

By: Representative Guice

To: Judiciary B

HOUSE BILL NO. 914

1 AN ACT TO AMEND SECTION 31-3-1, MISSISSIPPI CODE OF 1972, TO
 2 REMOVE FROM THE DEFINITION OF "CONTRACTOR" THE EXEMPTION ALLOWED
 3 FOR ANY OWNER OF A DWELLING OR STRUCTURE TO BE CONSTRUCTED OR
 4 IMPROVED AND WHICH IS NOT FOR SALE; TO AMEND SECTION 31-3-13,
 5 MISSISSIPPI CODE OF 1972, TO PROVIDE ADDITIONAL POWERS AND
 6 RESPONSIBILITIES OF THE BOARD OF PUBLIC CONTRACTORS; TO AMEND
 7 SECTION 31-3-21, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IF A
 8 CIVIL PENALTY OR ORDER OF ABATEMENT IMPOSED BY THE BOARD IS NOT
 9 PAID OR COMPLIED WITH, THE BOARD MAY INSTITUTE A PROCEEDING TO
 10 FORCE PAYMENT OR COMPLIANCE IN THE CHANCERY COURT OF THE FIRST
 11 JUDICIAL DISTRICT OF HINDS COUNTY; TO AMEND SECTION 31-3-14,
 12 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED
 13 PURPOSES.

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

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

17 31-3-1. The following words, as used in this chapter, shall
 18 have the meanings specified below:

19 "Board": The State Board of Contractors created under this
 20 chapter.

21 "Contractor": Any person contracting or undertaking as prime
 22 contractor, subcontractor or sub-subcontractor of any tier to do
 23 any erection, building, construction, reconstruction, repair,
 24 maintenance or related work on any public or private project;
 25 however, * * * it is * * * provided that nothing herein shall
 26 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 * * *

48 (f) Erection of a microwave tower built for the purpose
49 of telecommunication transmissions;

50 (g) Any contract or undertaking on a public project by
51 a prime contractor, subcontractor or sub-subcontractor of any tier
52 involving the construction, reconstruction, repair or maintenance
53 of fire protection systems where such contract, subcontract or
54 undertaking is less than Five Thousand Dollars (\$5,000.00);

55 (h) Any contract or undertaking on a private project by
56 a prime contractor, subcontractor or sub-subcontractor of any tier
57 involving the construction, reconstruction, repair or maintenance
58 of fire protection systems where such contract, subcontract or
59 undertaking is less than Ten Thousand Dollars (\$10,000.00); or

60 (i) Any contract or undertaking on a private or public
61 project by a prime contractor, subcontractor or sub-subcontractor
62 of any tier involving the construction, reconstruction, repair or
63 maintenance of technically specialized installations if performed
64 by a Mississippi contractor who has been in the business of



65 installing fire protection sprinkler systems on or before July 1,
66 2000.

67 "Certificate of responsibility": A certificate numbered and
68 held by a contractor issued by the board under the provisions of
69 this chapter after payment of the special privilege license tax
70 therefor levied under this chapter.

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

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

76 "Public agency": Any board, commission, council or agency of
77 the State of Mississippi or any district, county or municipality
78 thereof, including school, hospital, airport and all other types
79 of governing agencies created by or operating under the laws of
80 this state.

81 "Public funds": Monies of public agencies, whether obtained
82 from taxation, donation or otherwise; or monies being expended by
83 public agencies for the purposes for which such public agencies
84 exist.

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

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

90 31-3-13. (1) The board shall have the following powers and
91 responsibilities:

92 (a) To receive applications for certificates of
93 responsibility, to investigate and examine applicants for same by
94 holding hearings and securing information, to conduct
95 examinations, and to issue certificates of responsibility to such
96 contractors as the board finds to be responsible. * * * The board



97 shall charge fees for the extension of certificates as prescribed
98 in Section 31-3-14.

99 * * *

100 * * * All original certificates and renewals thereof issued
101 on or after July 1, 1980, shall expire one (1) year from the date
102 of issuance. No certificate or any renewal thereof shall be
103 issued until the payment of the appropriate fees and taxes allowed
104 under this chapter. Application for renewal of certificates of
105 responsibility, together with the payment of a special privilege
106 license tax as provided under this chapter, shall serve to extend
107 the current certificate until the board either renews the
108 certificate or denies the application.

109 No certificate of responsibility or any renewal thereof shall
110 be issued until the applicant furnishes to the board his
111 Mississippi state sales tax number or Mississippi state use tax
112 number and his state income tax identification numbers.

113 Additional fees may be required as provided in Section
114 31-3-14.

115 The board shall conduct an objective, standardized
116 examination of an applicant for a certificate to ascertain the
117 ability of the applicant to make practical application of his
118 knowledge of the profession or business of construction in the
119 category or categories for which he has applied for a certificate
120 of responsibility. The cost of the test and the cost of
121 administering the test shall be paid for by applicants for
122 certificates of responsibility at the time applications are filed.
123 The board shall investigate thoroughly the past record of all
124 applicants, which will include an effort toward ascertaining the
125 qualifications of applicants in reading plans and specifications,
126 estimating costs, construction ethics, and other similar matters.
127 The board shall take all applicants under consideration after
128 having examined him or them and go thoroughly into the records and
129 examinations, prior to granting any certificate of responsibility.



130 If the applicant is an individual, examination may be taken by his
131 personal appearance for examination or by the appearance for
132 examination of one or more of his responsible managing employees;
133 and if a copartnership or corporation or any other combination or
134 organization, by the examination of one or more of the responsible
135 managing officers or members of the executive staff of the
136 applicant's firm, according to its own designation.

137 (b) To conduct thorough investigations of all
138 applicants seeking renewal of their licenses and of all complaints
139 filed with the board concerning the performance of a contractor on
140 a public or private project.

141 (c) To obtain information concerning the responsibility
142 of any applicant for a certificate of responsibility or a holder
143 of a certificate of responsibility under this chapter. Such
144 information may be obtained by investigation, by hearings, or by
145 any other reasonable and lawful means. The board shall keep such
146 information appropriately filed and shall disseminate same to any
147 interested person. The board shall have the power of subpoena.

148 (d) To maintain a list of contractors to whom
149 certificates of responsibility are issued, refused, revoked or
150 suspended, which list shall be available to any interested person.
151 Such list shall indicate the kind or kinds of works or projects
152 for which a certificate of responsibility was issued, refused,
153 revoked or suspended.

154 (e) To revoke by order entered on its minutes a
155 certificate of responsibility upon a finding by the board that a
156 particular contractor is not responsible, and to suspend such
157 certificate of responsibility in particular cases pending
158 investigation, upon cause to be stated in the board's order of
159 suspension. No such revocation or suspension shall be ordered
160 without a hearing conducted upon not less than ten (10) days'
161 notice to such certificate holder by certified or registered mail,
162 wherein the holder of the certificate of responsibility shall be



163 given an opportunity to present all lawful evidence which he may
164 offer.

165 (f) To adopt rules and regulations setting forth the
166 requirements for certificates of responsibility, the revocation or
167 suspension thereof, and all other matters concerning same; rules
168 and regulations governing the conduct of the business of the board
169 and its employees; and such other rules and regulations as the
170 board finds necessary for the proper administration of this
171 chapter, including those for the conduct of its hearings on the
172 revocation or suspension of certificates of responsibility. Such
173 rules and regulations shall not conflict with the provisions of
174 this chapter.

175 (g) * * * To classify the kind or kinds of works or
176 projects that a contractor is qualified and entitled to perform
177 under the certificate of responsibility issued to him. Such
178 classification shall be specified in the certificate of
179 responsibility.

180 The powers of the State Board of Contractors shall not extend
181 to fixing a maximum limit in the bid amount of any contractor, or
182 the bonding capacity, or a maximum amount of work which a
183 contractor may have under contract at any time, except as stated
184 in paragraph (a) of this section; and the Board of Contractors
185 shall not have jurisdiction or the power or authority to determine
186 the maximum bond a contractor may be capable of obtaining. The
187 board, in determining the qualifications of any applicant for an
188 original certificate of responsibility or any renewal thereof,
189 shall, among other things, take into consideration the following:
190 (i) experience and ability, (ii) character, (iii) the manner of
191 performance of previous contracts, (iv) financial condition, (v)
192 equipment, (vi) personnel, (vii) work completed, (viii) work on
193 hand, (ix) ability to perform satisfactorily work under contract
194 at the time of an application for a certificate of responsibility
195 or a renewal thereof, (x) default in complying with provisions of



196 this law, or any other law of the state, and (xi) the results of
197 objective, standardized examinations. A record shall be made and
198 preserved by the board of each examination of an applicant and the
199 findings of the board thereon, and a certified copy of the record
200 and findings shall be furnished to any applicant desiring to
201 appeal from any order or decision of the board.

202 (h) To enter upon its minutes an order or decision
203 upon each application filed with it, and it may state in such
204 order or decision the reason or reasons for its order or decision.

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

209 (i) To designate an employee or representative of the
210 board to enter and inspect construction sites, at reasonable times
211 and upon the presentation of credentials that identify the person
212 as an employee or representative of the board.

213 (j) To require, at all construction sites where work or
214 activities under the jurisdiction of the board's regulation may
215 occur, the posting of signs identifying that a general contractor
216 is performing the construction.

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

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

226 31-3-14. (1) * * * All holders of a certificate of
227 responsibility shall pay a fee equal to One Hundred Dollars
228 (\$100.00) at the time of application or renewal of certificates of



229 responsibility. Any residential builder licensed under the
230 provisions of Section 73-59-1 et seq. shall be exempt from the fee
231 imposed under this section. The revenue derived from such
232 additional fees shall be deposited into the "Construction
233 Education Fund," a special fund hereby created in the State
234 Treasury, and distributed by the State Board of Contractors
235 created in Section 31-3-3, to public high schools and community
236 colleges that participate in the Mississippi Construction
237 Education Foundation's "school-to-work" program and state
238 universities that have construction technology programs and
239 certain construction educational trusts approved by the State
240 Board of Contractors in the manner hereinafter provided to offer
241 courses for construction education and construction craft training
242 to meet the needs of the construction industry of the State of
243 Mississippi.

244 (2) The State Board of Contractors shall, on an annual
245 basis, solicit from the Mississippi state institutions of higher
246 learning, all the public community and junior colleges, the
247 Mississippi Construction Education Foundation, public high schools
248 that participate in the Mississippi Construction Education
249 Foundation's "school-to-work" program and certain construction
250 educational trusts, applications for the use of such funds in
251 construction education and craft training programs in a manner
252 prescribed by the board. The board may appoint a technical
253 advisory committee to advise the board on the most needed areas of
254 construction education and craft training, continuing education or
255 research relating to the construction education and craft training
256 in the state, based on significant changes in the construction
257 industry's practices, economic development or on problems costing
258 public or private contractors substantial waste. The board shall
259 ensure that the monies distributed from this fund are properly
260 spent to promote construction education and craft training in
261 programs in the state which are approved by the board. At least



262 seventy-five percent (75%) of the monies distributed by the board,
263 pursuant to this section, must be used for construction craft
264 training.

265 (3) Each university, junior college, community college, the
266 Mississippi Construction Education Foundation, public high schools
267 that participate in the foundation's "school-to-work" program or
268 construction educational trust receiving funds pursuant to this
269 section for construction education or construction craft training
270 programs shall utilize such funds only for construction education
271 and craft training curricula and program development, faculty
272 development, equipment, student scholarships, student
273 assistantships, and for continuing education programs related to
274 construction education and craft training. Such funds shall not
275 be commingled with the normal operating funds of the educational
276 institution, regardless of the source of such funds.

277 (4) The State Board of Contractors shall ensure the
278 distribution of reports and the availability of construction
279 education programs established pursuant to this section to all
280 segments of the construction industry that are subject to the fee
281 provided under this section. The board shall cause a report to be
282 made to the Legislature in October of each year, summarizing the
283 allocation of funds by institution or program and summarizing the
284 new projects funded and the status of previously funded projects.

285 (5) All monies deposited into the "Construction Education
286 Fund" shall be used exclusively for construction education and
287 craft training and any unspent funds at the end of the fiscal year
288 shall not revert to the General Fund of the State Treasury but
289 shall be available for construction education and craft training
290 in subsequent fiscal years.

291 (6) All expenditures from the "Construction Education Fund"
292 shall be by requisition to the State Auditor, signed by the
293 executive secretary of the board and countersigned by the chairman



294 or vice chairman of the board, and the State Treasurer shall issue
295 his warrants thereon.

296 SECTION 4. Section 31-3-21, Mississippi Code of 1972, is
297 amended as follows:

298 31-3-21. (1) It shall be unlawful for any person who does
299 not hold a certificate of responsibility issued under this
300 chapter, or a similar certificate issued by another state
301 recognizing such certificate issued by the State of Mississippi,
302 to submit a bid, enter into a contract, or otherwise engage in or
303 continue in this state in the business of a contractor, as defined
304 in this chapter. Any bid which is submitted without a certificate
305 of responsibility number issued under this chapter and without
306 that number appearing on the exterior of the bid envelope, as and
307 if herein required, at the time designated for the opening of such
308 bid, shall not be considered further, and the person or public
309 agency soliciting bids shall not enter into a contract with a
310 contractor submitting a bid in violation of this section. In
311 addition, any person violating this section by knowingly and
312 willfully submitting a bid for projects without holding a
313 certificate of responsibility number issued under this chapter, as
314 and if herein required, at the time of the submission or opening
315 of such bid shall be guilty of a misdemeanor and, upon conviction,
316 shall be punished by a fine of not more than One Thousand Dollars
317 (\$1,000.00), or by imprisonment for not more than six (6) months,
318 or by both such fine and imprisonment.

319 (2) All bids submitted for public or private projects where
320 said bid is in excess of Fifty Thousand Dollars (\$50,000.00) with
321 respect to public projects and in excess of One Hundred Thousand
322 Dollars (\$100,000.00) with respect to private projects shall
323 contain on the outside or exterior of the envelope or container of
324 such bid the contractor's current certificate number, and no bid
325 shall be opened or considered unless such contractor's current
326 certificate number appears on the outside or exterior of said



327 envelope or container, or unless there appears a statement on the
328 outside or exterior of such envelope or container to the effect
329 that the bid enclosed therewith did not exceed Fifty Thousand
330 Dollars (\$50,000.00) with respect to public projects or One
331 Hundred Thousand Dollars (\$100,000.00) with respect to private
332 projects. Any person violating the provisions of this subsection
333 shall be guilty of a misdemeanor and, upon conviction, shall be
334 punished by a fine of not more than One Thousand Dollars
335 (\$1,000.00), or by imprisonment for not more than six (6) months,
336 or by both such fine and imprisonment.

337 (3) In the letting of public contracts preference shall be
338 given to resident contractors, and a nonresident bidder domiciled
339 in a state having laws granting preference to local contractors
340 shall be awarded Mississippi public contracts only on the same
341 basis as the nonresident bidder's state awards contracts to
342 Mississippi contractors bidding under similar circumstances; and
343 resident contractors actually domiciled in Mississippi, be they
344 corporate, individuals, or partnerships, are to be granted
345 preference over nonresidents in awarding of contracts in the same
346 manner and to the same extent as provided by the laws of the state
347 of domicile of the nonresident. When a nonresident contractor
348 submits a bid for a public project, he shall attach thereto a copy
349 of his resident state's current law pertaining to such state's
350 treatment of nonresident contractors. As used in this section,
351 the term "resident contractors" includes a nonresident person,
352 firm or corporation that has been qualified to do business in this
353 state and has maintained a permanent full-time office in the State
354 of Mississippi for two (2) years prior to January 1, 1986, and the
355 subsidiaries and affiliates of such a person, firm or corporation.
356 Any public agency awarding a contract shall promptly report to the
357 State Tax Commission the following information:

358 (a) The amount of the contract.



359 (b) The name and address of the contractor reviewing
360 the contract.

361 (c) The name and location of the project.

362 (4) In addition to any other penalties provided in this
363 chapter, and upon a finding of a violation of this chapter, the
364 State Board of Contractors may, after notice and hearing, issue an
365 order of abatement directing the contractor to cease all actions
366 constituting violations of this chapter until such time as the
367 contractor complies with Mississippi state law, and to pay to the
368 board a civil penalty to be deposited into the State Board of
369 Contractors' Fund, created in Section 31-3-17, of not more than
370 three percent (3%) of the total contract being performed by the
371 contractor. The funds collected from civil penalty payments shall
372 be used by the State Board of Contractors for enforcement and
373 education.

374 (5) If payment of a civil penalty assessed and levied by the
375 board is not paid when due, or if an order of abatement directing
376 a contractor to cease certain actions is not complied with, after
377 ten (10) days have elapsed from the payment due date or the order
378 of abatement, the board may institute a proceeding to force
379 payment or compliance in the Chancery Court of the First Judicial
380 District of Hinds County.

381 SECTION 5. Section 31-3-23, Mississippi Code of 1972, is
382 amended as follows:

383 31-3-23. Any person aggrieved by any order or decision of
384 the board may appeal within ten (10) days from the date of
385 adjournment of the session at which the board rendered such order
386 or decision, and may embody the facts, order and decision in a
387 bill of exceptions which shall be signed by the person acting as
388 chairman of the board. The executive secretary shall transmit the
389 bill of exceptions to the chancery court of the county of
390 residence of the appellant, unless the board has instituted a
391 proceeding under Section 31-3-21 (5) in which case the bill of



392 exceptions shall be transmitted to the Chancery Court of the First
393 Judicial District of Hinds County. The court or chancellor shall
394 hear and determine the same either in termtime or in vacation, on
395 the case as presented by the bill of exceptions, as an appellate
396 court, and shall affirm or reverse the judgment. If the judgment
397 be reversed, the chancery court or chancellor shall render such
398 order or judgment as the board ought to have rendered, and certify
399 the same to the board; and costs shall be awarded as in other
400 cases. The board may employ counsel to defend such appeals, to be
401 paid out of the funds in the State Board of Contractors Fund.

402 The remedies provided under this chapter for any aggrieved
403 applicant shall not be exclusive, but shall be cumulative of and
404 supplemental to any other remedies which he may otherwise have in
405 law or in equity, whether by injunction or otherwise.

406 SECTION 6. This act shall take effect and be in force from
407 and after July 1, 2001.

