

By: Representative Fleming

To: Judiciary B

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; TO AMEND SECTION  
5 31-3-21, MISSISSIPPI CODE OF 1972, TO CLARIFY BID REQUIREMENTS FOR  
6 CONTRACTORS; AND FOR RELATED PURPOSES.

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

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

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

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

28                   (i) Twenty-five Dollars (\$25.00) if the date of  
29 renewal of the extended certificate is the first Tuesday in April  
30 1981;

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

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

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

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

50           Additional fees may be required as provided in Section  
51 31-3-14.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

153 (i) To enlist the assistance of the courts in  
154 collecting fines and enforcing orders.

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

157 **SECTION 2.** Section 31-3-21, Mississippi Code of 1972, is  
158 amended as follows:

159           31-3-21. (1) It shall be unlawful for any person who does  
160 not hold a certificate of responsibility issued under this  
161 chapter, or a similar certificate issued by another state  
162 recognizing such certificate issued by the State of Mississippi,  
163 to submit a bid, enter into a contract for any public, residential  
164 or any other job, or otherwise engage in or continue in this state  
165 in the business of a contractor, as defined in this chapter. Any  
166 bid which is submitted without a certificate of responsibility  
167 number issued under this chapter and without that number appearing  
168 on the exterior of the bid envelope, as and if herein required, at  
169 the time designated for the opening of such bid, shall not be  
170 considered further, and the person or public agency soliciting  
171 bids shall not enter into a contract with a contractor submitting  
172 a bid in violation of this section. In addition, any person  
173 violating this section by knowingly and willfully submitting a bid  
174 for projects without holding a certificate of responsibility  
175 number issued under this chapter, as and if herein required, at  
176 the time of the submission or opening of such bid shall be guilty  
177 of a misdemeanor and, upon conviction, shall be punished by a fine  
178 of not more than One Thousand Dollars (\$1,000.00), or by  
179 imprisonment for not more than six (6) months, or by both such  
180 fine and imprisonment.

181           (2) All bids submitted for public or private projects where  
182 said bid is in excess of Fifty Thousand Dollars (\$50,000.00) with  
183 respect to public projects and in excess of One Hundred Thousand  
184 Dollars (\$100,000.00) with respect to private projects shall  
185 contain on the outside or exterior of the envelope or container of  
186 such bid the contractor's current certificate number, and no bid  
187 shall be opened or considered unless such contractor's current  
188 certificate number appears on the outside or exterior of said  
189 envelope or container, or unless there appears a statement on the  
190 outside or exterior of such envelope or container to the effect  
191 that the bid enclosed therewith did not exceed Fifty Thousand

192 Dollars (\$50,000.00) with respect to public projects or One  
193 Hundred Thousand Dollars (\$100,000.00) with respect to private  
194 projects. Any person violating the provisions of this subsection  
195 shall be guilty of a misdemeanor and, upon conviction, shall be  
196 punished by a fine of not more than One Thousand Dollars  
197 (\$1,000.00), or by imprisonment for not more than six (6) months,  
198 or by both such fine and imprisonment.

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

- 220 (a) The amount of the contract.
- 221 (b) The name and address of the contractor reviewing  
222 the contract.
- 223 (c) The name and location of the project.

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

236           **SECTION 3.** This act shall take effect and be in force from  
237 and after July 1, 2006.