To: Judiciary B

MISSISSIPPI LEGISLATURE REGULAR SESSION 2003
By: Representative Weathersby

HOUSE BILL NO. 1328

AN ACT TO CREATE THE MISSISSIPPI BOARD OF PLUMBING EXAMINERS; TO PROVIDE DEFINITIONS; TO PRESCRIBE THE POWERS AND DUTIES OF THE BOARD; TO PROVIDE FOR THE SUPPORT OF THE BOARD THROUGH THE COLLECTION OF FEES; TO PROVIDE QUALIFICATIONS AND EXAMINATIONS FOR PLUMBERS; TO PROVIDE FOR THE ISSUANCE OF LICENSES; TO PROVIDE FOR TEMPORARY WORKING PERMITS; TO PROVIDE FOR LICENSE RENEWAL; TO REQUIRE CONTINUING PROFESSIONAL EDUCATION COURSES FOR LICENSE RENEWAL; TO ESTABLISH THE PROCESS FOR FILING COMPLAINTS; TO PROVIDE PENALTIES FOR VIOLATIONS OF THIS ACT; TO PROVIDE THE GROUNDS FOR THE REVOCATION, SUSPENSION OR REFUSAL TO RENEW LICENSES; TO PROVIDE FOR EXEMPTIONS; AND FOR RELATED PURPOSES.

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

SECTION 1. (1) The purpose of this act is the protection of the health, safety, environment and general welfare of all those persons who use and rely upon plumbing for their personal and commercial needs, and to afford those persons with effective and practical protection against incompetent, inexperienced or unlawful acts by persons who perform plumbing work.

(2) It is the intent of the Legislature that the State Board of Plumbing created in this act shall be the sole and exclusive agency in this state empowered to license natural persons and regulate business entities engaged or seeking to engage in the business of plumbing systems installation and verification and to ensure compliance with the licensing requirements of this act.

Nothing in this act shall preclude any current authority of the State Board of Contractors.

SECTION 2. As used in this act, the following terms and phrases shall have the following meanings unless the context clearly indicates otherwise:

(a) "Apprentice plumber" means a natural person who enters into an agreement with an employer or joint apprenticeship
and training committee for a required period of time to receive
instruction and learn the plumbing trade.

(b) "Board" means the Mississippi Board of Plumbing
Examiners.

(c) "Journeyman plumber" means a natural person who
possesses the necessary qualifications and knowledge to install,
alter and/or repair plumbing systems, is licensed as such by the
board, is supervised by a master plumber, and is in the employment
of an employing entity.

(d) "Plumbing" means the work or business of installing
in buildings and on premises the pipes, fixtures, and other
apparatus for supplying water, or removing liquid waste and/or
water-born waste, and fixtures vessels and process piping that is
in direct contact with products for human consumption. The term
also means the installed fixture, drainage fixtures and water
distribution systems of buildings or premises.

(e) "Master plumber" means a natural person who
possesses the necessary qualifications and knowledge to plan and
lay out plumbing systems and who supervises journeyman plumbers in
the installation, alteration, and/or repair of plumbing systems;
and

(i) Is familiar with the codes and ordinances, or
(ii) Has passed the required examination and
fulfilled the other requirements of the board.

SECTION 3. (1) There is created the Mississippi Board of
Plumbing Examiners to license and regulate persons and business
entities engaged in the plumbing industry. The board shall be
composed of nine (9) members appointed by the Governor, with the
advice and consent of the Senate, as follows:

(a) One (1) member with at least ten (10) years
practical experience as a master plumber;

(b) One (1) member with at least five (5) years
practical experience as a journeyman plumber;
(c) One (1) registered engineer with plumbing background;

(d) One (1) member with at least five (5) years practical experience as a plumbing inspector;

(e) One (1) member who is a plumbing contractor with at least five (5) years experience;

(f) Two (2) members who are building contractors with at least five (5) years contracting experience, one (1) of whom is principally engaged in home building and one (1) of whom is principally engaged in commercial building; and

(g) Two (2) members who represent the public.

(2) Each member of the board must be a United States citizen.

Each member must be a qualified elector of this state and licensed by the board, except the first board members who must be licensed within one (1) year.

(3) The initial appointments to the board shall be made as follows: The Governor shall appoint three (3) members to serve for a term that expires on June 30, 2005, three (3) members to serve for a term that expires on June 30, 2007, and three (3) members to serve for a term that expires on June 30, 2009. After the expiration of the initial terms, all subsequent appointments shall be made by the Governor for terms of six (6) years from the expiration date of the previous term. Upon the expiration of his or her term of office, a board member shall continue to serve until his or her successor has been appointed and qualified. No board member may succeed himself without waiting a period of six (6) years after having served one (1) full six (6) year term.

(4) Any vacancy on the board before the expiration of a term shall be filled by the Governor, with the advice and consent of the Senate, for the remainder of the unexpired term.
(5) After the initial appointments are made to the board, the board shall submit a list of nominations to the Governor for any subsequent appointments.

(6) The Governor shall give due regard to geographic distribution in making the appointments to the board. Appointments to the board shall be made without regard to the race, creed, sex, religion or national origin of the appointee.

(7) The board shall select one (1) of its members to serve as chairman, one (1) member to serve as vice chairman and one (1) member to serve as secretary. The board may remove any member of the board or the chairman from his or her position as chairman for (a) malfeasance in office, or (b) conviction of a felony or a crime of moral turpitude while in office or (c) failure to attend three (3) consecutive board meetings. However, no member may be removed until after a public hearing of the charges against him or her, and at least thirty (30) days' prior written notice to the accused member of the charges against him or her and of the date fixed for the hearing. No board member shall participate in any matter before the board in which he or she has a pecuniary interest, personal bias or other similar interest of conflict.

(8) Board members shall receive no compensation for their services, but shall be reimbursed for their actual and necessary expenses incurred in the performance of official board business as provided in Section 25-3-41.

(9) The board shall meet at least quarterly and at such other times as deemed necessary by the board. Five (5) members of the board shall constitute a quorum of the board.

(10) The board shall adopt an official seal, which shall be judicially noticed and which shall be affixed to all licenses issued by the board. The Office of the State Board of Plumbing shall be located in the Jackson metropolitan area.

(11) The board may employ, subject to the approval of the State Personnel Board, an executive director and such attorneys,
experts and other employees as it may from time to time find necessary for the proper performance of its duties and for which the necessary funds are available, and to set the salary of the executive director, subject to the approval of the State Personnel Board.

(12) The secretary and the executive director shall give bond, payable to the Governor, in the penal sum of Five Thousand Dollars ($5,000.00) for the faithful performance of their duties, and the premium for the bonds shall be paid from the fees of the board.

(13) The board, by a majority vote, from time to time may make such provisions as it deems appropriate to authorize the performance by any board member or members, employee or other agent of the board of any function given the board in this act.

SECTION 4. (1) No appropriations from the State General Fund shall be used to operate the board. The board shall be supported solely by fees collected for license applications and renewals and/or other monies received by the board.

(2) All fees and any other monies received by the board, except for monetary penalties imposed, shall be deposited in a special fund that is created in the State Treasury and shall be used for the implementation and administration of this act. The monies in the special fund shall be subject to all provisions of the state budget laws that are applicable to special fund agencies, and shall be disbursed by the State Treasurer only upon warrants issued by the State Fiscal Officer upon requisitions signed by the chairman of the board or another board member designated by the chairman, and countersigned by the secretary of the board. Any interest earned on this special fund shall be credited by the State Treasurer to the fund and shall not be paid into the State General Fund. Any unexpended monies remaining in the special fund at the end of a fiscal year shall not lapse into
the State General Fund. Monetary penalties imposed by the board shall be deposited in the State General Fund.

SECTION 5. (1) In addition to any other duties set forth in this act, the board shall:

(a) Adopt a test of qualifications to be possessed by any person actually engaged in plumbing installation or plumbing work, and require that any person engaged in the duties of a journeyman plumber must possess journeyman plumber's license;

(b) Adopt a test of qualifications to be possessed by any person actually engaged in the art and business of a master plumber, and require that any person engaged in the duties of a master plumber must possess a master plumber's license; and

(c) Recognize the system of qualification or registration of apprentices as administered by joint and nonjoint apprenticeship committees approved by the State of Mississippi.

(2) The board may accept an affidavit from an individual certifying his work experience in the field of plumbing, and that individual may be certified as a journeyman plumber if he passes the written examination and pays the fees established by the board.

(3) The board shall approve, oversee and be responsible for all examinations for licensure under this act.

(4) The board shall be responsible for all disciplinary functions carried out in this state regarding all licensees under this act.

(5) The board shall be responsible for all disputed matters involving whether an applicant shall be licensed.

(6) The board shall have such other powers as may be required to carry out the provisions of this act.

SECTION 6. (1) (a) No natural person shall engage in doing the work of a journeyman plumber unless he possesses a license or renewal thereof issued by the board.
(b) A journeyman plumber may engage in the art of plumbing only when he is under the supervision of a master plumber licensed by this board.

c) Apprentices may engage in the art of plumbing only when they are under the direct constant, on-the-job supervision of a licensed journeyman plumber. Direct, constant on-the-job supervision means that a licensed journeyman plumber will supervise no more then four (4) apprentices on only one (1) job at a time.

(2) (a) No natural person shall engage in the work of a master plumber unless he possesses a master plumber's license or renewal thereof issued by the board.

(b) A master plumber shall not engage in the work of a journeyman plumber unless he currently possesses or previously possessed a journeyman plumber's licenses issued by the board.

c) A person issued a master plumber's license shall designate to the board, as required by regulations of the board, an employing entity, which may be a corporation, partnership, or sole proprietorship. A licensed master plumber shall notify the board of any change of employment status with an employing entity. A master plumber shall designate no more than one (1) employing entity at any time.

d) A master plumber or restricted master plumber's license shall not be issued, renewed, or revived until the applicant has provided proof acceptable to the board that insurance has been issued to the employing entity.

(3) The board shall issue a license to any person who qualifies under the board's regulations and who desires to engage in doing the work of a journeyman plumber, if he passes a written and manual journeyman plumber's examination, which shall be a standardized, nationally recognized test adopted by the board, and pays the fees established by the board.
(4) The board shall issue a license to any licensed journeyman plumber or other person who qualifies under the board's regulations and who desires to engage in the work of a master plumber, if he passes a written master plumber's examination, which shall be a standard, nationally recognized test adopted by the board, and satisfied the provisions of subsection (2)(c) of this section.

(5) No employing entity shall hold itself out as engaging in the business or art of plumbing unless it employs a master plumber. For purposes of this section, employment of a master plumber means employment on a regular paid basis for actual services performed supervising journeyman plumbers.

(6) (a) This section shall supercede municipal or other regulatory examination authority over master plumbers. Municipal or other local regulatory authorities may assess and collect locally adopted fees and charges relative to plumbing work as defined in Section 1 of this act that is performed in their respective jurisdictions, but only to persons licensed under the provisions of this section.

(b) No municipality or other local regulatory authority shall require any master plumber to apply for or maintain any master plumber's license, or any equivalent thereof, as a condition to performing plumbing work in any municipal or other local jurisdiction, other than a master plumber's license issued by the board.

SECTION 7. (1) A master plumber who has not been licensed by the board, but who has worked as a locally licensed master plumber in a municipality or has a certificate of responsibility issued by the State Board of Contractors to do plumbing work before July 1, 2003, shall be allowed to apply for and receive, upon payment of a reasonable fee set by the board, a master plumber's license permitting him to continue working as a master plumber. Any person holding such a master plumber's license shall
not perform the work of a journeyman plumber unless licensed by the board.

(2) A journeyman plumber who has not been licensed by the board but who has worked as a licensed journeyman plumber in a municipality or other local jurisdiction before July 1, 2003, shall be allowed to apply for and receive, upon payment of a reasonable fee set by the board, a journeyman plumber's license permitting him to continue working as a journeyman plumber.

SECTION 8. (1) The board shall adopt regulations establishing a category of inactive master plumbers, who shall be charged a reasonable annual renewal fee during the period of his inactive status. An inactive master plumber shall not be required to designate an employing entity. When an inactive plumber returns to work as a master plumber, he shall designate an employing entity and pay a reasonable fee set by the board.

(2) An inactive master plumber shall be permitted to work as a journeyman plumber during the period or periods he maintains an inactive plumber's license, if he is currently or was previously licensed by the board as a journeyman plumber.

SECTION 9. Temporary working permits to perform work as a journeyman plumber may be issued to a holder of a state license as a journeyman plumber from another state with similar qualifications, if that state recognizes the Mississippi license, or where other evidence shows that the applicant's past experience would be capable of protecting the public from defective plumbing. Both the chairman and secretary of the board must sign each temporary permit. A temporary working permit shall not be issued to master plumbers.

SECTION 10. (1) All original licenses shall be valid for one (1) year, unless suspended or revoked by the board, and each person to whom a license is issued shall pay a fee as provided in Section 11 of this act. Licenses shall be renewed annually after initial licensure upon payment of a renewal fee as provided in
Section 11 of this act and being in compliance with such additional requirements as the board may promulgate.

(2) (a) The board may establish and determine minimum requirements relative to continuing professional development for the renewal or reinstatement of any license or special endorsement issued by the board.

(b) A journeyman plumber licensed under this act must complete at least six (6) hours of continuing professional education each year upon license renewal. Three (3) of the hours must be in the subjects of health protection, energy conservation, and water conservation.

(c) A master plumber licensed under this act must complete at least twelve (12) hours of continuing professional education each year upon license renewal. Three (3) of the hours must be in the subjects of health protection, energy conservation, and water conservation.

(d) A journeyman plumber or master plumber may receive credit for participating in a continuing professional education course only if the course is provided by an individual, business, or association approved by the board and according to criteria adopted by the board.

SECTION 11. (1) The board may prescribe reasonable examination, licensing, and renewal fees for journeyman and master plumbers, temporary permit fees for journeymen plumbers, restricted license fees for journeyman and master plumbers and renewal fees for inactive master plumbers. These fees shall be commensurate to the extent feasible with the cost of fulfilling the duties of the board as provided by this act.

(2) The fees charged by the board shall not exceed the following amounts:

- (a) Journeyman plumber examination............. $125.00
- (b) Nonwritten journeyman plumber examination.. $150.00
- (c) Master plumber examination............... $250.00
(d) Nonwritten master plumber examination...... $275.00
(e) Initial journeyman plumber or master plumber license fee, payable upon successful completion of examination................................................ $50.00
(f) Journeyman or master plumber renewal fee.... $50.00
(g) Journeyman plumber or master plumber revival fee........................................................ $15.00
(h) Journeyman plumber or master plumber revival fee paid ninety (90) days late................................. $30.00
(i) Journeyman plumber temporary permits........ $75.00
(j) insufficient fund checks or return checks fee........................................................................ $25.00

SECTION 12. (1) The board may investigate an alleged violation of this act by a person who:

(a) Is licensed under this act; or
(b) Performs plumbing without holding a license under this act.

(2) The board shall keep an information file about each complaint filed with the board relating to a person licensed under this act. If a written complaint is filed with the board relating to a person licensed under this act, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

SECTION 13. Any person who violates any provision of this act, upon conviction thereof, shall be fined not less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00), or imprisoned in the county jail for not more than ninety (90) days, or both.

SECTION 14. (1) The board may enjoin any person from engaging in doing the work of a journeyman plumber or master plumber whenever it appears that a person is violating or is conspiring to violate the provisions of this act. The board may
also enjoin an employing entity from violating or conspiring to
violate the provisions of this act.

(2) The injunction provided for in this section may be
obtained without the necessity of posting bond. A court of
competent jurisdiction may, in its discretion, award a reasonable
attorney's fees to the board if the board prevails in any such
action. In order for the board to sustain any such action, it is
not necessary to allege or prove either that an adequate remedy at
law does not exist or that substantial or irreparable damage would
result from the continued violation of this act.

SECTION 15. (1) The board may revoke, suspend, or refuse to
renew any license issued by the board to any natural person in
accordance with procedures established by the board. Grounds for
revocation, suspension or refusal to renew a license, include, but
are not limited to, the following:

(a) Conviction of a felony;
(b) Falsification of any material portion of a
licensee's application or other requisite submission to the board
including, but not limited to, insurance, work, training or
experience verifications;
(c) Habitual performance of the work of either a
journeyman plumber or master plumber that is substantially below
the standard established by the State Department of Health;
(d) Refusal of a master plumber, after notice from the
board, to accurately designate an employment entity in his
application, his renewal thereof, or upon any change in employment
status with an employing entity;
(e) Habitual practice of a master plumber to knowingly
allow any employing entity to hold itself out as engaging in the
business of plumbing at a time when the employing entity does not
employ the master plumber as designated to the board;
(f) Habitual practice of a journeyman plumber or master
plumber to knowingly allow any person not licensed by the board to
perform plumbing work, except as otherwise authorized by the act;

(g) Violation of municipal or other local plumbing
codes not otherwise preempted by this act or related regulations
as evidenced by adjudication before local governing authorities;

and

(h) Habitual violation of the rules and regulations
adopted by the board by master plumbers, journeyman plumbers or
apprentice plumbers.

(2) Any licensee whose license is revoked or otherwise
restricted may appeal, within fifteen (15) days of written notice
by the secretary of the board of the revocation, to the chancery
court in the county of his residence. The chancery court shall
make its ruling based on the record before the board, but shall
not reverse or modify the decision of the board unless it
determines that it was (a) not supported by substantial evidence,
(b) arbitrary and capricious, (c) beyond the power of the board to
make, or (d) in violation of some statutory or constitutional
right of the appellant.

SECTION 16. A person shall be exempt from the requirements
of this act if:

(a) The person is a property owner who is performing
plumbing work in the property owner's homestead;

(b) The person is performing plumbing work outside a
municipality, or inside a municipality with fewer than five
thousand (5,000) inhabitants, unless an ordinance of the
municipality requires the person to be licensed;

(c) The person's plumbing work is incidental to and in
connection with the business in which the person is employed or
engaged and the person:

(i) Is regularly employed as or acting as a
maintenance person or maintenance engineer; and

(ii) Does not engage in plumbing for the public;
(d) The person is engaged in construction, installation, or maintenance on the premises or equipment of a railroad, if the person is an employee of the railroad who does not engage in plumbing for the public;

(e) The person is engaged by a public service company to:

   (i) Lay, maintain, or operate its service mains or lines to the point of connection to the private property; and

   (ii) Install, change, adjust, repair, remove, or renovate appurtenances, equipment, or appliances, and the person does not engage in plumbing work for the public;

(f) The person who performs plumbing work:

   (i) Holds a certificate issued by the State Board of Contractors as an irrigator; or

   (ii) Is licensed as a water well pump installer issued by the State Board of Contractors;

(g) The person performs plumbing work as a liquid petroleum gas installer licensed under the State Fire Marshal’s office; or

(h) The person performing plumbing work as a fire protection installer holds a certificate of responsibility issued by the State Board of Contractors to do fire protection work.

**SECTION 17.** This act shall take effect and be in force from and after July 1, 2003.