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To: Judiciary B

HOUSE BILL NO. 835

1 AN ACT TO AMEND SECTION 31-3-3, MISSISSIPPI CODE OF 1972, TO  
 2 INCREASE THE NUMBER OF MEMBERS ON THE STATE BOARD OF PUBLIC  
 3 CONTRACTORS AND TO REQUIRE THE ADDITIONAL MEMBERS TO BE  
 4 CONSTRUCTION PROGRAM MANAGERS OR CONSTRUCTION MANAGERS; TO AMEND  
 5 SECTION 31-3-13, MISSISSIPPI CODE OF 1972, TO DIRECT THE BOARD TO  
 6 REGULATE CONSTRUCTION PROGRAM MANAGEMENT BY REQUIRING  
 7 CERTIFICATION AND TO DEFINE CONSTRUCTION PROGRAM MANAGERS; AND FOR  
 8 RELATED PURPOSES.

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

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

12 31-3-3. There is hereby created the State Board of  
 13 Contractors of the State of Mississippi, which shall consist of  
 14 ten (10) members who shall be appointed by the Governor. All  
 15 appointments to the board after July 1, 1980, shall be made with  
 16 the advice and consent of the Senate. Two (2) road contractors;  
 17 two (2) building contractors; two (2) residential builders as  
 18 defined in Section 73-59-1; one (1) plumbing or heating and air  
 19 conditioning contractor; one (1) electrical contractor; and one  
 20 (1) water and sewer contractor shall compose the board. From and  
 21 after July 1, 1992, the Governor shall appoint one (1) additional  
 22 member who shall be a roofing contractor and whose term of office  
 23 shall be five (5) years. Each member shall be an actual resident  
 24 of the State of Mississippi and must have been actually engaged in

25 the contracting business for a period of not less than ten (10)  
26 years before appointment. The initial terms of the two (2)  
27 residential builders shall be for two (2) and four (4) years,  
28 respectively, beginning July 1, 1993.

29 From and after July 1, 2000, the board shall consist of  
30 twelve (12) members. Ten (10) of the members must have the  
31 experience and background as those previously described above and  
32 two (2) shall be construction program managers or construction  
33 managers, one (1) of whom shall serve an initial term of four (4)  
34 years and the other shall serve an initial term of five (5) years.

35 Upon the expiration of the term of office of any member of  
36 the board, the Governor shall appoint a new member for a term of  
37 five (5) years, such new appointments being made so as to maintain  
38 on the board two (2) building contractors; two (2) road  
39 contractors; two (2) residential builders; one (1) plumbing or  
40 heating and air conditioning contractor; one (1) electrical  
41 contractor; and one (1) water and sewer contractor; \* \* \* one (1)  
42 roofing contractor and two (2) construction program managers or  
43 construction managers. The Governor shall fill any vacancy by  
44 appointment, such appointee to serve the balance of the term of  
45 the original appointee. The Governor may remove any member of the  
46 board for misconduct, incompetency or willful neglect of duty.

47 In the event the Governor fails to appoint a member of the  
48 board within twelve (12) months of the occurrence of the vacancy,  
49 such vacancy shall be filled by majority vote of the board,  
50 subject to advice and consent of the Senate and the requirements  
51 of this section.

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

54 31-3-13. The board shall have the following powers and  
55 responsibilities:

56           (a) To receive applications for certificates of  
57 responsibility, to investigate and examine applicants for same by  
58 holding hearings and securing information, to conduct  
59 examinations, and to issue certificates of responsibility to such  
60 contractors as the board finds to be responsible. One-fourth  
61 (1/4) of the certificates scheduled for renewal on the last day of  
62 December 1980, shall be reviewed by the board on the first Tuesday  
63 in January 1981. The remaining certificates shall be subject to  
64 renewal in the following manner: One-fourth (1/4) on the first  
65 Tuesday in April 1981; one-fourth (1/4) on the first Tuesday in  
66 July 1981; and one-fourth (1/4) on the first Tuesday in October  
67 1981. The board is authorized to extend the dates of expiration  
68 of certificates to coincide with the scheduled date of review of  
69 individual contractors. Except for the certificates extended from  
70 December 31, 1980, to the first Tuesday in January 1981, the board  
71 shall charge fees for the extension of certificates as follows:

72                   (i) Twenty-five Dollars (\$25.00) if the date of  
73 renewal of the extended certificate is the first Tuesday in April  
74 1981;

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

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

80           The extended certificates renewed in compliance with this  
81 paragraph (a) and all original certificates and renewals thereof  
82 issued on or after July 1, 1980, shall expire one (1) year from  
83 the date of issuance. No certificate or any renewal thereof shall

84 be issued until the application has been on file with the board  
85 for at least thirty (30) days. Application for renewal of  
86 certificates of responsibility, together with the payment of a  
87 special privilege license tax as provided under this chapter,  
88 shall serve to extend the current certificate until the board  
89 either renews the certificate or denies the application.

90 No certificate of responsibility or any renewal thereof shall  
91 be issued until the applicant furnishes to the board his  
92 Mississippi state sales tax number or Mississippi state use tax  
93 number and his state income tax identification numbers.

94 Additional fees may be required as provided in Section  
95 31-3-14.

96 The board shall conduct an objective, standardized  
97 examination of an applicant for a certificate to ascertain the  
98 ability of the applicant to make practical application of his  
99 knowledge of the profession or business of construction in the  
100 category or categories for which he has applied for a certificate  
101 of responsibility. The cost of the test and the cost of  
102 administering the test shall be paid for by applicants for  
103 certificates of responsibility at the time applications are filed.  
104 The board shall investigate thoroughly the past record of all  
105 applicants, which will include an effort toward ascertaining the  
106 qualifications of applicants in reading plans and specifications,  
107 estimating costs, construction ethics, and other similar matters.  
108 The board shall take all applicants under consideration after  
109 having examined him or them and go thoroughly into the records and  
110 examinations, prior to granting any certificate of responsibility.  
111 If the applicant is an individual, examination may be taken by his

112 personal appearance for examination or by the appearance for  
113 examination of one or more of his responsible managing employees;  
114 and if a copartnership or corporation or any other combination or  
115 organization, by the examination of one or more of the responsible  
116 managing officers or members of the executive staff of the  
117 applicant's firm, according to its own designation.

118 (b) To conduct thorough investigations of all  
119 applicants seeking renewal of their licenses and of all complaints  
120 filed with the board concerning the performance of a contractor on  
121 a public or private project.

122 (c) To obtain information concerning the responsibility  
123 of any applicant for a certificate of responsibility or a holder  
124 of a certificate of responsibility under this chapter. Such  
125 information may be obtained by investigation, by hearings, or by  
126 any other reasonable and lawful means. The board shall keep such  
127 information appropriately filed and shall disseminate same to any  
128 interested person. The board shall have the power of subpoena.

129 (d) To maintain a list of contractors to whom  
130 certificates of responsibility are issued, refused, revoked or  
131 suspended, which list shall be available to any interested person.  
132 Such list shall indicate the kind or kinds of works or projects  
133 for which a certificate of responsibility was issued, refused,  
134 revoked or suspended.

135 (e) To revoke by order entered on its minutes a  
136 certificate of responsibility upon a finding by the board that a  
137 particular contractor is not responsible, and to suspend such  
138 certificate of responsibility in particular cases pending  
139 investigation, upon cause to be stated in the board's order of

140 suspension. No such revocation or suspension shall be ordered  
141 without a hearing conducted upon not less than ten (10) days'  
142 notice to such certificate holder by certified or registered mail,  
143 wherein the holder of the certificate of responsibility shall be  
144 given an opportunity to present all lawful evidence which he may  
145 offer.

146 (f) To adopt rules and regulations setting forth the  
147 requirements for certificates of responsibility, the revocation or  
148 suspension thereof, and all other matters concerning same; rules  
149 and regulations governing the conduct of the business of the board  
150 and its employees; and such other rules and regulations as the  
151 board finds necessary for the proper administration of this  
152 chapter, including those for the conduct of its hearings on the  
153 revocation or suspension of certificates of responsibility. Such  
154 rules and regulations shall not conflict with the provisions of  
155 this chapter.

156 (g) The board shall have the power and responsibility  
157 to classify the kind or kinds of works or projects that a  
158 contractor is qualified and entitled to perform under the  
159 certificate of responsibility issued to him. Such classification  
160 shall be specified in the certificate of responsibility.

161 The powers of the State Board of Contractors shall not extend  
162 to fixing a maximum limit in the bid amount of any contractor, or  
163 the bonding capacity, or a maximum amount of work which a  
164 contractor may have under contract at any time, except as stated  
165 in paragraph (a) of this section; and the Board of Contractors  
166 shall not have jurisdiction or the power or authority to determine  
167 the maximum bond a contractor may be capable of obtaining. The

168 board, in determining the qualifications of any applicant for an  
169 original certificate of responsibility or any renewal thereof,  
170 shall, among other things, take into consideration the following:  
171 (1) experience and ability, (2) character, (3) the manner of  
172 performance of previous contracts, (4) financial condition, (5)  
173 equipment, (6) personnel, (7) work completed, (8) work on hand,  
174 (9) ability to perform satisfactorily work under contract at the  
175 time of an application for a certificate of responsibility or a  
176 renewal thereof, (10) default in complying with provisions of this  
177 law, or any other law of the state, and (11) the results of  
178 objective, standardized examinations. A record shall be made and  
179 preserved by the board of each examination of an applicant and the  
180 findings of the board thereon, and a certified copy of the record  
181 and findings shall be furnished to any applicant desiring to  
182 appeal from any order or decision of the board.

183 (h) The board shall enter upon its minutes an order or  
184 decision upon each application filed with it, and it may state in  
185 such order or decision the reason or reasons for its order or  
186 decision.

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

191 The holder of any valid certificate of responsibility issued  
192 by the Board of Public Contractors prior to January 1, 1986, shall  
193 be automatically issued a certificate of responsibility by the  
194 State Board of Contractors for the same classification or  
195 classifications of work which the holder was entitled to perform

196 under the State Board of Public Contractors Act.

197 (i) To regulate persons engaging in construction  
198 program management, including the certification of persons who  
199 wish to engage in construction program management. The  
200 certification standards shall be developed with the Department of  
201 Finance and Administration's Bureau of Building, Grounds and Real  
202 Property Management and shall consist of:

203 (i) A construction program manager shall have a  
204 minimum of a bachelor's degree in architecture, engineering,  
205 building science, construction management, or construction  
206 technology and four (4) years of experience in managing  
207 multiphased construction projects with high costs, under the  
208 supervision of a licensed construction program manager. The board  
209 may waive the education and experience requirements provided for  
210 in this paragraph (i) if an applicant for certification can  
211 demonstrate that he has five (5) years of experience in  
212 construction program management.

213 (ii) Examination of all applicants for  
214 certification, which shall consist of a content-valid examination  
215 which tests applicant knowledge of all relevant matters pertinent  
216 to construction program management including, but not limited to,  
217 environmental and safety regulation; interpretation of  
218 architectural and construction contracts; budgeting;  
219 constructability reviews; cost accounting; financing; life cycle  
220 costing; planning, programming and scheduling of projects; value  
221 engineering; and project administration.

222 (iii) For the purposes of this paragraph (i), the  
223 following words shall have the meanings ascribed in this



224 subparagraph (iii), unless the context clearly indicates

225 otherwise:

226                   1. "Construction program management" means a  
227 set of management and technical services rendered by a person or  
228 firm to a public sector building owner during the predesign,  
229 design, construction or post-construction phases of new  
230 construction, demolition, alteration, repair or renovation  
231 projects. These services shall include any one or more of the  
232 following: project planning, budgeting, scheduling, coordination,  
233 design management, construction administration or facility  
234 occupancy actions, but shall not include any component of the  
235 actual construction work. The term shall not include general  
236 contractors who are engaged to actually perform the construction  
237 work and also shall not include services customarily performed by  
238 licensed or registered engineers.

239                   2. "Construction program manager" means a  
240 person who performs construction program management.

241                   3. "Construction manager" means any person  
242 who performs construction management or administration or facility  
243 occupancy actions.

244           SECTION 3. This act shall take effect and be in force from  
245 and after July 1, 2000.