

By: Representative Broomfield

To: Judiciary B

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1230

1 AN ACT TO AMEND SECTION 31-3-1, MISSISSIPPI CODE OF 1972, TO
2 REVISE CERTAIN DEFINITIONS FOR THE STATE BOARD OF PUBLIC
3 CONTRACTORS; TO AMEND SECTION 31-3-13, MISSISSIPPI CODE OF 1972,
4 TO AUTHORIZE THE BOARD TO ISSUE RESTRICTED CERTIFICATES OF
5 RESPONSIBILITY FOR CERTAIN PROJECTS; TO PROHIBIT MUNICIPALITIES
6 AND COUNTIES FROM REQUIRING ADDITIONAL TESTING ONCE A CONTRACTOR
7 HAS RECEIVED HIS OR HER CERTIFICATE OF RESPONSIBILITY; TO AMEND
8 SECTIONS 27-17-457 AND 17-25-5, MISSISSIPPI CODE OF 1972, IN
9 CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

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

13 31-3-1. The following words, as used in this chapter, shall
14 have the meanings specified below:

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

17 "Contractor": Any person contracting or undertaking as prime
18 contractor, subcontractor or sub-subcontractor of any tier to do
19 any erection, building, construction, reconstruction, repair,
20 maintenance or related work on any public or private project;
21 however, "contractor" shall not include any owner of a dwelling or
22 other structure to be constructed, altered, repaired or improved
23 and not for sale, lease, public use or assembly. It is further
24 provided that nothing herein shall apply to:

25 (a) Except for those who obtain a restricted
26 certificate of responsibility for undertakings that are less than
27 Fifty Thousand Dollars (\$50,000.00) on a public project, any
28 contract or undertaking on a public project by a prime contractor,
29 subcontractor or sub-subcontractor of any tier involving erection,
30 building, construction, reconstruction, repair, maintenance or

31 related work where such contract, subcontract or undertaking is
32 less than Fifty Thousand Dollars (\$50,000.00);

33 (b) Except for those who obtain a restricted
34 certificate of responsibility for undertakings that are less than
35 One Hundred Thousand Dollars (\$100,000.00) on a private project,
36 any contract or undertaking on a private project by a prime
37 contractor, subcontractor or sub-subcontractor of any tier
38 involving erection, building, construction, reconstruction,
39 repair, maintenance or related work where such contract,
40 subcontract or undertaking is less than One Hundred Thousand
41 Dollars (\$100,000.00);

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

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

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

50 (f) A new commercial construction project not exceeding
51 seventy-five hundred (7500) square feet and not more than two (2)
52 stories in height undertaken by an individual or entity licensed
53 under the provisions of Section 73-59-1 et seq.;

54 (g) Erection of a microwave tower built for the purpose
55 of telecommunication transmissions;

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

61 (i) Any contract or undertaking on a private project by
62 a prime contractor, subcontractor or sub-subcontractor of any tier
63 involving the construction, reconstruction, repair or maintenance

64 of fire protection systems where such contract, subcontract or
65 undertaking is less than Ten Thousand Dollars (\$10,000.00); or

66 (j) Any contract or undertaking on a private or public
67 project by a prime contractor, subcontractor or sub-subcontractor
68 of any tier involving the construction, reconstruction, repair or
69 maintenance of technically specialized installations if performed
70 by a Mississippi contractor who has been in the business of
71 installing fire protection sprinkler systems on or before July 1,
72 2000.

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

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

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

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

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

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

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

96 31-3-13. The board shall have the following powers and
97 responsibilities:

98 (a) To receive applications for certificates of
99 responsibility, to investigate and examine applicants for same by
100 holding hearings and securing information, to conduct
101 examinations, and to issue certificates of responsibility to such
102 contractors as the board finds to be responsible. One-fourth
103 (1/4) of the certificates scheduled for renewal on the last day of
104 December 1980, shall be reviewed by the board on the first Tuesday
105 in January 1981. The remaining certificates shall be subject to
106 renewal in the following manner: one-fourth (1/4) on the first
107 Tuesday in April 1981; one-fourth (1/4) on the first Tuesday in
108 July 1981; and one-fourth (1/4) on the first Tuesday in October
109 1981. The board is authorized to extend the dates of expiration
110 of certificates to coincide with the scheduled date of review of
111 individual contractors. Except for the certificates extended from
112 December 31, 1980, to the first Tuesday in January 1981, the board
113 shall charge fees for the extension of certificates as follows:

114 (i) Twenty-five Dollars (\$25.00) if the date of
115 renewal of the extended certificate is the first Tuesday in April
116 1981;

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

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

122 The extended certificates renewed in compliance with this
123 paragraph (a) and all original certificates and renewals thereof
124 issued on or after July 1, 1980, shall expire one (1) year from
125 the date of issuance. No certificate or any renewal thereof shall
126 be issued until the application has been on file with the board
127 for at least thirty (30) days. Application for renewal of
128 certificates of responsibility, together with the payment of a

129 special privilege license tax as provided under this chapter,
130 shall serve to extend the current certificate until the board
131 either renews the certificate or denies the application.

132 No certificate of responsibility or any renewal thereof shall
133 be issued until the applicant furnishes to the board his
134 Mississippi state sales tax number or Mississippi state use tax
135 number and his state income tax identification numbers.

136 Additional fees may be required as provided in Section
137 31-3-14.

138 The board shall conduct an objective, standardized
139 examination of an applicant for a certificate to ascertain the
140 ability of the applicant to make practical application of his
141 knowledge of the profession or business of construction in the
142 category or categories for which he has applied for a certificate
143 of responsibility. The following are the types of certificates of
144 responsibility that a contractor may be tested on: (a)
145 undertakings greater than Fifty Thousand Dollars (\$50,000.00) on
146 public projects, a regular certificate of responsibility; (b)
147 undertakings less than Fifty Thousand Dollars (\$50,000.00), a
148 restricted certificate of responsibility; (c) undertakings greater
149 than One Hundred Thousand Dollars (\$100,000.00) on private
150 projects, a regular certificate of responsibility; and (d)
151 undertakings less than One Hundred Thousand Dollars (\$100,000.00)
152 on private projects, a restricted certificate of responsibility.

153 The cost of the test and the cost of administering the test shall
154 be paid for by applicants for certificates of responsibility at
155 the time applications are filed. The board shall investigate
156 thoroughly the past record of all applicants, which will include
157 an effort toward ascertaining the qualifications of applicants in
158 reading plans and specifications, estimating costs, construction
159 ethics, and other similar matters. The board shall take all
160 applicants under consideration after having examined him or them
161 and go thoroughly into the records and examinations, prior to

162 granting any certificate of responsibility. If the applicant is an
163 individual, examination may be taken by his personal appearance
164 for examination or by the appearance for examination of one or
165 more of his responsible managing employees; and if a copartnership
166 or corporation or any other combination or organization, by the
167 examination of one or more of the responsible managing officers or
168 members of the executive staff of the applicant's firm, according
169 to its own designation.

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

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

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

187 (e) To revoke by order entered on its minutes a
188 certificate of responsibility upon a finding by the board that a
189 particular contractor is not responsible, and to suspend such
190 certificate of responsibility in particular cases pending
191 investigation, upon cause to be stated in the board's order of
192 suspension. No such revocation or suspension shall be ordered
193 without a hearing conducted upon not less than ten (10) days'
194 notice to such certificate holder by certified or registered mail,

195 wherein the holder of the certificate of responsibility shall be
196 given an opportunity to present all lawful evidence which he may
197 offer.

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

208 (g) The board shall have the power and responsibility
209 to classify the kind or kinds of works or projects that a
210 contractor is qualified and entitled to perform under the
211 certificate of responsibility issued to him. Such classification
212 shall be specified in the certificate of responsibility.

213 The powers of the State Board of Contractors shall not extend
214 to fixing a maximum limit in the bid amount of any contractor, or
215 the bonding capacity, or a maximum amount of work which a
216 contractor may have under contract at any time, except as stated
217 in paragraph (a) of this section; and the Board of Contractors
218 shall not have jurisdiction or the power or authority to determine
219 the maximum bond a contractor may be capable of obtaining. The
220 board, in determining the qualifications of any applicant for an
221 original certificate of responsibility or any renewal thereof,
222 shall, among other things, take into consideration the following:
223 (1) experience and ability, (2) character, (3) the manner of
224 performance of previous contracts, (4) financial condition, (5)
225 equipment, (6) personnel, (7) work completed, (8) work on hand,
226 (9) ability to perform satisfactorily work under contract at the
227 time of an application for a certificate of responsibility or a

228 renewal thereof, (10) default in complying with provisions of this
229 law, or any other law of the state, and (11) the results of
230 objective, standardized examinations. A record shall be made and
231 preserved by the board of each examination of an applicant and the
232 findings of the board thereon, and a certified copy of the record
233 and findings shall be furnished to any applicant desiring to
234 appeal from any order or decision of the board.

235 (h) The board shall enter upon its minutes an order or
236 decision upon each application filed with it, and it may state in
237 such order or decision the reason or reasons for its order or
238 decision.

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

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

249 (i) (i) Notwithstanding any provision of law to the
250 contrary, the board may issue a certificate of responsibility to
251 any person who establishes such person's competency in any
252 classification by successfully passing the examination, authorized
253 under subsection (a) of this section, for measuring of industry
254 expertise in such work that is administered by the board, and such
255 certificate of responsibility shall authorize the holder of the
256 certificate of responsibility to engage in contracting in this
257 state or any of its political subdivisions.

258 (ii) Such holder of a valid certificate of
259 responsibility shall be eligible to contract for such work in any
260 county or municipality upon:

261 1. Exhibiting evidence of a current
262 certificate of responsibility to the appropriate local officials;
263 2. Paying any local privilege fees; and
264 3. Paying any inspection or permit fees
265 customarily required by any county or municipality for such work.

266 No county or municipality shall require such holder of a
267 valid certificate of responsibility to pass any county or
268 municipal test or examination; nor shall a county or municipality
269 impose any additional requirements upon such valid holder of a
270 certificate of responsibility or its employees, nor in any way
271 discriminate against such holder of a certificate of
272 responsibility on the basis of such holder's nonresidency within
273 the county or municipality.

274 **SECTION 3.** Section 27-17-457, Mississippi Code of 1972, is
275 amended as follows:

276 27-17-457. (1) Any contractor, including, but not limited
277 to, any electrical, plumbing, heating and air conditioning, water
278 and sewer, roofing or mechanical contractor, who is licensed by
279 any one (1) municipality or county of the State of Mississippi,
280 which municipality or county has an examining board where there is
281 regularly given a written examination, and who does not hold a
282 current certificate of responsibility issued by the State Board of
283 Public Contractors, shall be allowed to do business in any other
284 municipality or county in the state without being required to
285 obtain a license in such other municipality or county or to
286 undergo any further examination provided:

287 (a) That he furnishes evidence that he has such
288 license;

289 (b) That he furnishes evidence that he actually took
290 and passed the written examination which qualified him for such
291 license; however, in lieu thereof evidence that if said contractor
292 was issued a license prior to May 1, 1972, and prior to the
293 existence of such written examination by a county or municipality

294 which has an examining board that does presently require written
295 examination to qualify for a license; and

296 (c) That he is not operating a separate place of
297 business located in such other municipality or county.

298 (2) Any contractor, including, but not limited to, any
299 electrical, plumbing, heating and air conditioning, water and
300 sewer, roofing or mechanical contractor, who is licensed by any
301 one (1) municipality or county of the State of Mississippi, which
302 municipality or county has an examining board where there is
303 regularly given a written examination, and who holds a current
304 certificate of responsibility issued by the State Board of Public
305 Contractors shall be allowed to do business in any other
306 municipality or county in the state without being required to
307 obtain a separate license in such other municipality or county or
308 to undergo any further examination provided said contractor meets
309 the requirements of paragraphs (a) and (b) of subsection (1) of
310 this section.

311 (3) No additional privilege license bond shall be required
312 in order for such a contractor to do business in another
313 municipality or county in the state as long as the contractor has
314 obtained the bond in the municipality or county where he is
315 licensed.

316 (4) Nothing in this Section 27-17-457 supercedes or
317 otherwise affects the provisions of Title 31, Chapter 3, or the
318 provisions of Title 73, Chapter 59. In the event any provision in
319 Section 27-17-457 conflicts with any provision of Title 31,
320 Chapter 3, or of Title 73, Chapter 59, the latter titles and
321 chapters are hereby deemed and shall be controlling over the
322 provisions of Section 27-17-457.

323 (5) This Section 27-17-457 is intended to apply only to the
324 Local Privilege Tax Law, and is not intended to apply to or
325 restrict the powers and authority granted to municipalities and
326 counties in Sections 21-19-25 and 19-5-9, or any powers or

327 authority derived from said sections related to permits and permit
328 bonds, and the issuance, denial or requirements thereof.

329 (6) No taxpayer receiving a privilege license under this
330 Section 27-17-457 shall be authorized to advertise to the public
331 that they are "licensed" unless said taxpayer is currently in
332 compliance with paragraph (b) of subsection (1) of this section,
333 or holds a current license or certificate of responsibility from
334 the State Board of Contractors. Any officer collecting the tax
335 may suspend the issuance or renewal of a privilege license granted
336 under this section until such time as said officer finds that such
337 taxpayer is in compliance with the provisions of this subsection.
338 If any taxpayer receiving a privilege license under this section
339 presents themselves to the public as "licensed" then said taxpayer
340 must state to the public that they are "licensed by the city of"
341 and/or "county of" followed by the name or names of the
342 appropriate city and/or county from which such taxpayer is
343 currently in compliance with paragraph (b) of subsection (1) of
344 this section; or, if otherwise appropriate, "licensed by the State
345 Board of Contractors."

346 (7) (a) Notwithstanding any provision of law to the
347 contrary, the board may issue a certificate of responsibility to
348 any person who establishes such person's competency in any
349 classification by successfully passing the examination, authorized
350 under Section 31-3-13, for measuring of industry expertise in such
351 work that is administered by the board, and such certificate of
352 responsibility shall authorize the holder of the certificate of
353 responsibility to engage in contracting in this state or any of
354 its political subdivisions.

355 (b) Such holder of a valid certificate of
356 responsibility shall be eligible to contract for such work in any
357 county or municipality upon:

358 (i) Exhibiting evidence of a current certificate
359 of responsibility to the appropriate local officials;

360 (ii) Paying any local privilege fees; and
361 (iii) Paying any inspection or permit fees
362 customarily required by any county or municipality for such work.

363 No county or municipality shall require such holder of a
364 valid certificate of responsibility to pass any county or
365 municipal test or examination; nor shall a county or municipality
366 impose any additional requirements upon such valid holder of a
367 certificate of responsibility or its employees, nor in any way
368 discriminate against such holder of a certificate of
369 responsibility on the basis of such holder's nonresidency within
370 the county or municipality.

371 **SECTION 4.** Section 17-25-5, Mississippi Code of 1972, is
372 amended as follows:

373 17-25-5. (1) Every municipality and county of the State of
374 Mississippi shall grant competency examination reciprocity to any
375 contractor including, but not limited to, any electrical,
376 plumbing, heating and air conditioning, water and sewer, roofing
377 or mechanical contractor, who is licensed by another municipality
378 or county of this state without imposing any further competency
379 examination requirements provided:

380 (a) That the contractor furnishes evidence that he has
381 a license issued on the basis of a competency examination
382 administered in one (1) municipality or county of the State of
383 Mississippi which has an examining board that regularly gives a
384 written examination which has been approved by the State Board of
385 Public Contractors or the Building Officials Association of
386 Mississippi;

387 (b) That he furnishes evidence that he actually took
388 and passed the written examination which qualified him for such
389 license; however, in lieu thereof, he may furnish evidence that
390 he was issued a license prior to May 1, 1972, and prior to the
391 existence of a written examination by a county or municipality

392 which has an examining board that requires written examination to
393 qualify for a license;

394 (c) That he has been actively engaged in the business
395 for which he is licensed for two (2) years or more;

396 (d) That he has held a license for his business for one
397 (1) year or more; and

398 (e) That he pays the license fee to the municipality or
399 county to which application is made for a license unless he holds
400 a current certificate of responsibility issued by the State Board
401 of Public Contractors, in which case no license fee shall be
402 collected.

403 (2) (a) Any contractor who operates more than one (1)
404 separate place of business within the state must obtain the
405 appropriate privilege license and pay the privilege license fee
406 for each location if required by the local jurisdiction.

407 (b) Every jurisdiction in which a contractor does
408 business may impose its own separate bonding requirements on the
409 contractor desiring to do business there.

410 (3) (a) Notwithstanding any provision of law to the
411 contrary, the board may issue a certificate of responsibility to
412 any person who establishes such person's competency in any
413 classification by successfully passing the examination, authorized
414 under Section 31-3-13, for measuring of industry expertise in such
415 work that is administered by the board, and such certificate of
416 responsibility shall authorize the holder of the certificate of
417 responsibility to engage in contracting in this state or any of
418 its political subdivisions.

419 (b) Such holder of a valid certificate of
420 responsibility shall be eligible to contract for such work in any
421 county or municipality upon:

422 (i) Exhibiting evidence of a current certificate
423 of responsibility to the appropriate local officials;

424 (ii) Paying any local privilege fees; and

425 (iii) Paying any inspection or permit fees
426 customarily required by any county or municipality for such work.

427 No county or municipality shall require such holder of a
428 valid certificate of responsibility to pass any county or
429 municipal test or examination; nor shall a county or municipality
430 impose any additional requirements upon such valid holder of a
431 certificate of responsibility or its employees, nor in any way
432 discriminate against such holder of a certificate of
433 responsibility on the basis of such holder's nonresidency within
434 the county or municipality.

435 **SECTION 5.** This act shall take effect and be in force from
436 and after July 1, 2005.