

By: Representative Fleming

To: Judiciary B

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 34

1 AN ACT TO AMEND SECTION 31-3-13, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT THE BOARD OF CONTRACTORS MAY ENLIST THE ASSISTANCE OF
3 THE COURTS TO COLLECT FINES AND ENFORCE ORDERS; TO PROVIDE THAT
4 SHERIFFS SHALL ENFORCE ORDERS OF THE BOARD; AND FOR RELATED
5 PURPOSES.

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

7 **SECTION 1.** Section 31-3-13, Mississippi Code of 1972, is
8 amended as follows:

9 31-3-13. The board shall have the following powers and
10 responsibilities:

11 (a) To receive applications for certificates of
12 responsibility, to investigate and examine applicants for same by
13 holding hearings and securing information, to conduct
14 examinations, and to issue certificates of responsibility to such
15 contractors as the board finds to be responsible. One-fourth
16 (1/4) of the certificates scheduled for renewal on the last day of
17 December 1980, shall be reviewed by the board on the first Tuesday
18 in January 1981. The remaining certificates shall be subject to
19 renewal in the following manner: one-fourth (1/4) on the first
20 Tuesday in April 1981; one-fourth (1/4) on the first Tuesday in
21 July 1981; and one-fourth (1/4) on the first Tuesday in October
22 1981. The board is authorized to extend the dates of expiration
23 of certificates to coincide with the scheduled date of review of
24 individual contractors. Except for the certificates extended from
25 December 31, 1980, to the first Tuesday in January 1981, the board
26 shall charge fees for the extension of certificates as follows:

27 (i) Twenty-five Dollars (\$25.00) if the date of
28 renewal of the extended certificate is the first Tuesday in April
29 1981;

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

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

35 The extended certificates renewed in compliance with this
36 paragraph (a) and all original certificates and renewals thereof
37 issued on or after July 1, 1980, shall expire one (1) year from
38 the date of issuance. No certificate or any renewal thereof shall
39 be issued until the application has been on file with the board
40 for at least thirty (30) days. Application for renewal of
41 certificates of responsibility, together with the payment of a
42 special privilege license tax as provided under this chapter,
43 shall serve to extend the current certificate until the board
44 either renews the certificate or denies the application.

45 No certificate of responsibility or any renewal thereof shall
46 be issued until the applicant furnishes to the board his
47 Mississippi state sales tax number or Mississippi state use tax
48 number and his state income tax identification numbers.

49 Additional fees may be required as provided in Section
50 31-3-14.

51 The board shall conduct an objective, standardized
52 examination of an applicant for a certificate to ascertain the
53 ability of the applicant to make practical application of his
54 knowledge of the profession or business of construction in the
55 category or categories for which he has applied for a certificate
56 of responsibility. The cost of the test and the cost of
57 administering the test shall be paid for by applicants for
58 certificates of responsibility at the time applications are filed.
59 The board shall investigate thoroughly the past record of all

60 applicants, which will include an effort toward ascertaining the
61 qualifications of applicants in reading plans and specifications,
62 estimating costs, construction ethics, and other similar matters.
63 The board shall take all applicants under consideration after
64 having examined him or them and go thoroughly into the records and
65 examinations, prior to granting any certificate of responsibility.
66 If the applicant is an individual, examination may be taken by his
67 personal appearance for examination or by the appearance for
68 examination of one or more of his responsible managing employees;
69 and if a copartnership or corporation or any other combination or
70 organization, by the examination of one or more of the responsible
71 managing officers or members of the executive staff of the
72 applicant's firm, according to its own designation.

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

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

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

90 (e) To revoke by order entered on its minutes a
91 certificate of responsibility upon a finding by the board that a
92 particular contractor is not responsible, and to suspend such

93 certificate of responsibility in particular cases pending
94 investigation, upon cause to be stated in the board's order of
95 suspension. No such revocation or suspension shall be ordered
96 without a hearing conducted upon not less than ten (10) days'
97 notice to such certificate holder by certified or registered mail,
98 wherein the holder of the certificate of responsibility shall be
99 given an opportunity to present all lawful evidence which he may
100 offer.

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

111 (g) The board shall have the power and responsibility
112 to classify the kind or kinds of works or projects that a
113 contractor is qualified and entitled to perform under the
114 certificate of responsibility issued to him. Such classification
115 shall be specified in the certificate of responsibility.

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

126 (1) experience and ability, (2) character, (3) the manner of
127 performance of previous contracts, (4) financial condition, (5)
128 equipment, (6) personnel, (7) work completed, (8) work on hand,
129 (9) ability to perform satisfactorily work under contract at the
130 time of an application for a certificate of responsibility or a
131 renewal thereof, (10) default in complying with provisions of this
132 law, or any other law of the state, and (11) the results of
133 objective, standardized examinations. A record shall be made and
134 preserved by the board of each examination of an applicant and the
135 findings of the board thereon, and a certified copy of the record
136 and findings shall be furnished to any applicant desiring to
137 appeal from any order or decision of the board.

138 (h) The board shall enter upon its minutes an order or
139 decision upon each application filed with it, and it may state in
140 such order or decision the reason or reasons for its order or
141 decision.

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

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

152 (i) When any party fails to abide by any order issued
153 by the board in accordance with this section, the board shall have
154 the power to institute and maintain proceedings in its name for
155 enforcement of the order in the chancery court of the county of
156 residence of the delinquent party; however, if the delinquent
157 party is a nonresident of the State of Mississippi, such

158 proceedings shall be in the Chancery Court of the First Judicial
159 District of Hinds County, Mississippi.

160 (j) The sheriffs of the state shall enforce any orders
161 of the board when so requested by the board.

162 **SECTION 2.** This act shall take effect and be in force from
163 and after July 1, 2006.