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

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

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

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

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

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

(a) Any contract or undertaking on a public project by a prime contractor, subcontractor or sub-subcontractor of any tier involving erection, building, construction, reconstruction, repair, maintenance or related work where such contract, subcontract or undertaking is less than Fifty Thousand Dollars ($50,000.00);
(b) Any contract or undertaking on a private project by a prime contractor, subcontractor or sub-subcontractor of any tier involving erection, building, construction, reconstruction, repair, maintenance or related work where such contract, subcontract or undertaking is less than One Hundred Thousand Dollars ($100,000.00);

c) Highway construction, highway bridges, overpasses and any other project incidental to the construction of highways which are designated as federal aid projects and in which federal funds are involved;

d) A residential project to be occupied by fifty (50) or fewer families and not more than three (3) stories in height;

e) A residential subdivision where the contractor is developing either single-family or multi-family lots;

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

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

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

(i) Any contract or undertaking on a private or public project by a prime contractor, subcontractor or sub-subcontractor of any tier involving the construction, reconstruction, repair or maintenance of technically specialized installations if performed by a Mississippi contractor who has been in the business of
installing fire protection sprinkler systems on or before July 1, 2000.

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

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

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

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

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

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

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

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

(a) To receive applications for certificates of responsibility, to investigate and examine applicants for same by holding hearings and securing information, to conduct examinations, and to issue certificates of responsibility to such contractors as the board finds to be responsible. * * * The board
shall charge fees for the extension of certificates as prescribed in Section 31-3-14.

* * *

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

No certificate of responsibility or any renewal thereof shall be issued until the applicant furnishes to the board his Mississippi state sales tax number or Mississippi state use tax number and his state income tax identification numbers. Additional fees may be required as provided in Section 31-3-14.

The board shall conduct an objective, standardized examination of an applicant for a certificate to ascertain the ability of the applicant to make practical application of his knowledge of the profession or business of construction in the category or categories for which he has applied for a certificate of responsibility. The cost of the test and the cost of administering the test shall be paid for by applicants for certificates of responsibility at the time applications are filed. The board shall investigate thoroughly the past record of all applicants, which will include an effort toward ascertaining the qualifications of applicants in reading plans and specifications, estimating costs, construction ethics, and other similar matters. The board shall take all applicants under consideration after having examined him or them and go thoroughly into the records and examinations, prior to granting any certificate of responsibility.
If the applicant is an individual, examination may be taken by his personal appearance for examination or by the appearance for examination of one or more of his responsible managing employees; and if a copartnership or corporation or any other combination or organization, by the examination of one or more of the responsible managing officers or members of the executive staff of the applicant's firm, according to its own designation.

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

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

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

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

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

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

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

(i) experience and ability, (ii) character, (iii) the manner of performance of previous contracts, (iv) financial condition, (v) equipment, (vi) personnel, (vii) work completed, (viii) work on hand, (ix) ability to perform satisfactorily work under contract at the time of an application for a certificate of responsibility or a renewal thereof, (x) default in complying with provisions of
this law, or any other law of the state, and (xi) the results of
objective, standardized examinations. A record shall be made and
preserved by the board of each examination of an applicant and the
findings of the board thereon, and a certified copy of the record
and findings shall be furnished to any applicant desiring to
appeal from any order or decision of the board.

(h) To enter upon its minutes an order or decision
upon each application filed with it, and it may state in such
order or decision the reason or reasons for its order or decision.
Upon failure of the board to enter an order or decision upon
its minutes as to any application within one hundred eighty (180)
days from the date of filing such application, the applicant shall
have the right of appeal as otherwise provided by this chapter.

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

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

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

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

31-3-14. (1) *** All holders of a certificate of
responsibility shall pay a fee equal to One Hundred Dollars
($100.00) at the time of application or renewal of certificates of
responsibility. Any residential builder licensed under the provisions of Section 73-59-1 et seq. shall be exempt from the fee imposed under this section. The revenue derived from such additional fees shall be deposited into the "Construction Education Fund," a special fund hereby created in the State Treasury, and distributed by the State Board of Contractors created in Section 31-3-3, to public high schools and community colleges that participate in the Mississippi Construction Education Foundation's "school-to-work" program and state universities that have construction technology programs and certain construction educational trusts approved by the State Board of Contractors in the manner hereinafter provided to offer courses for construction education and construction craft training to meet the needs of the construction industry of the State of Mississippi.

(2) The State Board of Contractors shall, on an annual basis, solicit from the Mississippi state institutions of higher learning, all the public community and junior colleges, the Mississippi Construction Education Foundation, public high schools that participate in the Mississippi Construction Education Foundation's "school-to-work" program and certain construction educational trusts, applications for the use of such funds in construction education and craft training programs in a manner prescribed by the board. The board may appoint a technical advisory committee to advise the board on the most needed areas of construction education and craft training, continuing education or research relating to the construction education and craft training in the state, based on significant changes in the construction industry's practices, economic development or on problems costing public or private contractors substantial waste. The board shall ensure that the monies distributed from this fund are properly spent to promote construction education and craft training in programs in the state which are approved by the board. At least
seventy-five percent (75%) of the monies distributed by the board, pursuant to this section, must be used for construction craft training.

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

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

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

(6) All expenditures from the "Construction Education Fund" shall be by requisition to the State Auditor, signed by the executive secretary of the board and countersigned by the chairman.
or vice chairman of the board, and the State Treasurer shall issue
his warrants thereon.

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

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

(2) All bids submitted for public or private projects where
said bid is in excess of Fifty Thousand Dollars ($50,000.00) with
respect to public projects and in excess of One Hundred Thousand
Dollars ($100,000.00) with respect to private projects shall
contain on the outside or exterior of the envelope or container of
such bid the contractor's current certificate number, and no bid
shall be opened or considered unless such contractor's current
certificate number appears on the outside or exterior of said
envelope or container, or unless there appears a statement on the outside or exterior of such envelope or container to the effect that the bid enclosed therewith did not exceed Fifty Thousand Dollars ($50,000.00) with respect to public projects or One Hundred Thousand Dollars ($100,000.00) with respect to private projects. Any person violating the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.

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

(a) The amount of the contract.
(b) The name and address of the contractor reviewing the contract.

c) The name and location of the project.

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

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

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

31-3-23. Any person aggrieved by any order or decision of the board may appeal within ten (10) days from the date of adjournment of the session at which the board rendered such order or decision, and may embody the facts, order and decision in a bill of exceptions which shall be signed by the person acting as chairman of the board. The executive secretary shall transmit the bill of exceptions to the chancery court of the county of residence of the appellant, unless the board has instituted a proceeding under Section 31-3-21 (5) in which case the bill of
exceptions shall be transmitted to the Chancery Court of the First Judicial District of Hinds County. The court or chancellor shall hear and determine the same either in termtime or in vacation, on the case as presented by the bill of exceptions, as an appellate court, and shall affirm or reverse the judgment. If the judgment be reversed, the chancery court or chancellor shall render such order or judgment as the board ought to have rendered, and certify the same to the board; and costs shall be awarded as in other cases. The board may employ counsel to defend such appeals, to be paid out of the funds in the State Board of Contractors Fund.

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

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