issuance of a license to practice landscape
109 architecture in this state.

110 SECTION 7. Section 73-2-13, Mississippi Code of 1972, is
111 reenacted as follows:

112 73-2-13. There shall be an advisory committee to the board
113 to consist of five (5) members appointed by the Governor from a
114 list of names supplied by Mississippi Chapter of the American
115 Society of Landscape Architects, giving the names of no fewer than
116 three (3) times the number of persons to be appointed. Each
117 member of the initially appointed committee shall be qualified as
118 described by Section 73-2-7. Appointments shall be licensed
119 landscape architects only and shall be for five-year terms. Each
120 member shall hold office until the appointment and qualification
121 of his successor. Vacancies occurring prior to the expiration of
122 the term shall be filled by appointment in like manner for the
123 unexpired term.

124 The committee shall review, approve or disapprove, and make
125 recommendations on all applications for landscape architect's
126 license. At the direction of the board, the committee shall also
127 review and investigate any charges brought against any landscape
128 architect as provided for in Section 73-2-16 and make findings of
129 fact and recommendations to the board concerning any disciplinary
130 action which the committee deems necessary and proper pursuant to
131 Section 73-2-16.

132 Each member of the committee shall be entitled to receive a
133 per diem in such amounts as shall be set by the board, but not to
134 exceed the amount provided for in Section 25-3-69, and shall be
135 reimbursed for expenses that are incurred in the actual

136 performance of his duties under the provisions of Section 25-3-41.

137 Before entering upon the discharge of his duties, each member
138 of the committee shall take and subscribe to the oath of office
139 and file it with the Secretary of State. The committee shall
140 elect at the first meeting of every calendar year from among its
141 members, a chairman and a secretary to hold office for one (1)
142 year.

143 SECTION 8. Section 73-2-15, Mississippi Code of 1972, is
144 reenacted as follows:

145 73-2-15. The board shall require that every landscape
146 architect shall pay a biennial license renewal fee set by the
147 board not in excess of Two Hundred Dollars (\$200.00). The renewal
148 fee shall be due and payable on the first day of January of each
149 year in which the fee is required to be paid and shall become
150 delinquent after the thirty-first day of January of such year, and
151 if the renewal fee is not paid before it becomes delinquent, a
152 penalty fee of Five Dollars (\$5.00) shall be added to the amount
153 thereof per month. If the renewal fee and penalty are not paid
154 before the first day of June in the year in which they become due,
155 the landscape architect's certificate shall be suspended. The
156 certificate may be reinstated upon the payment of the renewal fee,
157 the penalty fees and a reinstatement fee of Fifty Dollars
158 (\$50.00), and provision of such proof of the landscape architect's
159 qualifications as may be required in the sound discretion of the
160 board.

161 The board shall send a receipt to each landscape architect
162 promptly upon payment of the renewal fee.

163 The board may recognize, prepare or administer continuing
164 education programs for landscape architects as a basis for license
165 renewal.

166 The board shall adopt an appropriate seal for use by licensed
167 landscape architects.

168 SECTION 9. Section 73-2-16, Mississippi Code of 1972, is
169 reenacted as follows:

170 73-2-16. (1) The board shall also have the power to revoke,
171 suspend or annul the certificate or registration of a landscape
172 architect or reprimand, censure or otherwise discipline a
173 landscape architect.

174 (2) The board, upon satisfactory proof and in accordance
175 with the provisions of this chapter, may take the disciplinary
176 actions against any registered landscape architect for any of the
177 following reasons:

178 (a) Violating any of the provisions of Sections 73-2-1
179 through 73-2-21 or the implementing bylaws, rules, regulations or
180 standards of ethics or conduct duly adopted and promulgated by the
181 board pertaining to the practice of landscape architecture;

182 (b) Fraud, deceit or misrepresentation in obtaining a
183 certificate of registration;

184 (c) Gross negligence, malpractice, incompetency or
185 misconduct in the practice of landscape architecture;

186 (d) Any professional misconduct, as defined by the
187 board through bylaws, rules and regulations and standards of
188 conduct and ethics (professional misconduct shall not be defined
189 to include bidding on contracts for a price);

190 (e) Practicing or offering to practice landscape
191 architecture on an expired license or while under suspension or
192 revocation of a license unless said suspension or revocation be
193 abated through probation;

194 (f) Practicing landscape architecture under an assumed
195 or fictitious name;

196 (g) Being convicted by any court of a felony, except
197 conviction of culpable negligent manslaughter, in which case the
198 record of conviction shall be conclusive evidence;

199 (h) Willfully misleading or defrauding any person
200 employing him as a landscape architect by any artifice or false
201 statement;

202 (i) Having undisclosed financial or personal interest
203 which compromises his obligation to his client;

204 (j) Obtaining a certificate by fraud or deceit; or

205 (k) Violating any of the provisions of this chapter.

206 (3) Any person may prefer charges against any other person
207 for committing any of the acts set forth in subsection (2). Such
208 charges need not be sworn to, may be made upon actual knowledge,
209 or upon information and belief, and shall be filed with the board.
210 In the event any person licensed under Sections 73-2-1 through
211 73-2-21 is expelled from membership in any Mississippi or national
212 professional landscape architectural society or association, the
213 board shall thereafter cite said person to appear at a hearing
214 before the board and to show cause why disciplinary action should
215 not be taken against that person.

216 The board shall investigate all charges filed with it and,
217 upon finding reasonable cause to believe that the charges are not
218 frivolous, unfounded or filed in bad faith, may, in its
219 discretion, cause a hearing to be held, at a time and place fixed
220 by the board, regarding the charges and may compel the accused by
221 subpoena to appear before the board to respond to said charges.

222 No disciplinary action taken hereunder may be taken until the
223 accused has been furnished both a statement of the charges against
224 him and notice of the time and place of the hearing thereof, which
225 shall be personally served on the accused or mailed by registered
226 or certified mail, return receipt requested, to the last known
227 business or residence address of the accused not less than thirty
228 (30) days prior to the date fixed for the hearing.

229 (4) At any hearing held under the provisions of this
230 section, the board shall have the power to subpoena witnesses and
231 compel their attendance and require the production of any books,
232 papers or documents. The hearing shall be conducted before the
233 full board with the president of the board serving as the
234 presiding judge. Counsel for the board shall present all evidence
235 relating to the charges. All evidence shall be presented under
236 oath, which may be administered by any member of the board, and
237 thereafter the proceedings may, if necessary, be transcribed in

238 full by the court reporter and filed as part of the record in the
239 case. Copies of such transcription may be provided to any party
240 to the proceedings at a cost to be fixed by the board.

241 All witnesses who shall be subpoenaed and who shall appear in
242 any proceedings before the board shall receive the same fees and
243 mileage as allowed by law in judicial civil proceedings, and all
244 such fees shall be taxed as part of the costs of the case.

245 Where in any proceedings before the board any witness shall
246 fail or refuse to attend upon subpoena issued by the board, shall
247 refuse to testify or shall refuse to produce any books and papers,
248 the production of which is called for by the subpoena, the
249 attendance of such witness and the giving of his testimony and the
250 production of the books and papers shall be enforced by any court
251 of competent jurisdiction of this state in the manner provided for
252 the enforcement of attendance and testimony of witnesses in civil
253 cases in the courts of this state.

254 The accused shall have the right to be present at the hearing
255 in person, by counsel or other representative, or both. The
256 accused shall have the right to present evidence and to examine
257 and cross-examine all witnesses. The board is authorized to
258 continue or recess the hearing as may be necessary.

259 (5) At the conclusion of the hearing, the board may either
260 decide the issue at that time or take the case under advisement
261 for further deliberation. The board shall render its decision not
262 more than forty-five (45) days after the close of the hearing, and
263 shall forward to the last known business or residence address of
264 the accused by certified or registered mail, return receipt
265 requested, a written statement of the decision of the board.

266 If a majority of the board finds the accused guilty of the
267 charges filed, the board may: (a) issue a public or private
268 reprimand; (b) suspend or revoke the license of the accused, if
269 the accused is a registrant; or (c) in lieu of or in addition to
270 such reprimand, suspension or revocation, assess and levy upon the
271 guilty party a monetary penalty of not less than One Hundred

272 Dollars (\$100.00) nor more than Five Thousand Dollars (\$5,000.00)
273 for each violation.

274 (6) A monetary penalty assessed and levied under this
275 section shall be paid to the board upon the expiration of the
276 period allowed for appeal of such penalties under this section, or
277 may be paid sooner if the guilty party elects. Money collected by
278 the board under this section shall be deposited to the credit of
279 the board's general operating fund.

280 When payment of a monetary penalty assessed and levied by the
281 board in accordance with this section is not paid when due, the
282 board shall have the power to institute and maintain proceedings
283 in its name for enforcement of payment in the chancery court of
284 the county and judicial district of the residence of the guilty
285 party and if the guilty party be a nonresident of the State of
286 Mississippi, such proceedings shall be in the Chancery Court of
287 the First Judicial District of Hinds County, Mississippi.

288 (7) When the board has taken a disciplinary action under
289 this section, the board may, in its discretion, stay such action
290 and place the guilty party on probation for a period not to exceed
291 one (1) year upon the condition that the guilty party shall not
292 further violate either the law of the State of Mississippi
293 pertaining to the practice of landscape architecture or the
294 bylaws, rules and regulations, or standards of conduct and ethics
295 promulgated by the board.

296 (8) The board, in its discretion, may assess and tax any
297 part or all of the costs of any disciplinary proceedings conducted
298 under this section against the accused, if the accused is found
299 guilty of the charges.

300 (9) The power and authority of the board to assess and levy
301 the monetary penalties provided for in this section shall not be
302 affected or diminished by any other proceeding, civil or criminal,
303 concerning the same violation or violations except as provided in
304 this section.

305 (10) The board, for sufficient cause, may reissue a revoked

306 license of registration whenever a majority of the board members
307 vote to do so but in no event shall a revoked license be issued
308 within two (2) years of the revocation. A new license of
309 registration required to replace a revoked, lost, mutilated or
310 destroyed license may be issued, subject to the rules of the
311 board, for a charge not to exceed Twenty-five Dollars (\$25.00).

312 (11) The board may direct the advisory committee to review
313 and investigate any charges brought against any landscape
314 architect under this chapter and to hold the hearings provided for
315 in this section and to make findings of fact and recommendations
316 to the board concerning the disposition of such charges.

317 (12) Nothing herein contained shall preclude the board or
318 advisory committee from initiating proceedings in any case. The
319 advisory committee shall furnish legal advice and assistance to
320 the board whenever such service is requested.

321 (13) In addition to the reasons specified in subsection (2)
322 of this section, the board shall be authorized to suspend the
323 license of any licensee for being out of compliance with an order
324 for support, as defined in Section 93-11-153 of this act. The
325 procedure for suspension of a license for being out of compliance
326 with an order for support, and the procedure for the reissuance or
327 reinstatement of a license suspended for that purpose, and the
328 payment of any fees for the reissuance or reinstatement of a
329 license suspended for that purpose, shall be governed by Section
330 93-11-157 or 93-11-163 of this act, as the case may be. If there
331 is any conflict between any provision of Section 93-11-157 or
332 93-11-163 of this act and any provision of this chapter, the
333 provisions of Section 93-11-157 or 93-11-163 of this act, as the
334 case may be, shall control.

335 SECTION 10. Section 73-2-17, Mississippi Code of 1972, is
336 reenacted as follows:

337 73-2-17. Each applicant for examination as a landscape
338 architect shall pay to the board for the purposes of procuring,
339 administering and grading the examination, an administration fee

340 not to exceed One Hundred Dollars (\$100.00) together with an
341 application fee in such amount as the board may set, but in no
342 event to exceed the actual cost to the board of purchasing,
343 preparing and evaluating the examination. Upon passing the
344 examination and meeting the requirements of this chapter and upon
345 paying an initial registration fee in an amount set by the board,
346 an applicant shall be issued an original certificate as a licensed
347 landscape architect and a rubber stamp bearing the seal adopted by
348 the board for use by landscape architects. Each holder of a
349 certificate as provided herein shall be entitled to practice as a
350 licensed landscape architect without additional fee or charge
351 until the next biennial renewal period, and thereafter upon
352 payment of the biennial license fee as provided by Section
353 73-2-15.

354 A fee of Twenty-five Dollars (\$25.00) shall be charged for
355 each duplicate certificate issued by the board.

356 All checks or money orders submitted to the board shall be
357 made payable to the board.

358 SECTION 11. Section 73-2-19, Mississippi Code of 1972, is
359 reenacted as follows:

360 73-2-19. This chapter shall not require licensing in the
361 following cases:

362 (a) The practice of landscape architecture by any
363 person who acts under the supervision of a registered landscape
364 architect or by an employee of a person lawfully engaged in the
365 practice of landscape architecture and who, in either event, does
366 not assume responsible charge of design or supervision.

367 (b) The practice of landscape architecture by employees
368 of the United States Government while engaged within this state in
369 the practice of landscape architecture for said government.

370 (c) The practice of planning as customarily done by
371 regional and urban planners.

372 (d) The practice of arborists, foresters, gardeners,
373 home builders, floriculturists and ornamental horticulturists

374 performing their respective trades or professions.

375 (e) The practice of any nurseryman or landscape
376 contractor to practice planting design, planting, and location and
377 arrangement of plant materials.

378 (f) The practice of architecture or engineering as
379 defined by the laws of the State of Mississippi, including, but
380 not limited to such planting as might be incidental to such
381 practice.

382 (g) The work or practice of a regular employee of a
383 public service company or public utility, by rendering to such
384 company landscape architectural service in connection with its
385 facilities which are subject to regulation, supervision and
386 control in order to safeguard life, health and property by the
387 Public Service Commission of this state shall be exempt so long as
388 such person is thus actually and exclusively employed.

389 (h) Any person, firm or corporation performing
390 landscape architecture or working on his own land or property or
391 employing anyone to work on his own land.

392 (i) The practice of golf course architects who are
393 engaged in the preparation of drawings and specifications and
394 responsible supervision, including related consultation,
395 investigation, reconnaissance, research and design, where the
396 dominant purpose of such services is the design of a golf course,
397 in accordance with accepted professional standards of public
398 health and safety.

399 SECTION 12. Section 73-2-21, Mississippi Code of 1972, is
400 reenacted as follows:

401 73-2-21. It shall be a misdemeanor for any person to:

402 (a) Offer to practice or hold himself out as entitled
403 to practice landscape architecture, unless duly certified and
404 registered under this chapter.

405 (b) Present as his own the certificate of another.

406 (c) Give false or forged evidence to the board or any
407 member thereof in obtaining a certificate.

408 (d) Falsely impersonate any other practitioner of like
409 or different name.

410 (e) Use or attempt to use a certificate that has been
411 revoked.

412 (f) Otherwise violate any of the provisions of this
413 chapter.

414 Such misdemeanor shall be punishable by a fine of not less
415 than Five Hundred Dollars (\$500.00) and not more than One Thousand
416 Dollars (\$1,000.00), or imprisonment for not more than one (1)
417 year in the county jail, or both.

418 If any person, firm or corporation violates any of the
419 provisions of this chapter, the secretary of the board shall, upon
420 direction of a majority of the board, in the name of the State of
421 Mississippi, acting through an attorney employed by the board,
422 apply in any chancery court of competent jurisdiction for an
423 injunction or temporary restraining order pursuant to the
424 Mississippi Rules of Civil Procedure enjoining such violation or
425 for an order enforcing compliance with the provisions of this
426 chapter. If at such hearing it is established that such person
427 has violated or is violating this chapter, the court may, in
428 addition to enjoining such violation or enforcing compliance with
429 this chapter, award all cost and expenses, including reasonable
430 attorney's fees, to the board. In case of violation of any decree
431 issued in compliance with this paragraph, the court may try and
432 punish the offender for contempt of court and shall fine such
433 offender a sum of not less than Two Hundred Fifty Dollars
434 (\$250.00) per offense. Each day of such violation shall
435 constitute a distinct and separate offense.

436 SECTION 13. Section 73-2-23, Mississippi Code of 1972, is
437 reenacted as follows:

438 73-2-23. All courts of competent jurisdiction within their
439 respective territorial jurisdiction are hereby empowered to hear,
440 try and determine such crimes without indictment and to impose in
441 full the punishments of fines and imprisonments herein prescribed.

442 All violations of this chapter, when reported to the board and
443 duly substantiated by affidavits or other satisfactory evidence,
444 shall be investigated by it, and if the report is found to be true
445 and the evidence substantiated, the board shall report such
446 violations to the Attorney General and request prompt prosecution.

447 SECTION 14. Section 73-2-25, Mississippi Code of 1972, is
448 reenacted as follows:

449 73-2-25. Nothing contained in this chapter shall be
450 construed to require the use of a landscape architect for any job
451 or work in which landscape architecture is either directly or
452 indirectly involved.

453 SECTION 15. Section 73-2-27, Mississippi Code of 1972, which
454 provides for the repeal of the Advisory Committee to the State
455 Board of Architecture and prescribes its duties and powers in
456 regulating the practice of landscape architecture, is repealed.

457 SECTION 16. The publishers shall print in the supplement the
458 text of Section 73-2-19 as it appears in Section 11 of this act,
459 which is the language that was contained in Section 73-2-19 as it
460 appeared in Chapter 451, Laws of 1996.

461 SECTION 17. This act shall take effect and be in force from
462 and after July 1, 1999, and shall stand repealed from and after
463 July 1, 2002.