

By: Guice

To: Judiciary B

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 1098

1 AN ACT TO ALLOW THE USE OF CONSTRUCTION MANAGERS OR THE BID  
2 PROCESS IN CERTAIN PUBLIC PROJECTS; TO AMEND SECTION 31-3-13,  
3 MISSISSIPPI CODE OF 1972, TO LICENSE AND REGULATE CONSTRUCTION  
4 MANAGERS; AND FOR RELATED PURPOSES.

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

6 SECTION 1. The Legislature finds and declares that in order  
7 to secure public trust in the letting of public contracts any  
8 construction projects using public funds should utilize the bid  
9 procedures as provided by law.

10 SECTION 2. In any construction contract involving public  
11 funds for construction the following shall apply:

12 (a) If the cost for the construction of a building is  
13 Twenty Million Dollars (\$20,000,000.00) or more, a construction  
14 manager may be used on the project or if a construction manager is  
15 not used the bid procedure shall be followed.

16 (b) If the cost for the construction of a building is  
17 less than Twenty Million Dollars (\$20,000,000.00) the bid  
18 procedure shall be used.

19 (c) If a construction manager is used, he shall not bid  
20 on any part of the project.

21 (d) For the purposes of this section the construction  
22 of a separate building in a project containing more than one (1)  
23 building shall be considered a separate project for the purposes  
24 of the monetary requirements of paragraphs (a) and (b) of this  
25 subsection.

26 (e) The use of program managers for projects subject to  
27 the provisions of this section is prohibited.

28 (f) If a construction manager is used, all parts of a  
29 project shall be subject to the bid procedure.

30 SECTION 3. Section 31-3-13, Mississippi Code of 1972, is  
31 amended as follows:[BD1]

32 31-3-13. The board shall have the following powers and  
33 responsibilities:

34 (a) To receive applications for certificates of  
35 responsibility, to investigate and examine applicants for same by  
36 holding hearings and securing information, to conduct  
37 examinations, and to issue certificates of responsibility to such  
38 contractors as the board finds to be responsible. One-fourth  
39 (1/4) of the certificates scheduled for renewal on the last day of  
40 December 1980, shall be reviewed by the board on the first Tuesday  
41 in January 1981. The remaining certificates shall be subject to  
42 renewal in the following manner: One-fourth (1/4) on the first  
43 Tuesday in April 1981; one-fourth (1/4) on the first Tuesday in  
44 July 1981; and one-fourth (1/4) on the first Tuesday in October  
45 1981. The board is authorized to extend the dates of expiration  
46 of certificates to coincide with the scheduled date of review of  
47 individual contractors. Except for the certificates extended from  
48 December 31, 1980, to the first Tuesday in January 1981, the board  
49 shall charge fees for the extension of certificates as follows:

50 (i) Twenty-five Dollars (\$25.00) if the date of  
51 renewal of the extended certificate is the first Tuesday in April  
52 1981;

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

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

58 The extended certificates renewed in compliance with this  
59 paragraph (a) and all original certificates and renewals thereof  
60 issued on or after July 1, 1980, shall expire one (1) year from

61 the date of issuance. No certificate or any renewal thereof shall  
62 be issued until the application has been on file with the board  
63 for at least thirty (30) days. Application for renewal of  
64 certificates of responsibility, together with the payment of a  
65 special privilege license tax as provided under this chapter,  
66 shall serve to extend the current certificate until the board  
67 either renews the certificate or denies the application.

68 No certificate of responsibility or any renewal thereof shall  
69 be issued until the applicant furnishes to the board his  
70 Mississippi state sales tax number or Mississippi state use tax  
71 number and his state income tax identification numbers.

72 Additional fees may be required as provided in Section  
73 31-3-14.

74 The board shall conduct an objective, standardized  
75 examination of an applicant for a certificate to ascertain the  
76 ability of the applicant to make practical application of his  
77 knowledge of the profession or business of construction in the  
78 category or categories for which he has applied for a certificate  
79 of responsibility. The cost of the test and the cost of  
80 administering the test shall be paid for by applicants for  
81 certificates of responsibility at the time applications are filed.  
82 The board shall investigate thoroughly the past record of all  
83 applicants, which will include an effort toward ascertaining the  
84 qualifications of applicants in reading plans and specifications,  
85 estimating costs, construction ethics, and other similar matters.  
86 The board shall take all applicants under consideration after  
87 having examined him or them and go thoroughly into the records and  
88 examinations, prior to granting any certificate of responsibility.  
89 If the applicant is an individual, examination may be taken by his  
90 personal appearance for examination or by the appearance for  
91 examination of one or more of his responsible managing employees;  
92 and if a copartnership or corporation or any other combination or  
93 organization, by the examination of one or more of the responsible

94 managing officers or members of the executive staff of the  
95 applicant's firm, according to its own designation.

96 (b) To conduct thorough investigations of all  
97 applicants seeking renewal of their licenses and of all complaints  
98 filed with the board concerning the performance of a contractor on  
99 a public or private project.

100 (c) To obtain information concerning the responsibility  
101 of any applicant for a certificate of responsibility or a holder  
102 of a certificate of responsibility under this chapter. Such  
103 information may be obtained by investigation, by hearings, or by  
104 any other reasonable and lawful means. The board shall keep such  
105 information appropriately filed and shall disseminate same to any  
106 interested person. The board shall have the power of subpoena.

107 (d) To maintain a list of contractors to whom  
108 certificates of responsibility are issued, refused, revoked or  
109 suspended, which list shall be available to any interested person.  
110 Such list shall indicate the kind or kinds of works or projects  
111 for which a certificate of responsibility was issued, refused,  
112 revoked or suspended.

113 (e) To revoke by order entered on its minutes a  
114 certificate of responsibility upon a finding by the board that a  
115 particular contractor is not responsible, and to suspend such  
116 certificate of responsibility in particular cases pending  
117 investigation, upon cause to be stated in the board's order of  
118 suspension. No such revocation or suspension shall be ordered  
119 without a hearing conducted upon not less than ten (10) days'  
120 notice to such certificate holder by certified or registered mail,  
121 wherein the holder of the certificate of responsibility shall be  
122 given an opportunity to present all lawful evidence which he may  
123 offer.

124 (f) To adopt rules and regulations setting forth the  
125 requirements for certificates of responsibility, the revocation or  
126 suspension thereof, and all other matters concerning same; rules

127 and regulations governing the conduct of the business of the board  
128 and its employees; and such other rules and regulations as the  
129 board finds necessary for the proper administration of this  
130 chapter, including those for the conduct of its hearings on the  
131 revocation or suspension of certificates of responsibility. Such  
132 rules and regulations shall not conflict with the provisions of  
133 this chapter.

134 (g) The board shall have the power and responsibility  
135 to classify the kind or kinds of works or projects that a  
136 contractor is qualified and entitled to perform under the  
137 certificate of responsibility issued to him. Such classification  
138 shall be specified in the certificate of responsibility.

139 The powers of the State Board of Contractors shall not extend  
140 to fixing a maximum limit in the bid amount of any contractor, or  
141 the bonding capacity, or a maximum amount of work which a  
142 contractor may have under contract at any time, except as stated  
143 in paragraph (a) of this section; and the Board of Contractors  
144 shall not have jurisdiction or the power or authority to determine  
145 the maximum bond a contractor may be capable of obtaining. The  
146 board, in determining the qualifications of any applicant for an  
147 original certificate of responsibility or any renewal thereof,  
148 shall, among other things, take into consideration the following:

149 (1) experience and ability, (2) character, (3) the manner of  
150 performance of previous contracts, (4) financial condition, (5)  
151 equipment, (6) personnel, (7) work completed, (8) work on hand,  
152 (9) ability to perform satisfactorily work under contract at the  
153 time of an application for a certificate of responsibility or a  
154 renewal thereof, (10) default in complying with provisions of this  
155 law, or any other law of the state, and (11) the results of  
156 objective, standardized examinations. A record shall be made and  
157 preserved by the board of each examination of an applicant and the  
158 findings of the board thereon, and a certified copy of the record  
159 and findings shall be furnished to any applicant desiring to

160 appeal from any order or decision of the board.

161 (h) The board shall enter upon its minutes an order or  
162 decision upon each application filed with it, and it may state in  
163 such order or decision the reason or reasons for its order or  
164 decision.

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

169 The holder of any valid certificate of responsibility issued  
170 by the Board of Public Contractors prior to January 1, 1986, shall  
171 be automatically issued a certificate of responsibility by the  
172 State Board of Contractors for the same classification or  
173 classifications of work which the holder was entitled to perform  
174 under the State Board of Public Contractors Act.

175 (i) To license and regulate construction managers  
176 through the certification process provided in this chapter. The  
177 board shall develop certification standards and provide  
178 examinations for certification as a construction manager. For the  
179 purposes of this paragraph the term "construction manager" means  
180 any person who covenants with an owner to further the interests of  
181 the owner by furnishing construction management skills and  
182 judgment in cooperation with, and reliance upon, the services of  
183 an architect or engineer and who agrees to furnish business  
184 administration and management services and to perform in an  
185 expeditious and economical manner consistent with the interests of  
186 the owner. Provided, however, these requirements shall not apply  
187 to architects and engineers licensed and registered in the state  
188 who serve as construction managers.

189 SECTION 4. This act shall take effect and be in force from  
190 and after July 1, 2000.