

By: Representative Stevens

To: Judiciary A

HOUSE BILL NO. 462

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 AND 73-2-23, MISSISSIPPI CODE OF 1972, WHICH REGULATE THE
 4 PRACTICE OF LANDSCAPE ARCHITECTURE; TO AMEND REENACTED SECTION
 5 73-2-3, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF
 6 LANDSCAPE ARCHITECT; TO AMEND REENACTED SECTION 73-2-5,
 7 MISSISSIPPI CODE OF 1972, TO CLARIFY LICENSING REQUIREMENTS; TO
 8 AMEND REENACTED SECTION 73-2-11, MISSISSIPPI CODE OF 1972, TO
 9 CLARIFY THE PROCEDURE FOR NONRESIDENT APPLICANTS FOR EXAMINATION;
 10 TO AMEND REENACTED SECTION 73-2-19, MISSISSIPPI CODE OF 1972, TO
 11 REVISE CERTAIN EXEMPTIONS FROM LICENSING; TO REPEAL SECTION
 12 73-2-25, MISSISSIPPI CODE OF 1972, WHICH DOES NOT REQUIRE THE USE
 13 OF LANDSCAPE ARCHITECTS FOR LANDSCAPE ARCHITECTURE JOBS; TO AMEND
 14 SECTION 17, CHAPTER 371, LAWS OF 1999, TO EXTEND THE REPEALER ON
 15 THE LANDSCAPE ARCHITECTURE LAW; AND FOR RELATED PURPOSES.

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

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

19 73-2-1. This chapter shall be known and may be cited as the
 20 "Landscape Architectural Practice Law."

21 SECTION 2. Section 73-2-3, Mississippi Code of 1972, is
 22 reenacted and amended as follows:

23 73-2-3. As used in this chapter:

24 (a) "Landscape architect" means a person who is
 25 licensed to practice landscape architecture in this state under
 26 the authority of this chapter and is engaging in the practice of
 27 landscape architecture within the meaning and intent of this
 28 chapter when he performs or holds himself out as capable of
 29 performing any of the services or creative works within the
 30 definition of landscape architecture.

31 (b) "Landscape architecture" means any service or
 32 creative work, the adequate performance of which requires

33 landscape architectural education, training and experience; the
34 performance of professional services such as consultation,
35 investigation, research, associated planning, design, preparation
36 of drawings, specifications and contract documents, and
37 responsible supervision or construction management in connection
38 with the development of land areas where, and to the extent that,
39 dominant purpose of such services is the preservation, enhancement
40 or determination of proper land uses, natural land features,
41 ground cover and plantings, naturalistic and aesthetic values; the
42 determination of settings, grounds and approaches for buildings
43 and structures or other improvements; the determination of
44 environmental problems of land relating to erosion, flooding,
45 blight and other hazards; the shaping and contouring of land and
46 water forms; the setting of grades, determination of drainage and
47 providing for storm drainage systems where such systems do not
48 require structural design of system components, and determination
49 of landscape irrigation; the design of such tangible objects and
50 features as are necessary to the purpose outlined herein, but
51 shall not include the design of buildings or structures with
52 separate and self-contained purposes such as are ordinarily
53 included in the practice of architecture or engineering.

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

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

59 (e) "Mississippi chapter" means the Mississippi Chapter
60 of the American Society of Landscape Architects.

61 SECTION 3. Section 73-2-5, Mississippi Code of 1972, is
62 reenacted and amended as follows:

63 73-2-5. No person shall practice landscape architecture in
64 this state or use the title "landscape architect" on any sign,
65 title, card or device to indicate that such person is practicing

66 landscape architecture or is a landscape architect, unless such
67 person shall have secured from the board a license as landscape
68 architect in the manner hereinafter provided, and shall thereafter
69 comply with the provisions of this chapter. Every holder of a
70 current license shall display it in a conspicuous place in his
71 principal office or place of employment.

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

74 73-2-7. In order to qualify for a license as a landscape
75 architect, an applicant must:

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

78 (b) Have received a degree in landscape architecture
79 from a college or university having a minimum four-year curriculum
80 in landscape architecture approved by the board or have completed
81 seven (7) years of work in the practice of landscape architecture
82 of a grade and character suitable to the board. Graduation in a
83 curriculum other than landscape architecture from a college or
84 university shall be equivalent to two (2) years' experience of the
85 seven (7) specified above in this section, except that no
86 applicant shall receive credit for more than two (2) years'
87 experience for any scholastic training.

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

90 Each application or filing made under this section shall
91 include the social security number(s) of the applicant in
92 accordance with Section 93-11-64, Mississippi Code of 1972.

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

95 73-2-9. Examinations for the license shall be held by the
96 board annually. The board shall adopt rules and regulations
97 covering the subjects and scope of the examinations, publish
98 appropriate announcements, and conduct the examinations at the

99 times designated. Except as otherwise provided in this chapter,
100 every applicant shall be required, in addition to all other
101 requirements, to take and pass a written examination. Each
102 written examination may be supplemented by such oral examinations
103 as the board shall determine.

104 SECTION 6. Section 73-2-11, Mississippi Code of 1972, is
105 reenacted and amended as follows:

106 73-2-11. The board may exempt from examination any applicant
107 who holds a license or certificate to practice landscape
108 architecture issued to him upon examination by a legally
109 constituted board of examiners of any other state or Washington,
110 D.C., or any other territory or possession under the control of
111 the United States, provided that such requirements of the state in
112 which the applicant is registered are equivalent to those of this
113 state.

114 Each nonresident applicant shall submit, as part of the
115 application, a sworn affidavit stating that neither such applicant
116 nor any person in or agent of the applicant's firm has practiced
117 or is practicing landscape architectural work in this state prior
118 to the applicant having been licensed by the board unless such
119 person or agent holds a license to practice landscape architecture
120 in this state. Failure to submit this affidavit or submitting an
121 affidavit which is false in any respect shall constitute just
122 cause for denial of the application.

123 An applicant who is a licensed landscape architect but who
124 was admitted in a jurisdiction which did not offer a written
125 examination acceptable to the board or was admitted without the
126 requirement of passing a written examination may be issued a
127 license to practice landscape architecture in this state upon the
128 taking and passing of any examination or procedure as may be
129 adopted by the board, provided that such applicant meets all other
130 requirements for issuance of a license to practice landscape
131 architecture in this state.

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

134 73-2-13. There shall be an advisory committee to the board
135 to consist of five (5) members appointed by the Governor from a
136 list of names supplied by Mississippi Chapter of the American
137 Society of Landscape Architects, giving the names of no fewer than
138 three (3) times the number of persons to be appointed. Each
139 member of the initially appointed committee shall be qualified as
140 described by Section 73-2-7. Appointments shall be licensed
141 landscape architects only and shall be for five-year terms. Each
142 member shall hold office until the appointment and qualification
143 of his successor. Vacancies occurring prior to the expiration of
144 the term shall be filled by appointment in like manner for the
145 unexpired term.

146 The committee shall review, approve or disapprove, and make
147 recommendations on all applications for landscape architect's
148 license. At the direction of the board, the committee shall also
149 review and investigate any charges brought against any landscape
150 architect as provided for in Section 73-2-16 and make findings of
151 fact and recommendations to the board concerning any disciplinary
152 action which the committee deems necessary and proper pursuant to
153 Section 73-2-16.

154 Each member of the committee shall be entitled to receive a
155 per diem in such amounts as shall be set by the board, but not to
156 exceed the amount provided for in Section 25-3-69, and shall be
157 reimbursed for expenses that are incurred in the actual
158 performance of his duties under the provisions of Section 25-3-41.

159 Before entering upon the discharge of his duties, each member
160 of the committee shall take and subscribe to the oath of office
161 and file it with the Secretary of State. The committee shall
162 elect at the first meeting of every calendar year from among its
163 members, a chairman and a secretary to hold office for one (1)
164 year.

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

167 73-2-15. The board shall require that every landscape
168 architect shall pay a biennial license renewal fee set by the
169 board not in excess of Two Hundred Dollars (\$200.00). The renewal
170 fee shall be due and payable on the first day of January of each
171 year in which the fee is required to be paid and shall become
172 delinquent after the thirty-first day of January of such year, and
173 if the renewal fee is not paid before it becomes delinquent, a
174 penalty fee of Five Dollars (\$5.00) shall be added to the amount
175 thereof per month. If the renewal fee and penalty are not paid
176 before the first day of June in the year in which they become due,
177 the landscape architect's certificate shall be suspended. The
178 certificate may be reinstated upon the payment of the renewal fee,
179 the penalty fees and a reinstatement fee of Fifty Dollars
180 (\$50.00), and provision of such proof of the landscape architect's
181 qualifications as may be required in the sound discretion of the
182 board.

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

185 The board may recognize, prepare or administer continuing
186 education programs for landscape architects as a basis for license
187 renewal.

188 The board shall adopt an appropriate seal for use by licensed
189 landscape architects.

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

192 73-2-16. (1) The board shall also have the power to revoke,
193 suspend or annul the certificate or registration of a landscape
194 architect or reprimand, censure or otherwise discipline a
195 landscape architect.

196 (2) The board, upon satisfactory proof and in accordance
197 with the provisions of this chapter, may take the disciplinary

198 actions against any registered landscape architect for any of the
199 following reasons:

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

204 (b) Fraud, deceit or misrepresentation in obtaining a
205 certificate of registration;

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

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

212 (e) Practicing or offering to practice landscape
213 architecture on an expired license or while under suspension or
214 revocation of a license unless said suspension or revocation be
215 abated through probation;

216 (f) Practicing landscape architecture under an assumed
217 or fictitious name;

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

221 (h) Willfully misleading or defrauding any person
222 employing him as a landscape architect by any artifice or false
223 statement;

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

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

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

228 (3) Any person may prefer charges against any other person
229 for committing any of the acts set forth in subsection (2). Such
230 charges need not be sworn to, may be made upon actual knowledge,

231 or upon information and belief, and shall be filed with the board.
232 In the event any person licensed under Sections 73-2-1 through
233 73-2-21 is expelled from membership in any Mississippi or national
234 professional landscape architectural society or association, the
235 board shall thereafter cite said person to appear at a hearing
236 before the board and to show cause why disciplinary action should
237 not be taken against that person.

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

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

251 (4) At any hearing held under the provisions of this
252 section, the board shall have the power to subpoena witnesses and
253 compel their attendance and require the production of any books,
254 papers or documents. The hearing shall be conducted before the
255 full board with the president of the board serving as the
256 presiding judge. Counsel for the board shall present all evidence
257 relating to the charges. All evidence shall be presented under
258 oath, which may be administered by any member of the board, and
259 thereafter the proceedings may, if necessary, be transcribed in
260 full by the court reporter and filed as part of the record in the
261 case. Copies of such transcription may be provided to any party
262 to the proceedings at a cost to be fixed by the board.

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

267 Where in any proceedings before the board any witness shall
268 fail or refuse to attend upon subpoena issued by the board, shall
269 refuse to testify or shall refuse to produce any books and papers,
270 the production of which is called for by the subpoena, the
271 attendance of such witness and the giving of his testimony and the
272 production of the books and papers shall be enforced by any court
273 of competent jurisdiction of this state in the manner provided for
274 the enforcement of attendance and testimony of witnesses in civil
275 cases in the courts of this state.

276 The accused shall have the right to be present at the hearing
277 in person, by counsel or other representative, or both. The
278 accused shall have the right to present evidence and to examine
279 and cross-examine all witnesses. The board is authorized to
280 continue or recess the hearing as may be necessary.

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

288 If a majority of the board finds the accused guilty of the
289 charges filed, the board may: (a) issue a public or private
290 reprimand; (b) suspend or revoke the license of the accused, if
291 the accused is a registrant; or (c) in lieu of or in addition to
292 such reprimand, suspension or revocation, assess and levy upon the
293 guilty party a monetary penalty of not less than One Hundred
294 Dollars (\$100.00) nor more than Five Thousand Dollars (\$5,000.00)
295 for each violation.

296 (6) A monetary penalty assessed and levied under this
297 section shall be paid to the board upon the expiration of the
298 period allowed for appeal of such penalties under this section, or
299 may be paid sooner if the guilty party elects. Money collected by
300 the board under this section shall be deposited to the credit of
301 the board's general operating fund.

302 When payment of a monetary penalty assessed and levied by the
303 board in accordance with this section is not paid when due, the
304 board shall have the power to institute and maintain proceedings
305 in its name for enforcement of payment in the chancery court of
306 the county and judicial district of the residence of the guilty
307 party and if the guilty party be a nonresident of the State of
308 Mississippi, such proceedings shall be in the Chancery Court of
309 the First Judicial District of Hinds County, Mississippi.

310 (7) When the board has taken a disciplinary action under
311 this section, the board may, in its discretion, stay such action
312 and place the guilty party on probation for a period not to exceed
313 one (1) year upon the condition that the guilty party shall not
314 further violate either the law of the State of Mississippi
315 pertaining to the practice of landscape architecture or the
316 bylaws, rules and regulations, or standards of conduct and ethics
317 promulgated by the board.

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

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

327 (10) The board, for sufficient cause, may reissue a revoked
328 license of registration whenever a majority of the board members

329 vote to do so but in no event shall a revoked license be issued
330 within two (2) years of the revocation. A new license of
331 registration required to replace a revoked, lost, mutilated or
332 destroyed license may be issued, subject to the rules of the
333 board, for a charge not to exceed Twenty-five Dollars (\$25.00).

334 (11) The board may direct the advisory committee to review
335 and investigate any charges brought against any landscape
336 architect under this chapter and to hold the hearings provided for
337 in this section and to make findings of fact and recommendations
338 to the board concerning the disposition of such charges.

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

343 (13) In addition to the reasons specified in subsection (2)
344 of this section, the board shall be authorized to suspend the
345 license of any licensee for being out of compliance with an order
346 for support, as defined in Section 93-11-153 of this act. The
347 procedure for suspension of a license for being out of compliance
348 with an order for support, and the procedure for the reissuance or
349 reinstatement of a license suspended for that purpose, and the
350 payment of any fees for the reissuance or reinstatement of a
351 license suspended for that purpose, shall be governed by Section
352 93-11-157 or 93-11-163 of this act, as the case may be. If there
353 is any conflict between any provision of Section 93-11-157 or
354 93-11-163 of this act and any provision of this chapter, the
355 provisions of Section 93-11-157 or 93-11-163 of this act, as the
356 case may be, shall control.

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

359 73-2-17. Each applicant for examination as a landscape
360 architect shall pay to the board for the purposes of procuring,
361 administering and grading the examination, an administration fee

362 not to exceed One Hundred Dollars (\$100.00) together with an
363 application fee in such amount as the board may set, but in no
364 event to exceed the actual cost to the board of purchasing,
365 preparing and evaluating the examination. Upon passing the
366 examination and meeting the requirements of this chapter and upon
367 paying an initial registration fee in an amount set by the board,
368 an applicant shall be issued an original certificate as a licensed
369 landscape architect and a rubber stamp bearing the seal adopted by
370 the board for use by landscape architects. Each holder of a
371 certificate as provided herein shall be entitled to practice as a
372 licensed landscape architect without additional fee or charge
373 until the next biennial renewal period, and thereafter upon
374 payment of the biennial license fee as provided by Section
375 73-2-15.

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

378 All checks or money orders submitted to the board shall be
379 made payable to the board.

380 SECTION 11. Section 73-2-19, Mississippi Code of 1972, is
381 reenacted and amended as follows:

382 73-2-19. This chapter shall not require licensing in the
383 following cases:

384 (a) The practice of landscape architecture by any
385 person who acts under the supervision of a registered landscape
386 architect or by an employee of a person lawfully engaged in the
387 practice of landscape architecture and who, in either event, does
388 not assume responsible charge of design or supervision.

389 (b) The practice of landscape architecture by employees
390 of the United States government while engaged within this state in
391 the practice of landscape architecture for said government.

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

394 (d) The practice of arborists, foresters, gardeners,
395 home builders, floriculturists and ornamental horticulturists
396 performing their respective trades or professions.

397 (e) The practice of any nurseryman or landscape
398 contractor to practice planting design, planting, and location and
399 arrangement of plant materials.

400 (f) The practice of architecture or engineering as
401 defined by the laws of the State of Mississippi, including, but
402 not limited to such planting as might be incidental to such
403 practice.

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

411 (h) Any person, firm or corporation performing
412 landscape architecture and working on his own land or
413 property * * *.

414 (i) * * * Golf course architects * * * engaged in the
415 preparation of drawings and specifications for a golf course, in
416 accordance with accepted professional standards of public health
417 and safety.

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

420 73-2-21. It shall be a misdemeanor for any person to:

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

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

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

427 (d) Falsely impersonate any other practitioner of like
428 or different name.

429 (e) Use or attempt to use a certificate that has been
430 revoked.

431 (f) Otherwise violate any of the provisions of this
432 chapter.

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

437 If any person, firm or corporation violates any of the
438 provisions of this chapter, the secretary of the board shall, upon
439 direction of a majority of the board, in the name of the State of
440 Mississippi, acting through an attorney employed by the board,
441 apply in any chancery court of competent jurisdiction for an
442 injunction or temporary restraining order pursuant to the
443 Mississippi Rules of Civil Procedure enjoining such violation or
444 for an order enforcing compliance with the provisions of this
445 chapter. If at such hearing it is established that such person
446 has violated or is violating this chapter, the court may, in
447 addition to enjoining such violation or enforcing compliance with
448 this chapter, award all cost and expenses, including reasonable
449 attorney's fees, to the board. In case of violation of any decree
450 issued in compliance with this paragraph, the court may try and
451 punish the offender for contempt of court and shall fine such
452 offender a sum of not less than Two Hundred Fifty Dollars
453 (\$250.00) per offense. Each day of such violation shall
454 constitute a distinct and separate offense.

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

457 73-2-23. All courts of competent jurisdiction within their
458 respective territorial jurisdiction are hereby empowered to hear,
459 try and determine such crimes without indictment and to impose in

460 full the punishments of fines and imprisonments herein prescribed.
461 All violations of this chapter, when reported to the board and
462 duly substantiated by affidavits or other satisfactory evidence,
463 shall be investigated by it, and if the report is found to be true
464 and the evidence substantiated, the board shall report such
465 violations to the Attorney General and request prompt prosecution.

466 SECTION 14. Section 73-2-25, Mississippi Code of 1972, which
467 does not require the use of landscape architects for landscape
468 architecture jobs under this chapter, is repealed.

469 SECTION 15. Section 17, Chapter 371, Laws of 1999, is
470 amended as follows:

471 Section 17. This act shall take effect and be in force from
472 and after July 1, 1999, and shall stand repealed from and after
473 July 1, 2005.

474 SECTION 16. This act shall take effect and be in force from
475 and after July 1, 2001.