

By: Representative Morris

To: Judiciary B

HOUSE BILL NO. 985

1 AN ACT TO AMEND SECTIONS 31-3-13 AND 73-59-3, MISSISSIPPI
2 CODE OF 1972, TO REQUIRE CONTRACTORS, BUILDERS AND REMODELERS TO
3 POST A PERFORMANCE BOND WHICH APPLIES STATEWIDE; AND FOR RELATED
4 PURPOSES.

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

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

8 31-3-13. The board shall have the following powers and
9 responsibilities:

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

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

29 (ii) Fifty Dollars (\$50.00) if the date of renewal
30 of the extended certificate is the first Tuesday in July 1981; and
31 (iii) Seventy-five Dollars (\$75.00) if the date of
32 renewal of the extended certificate is the first Tuesday in
33 October 1981.

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

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

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

50 The board shall conduct an objective, standardized
51 examination of an applicant for a certificate to ascertain the
52 ability of the applicant to make practical application of his
53 knowledge of the profession or business of construction in the
54 category or categories for which he has applied for a certificate
55 of responsibility. The cost of the test and the cost of
56 administering the test shall be paid for by applicants for
57 certificates of responsibility at the time applications are filed.
58 The board shall investigate thoroughly the past record of all
59 applicants, which will include an effort toward ascertaining the
60 qualifications of applicants in reading plans and specifications,
61 estimating costs, construction ethics, and other similar matters.

62 The board shall take all applicants under consideration after
63 having examined him or them and go thoroughly into the records and
64 examinations, prior to granting any certificate of responsibility.
65 If the applicant is an individual, examination may be taken by his
66 personal appearance for examination or by the appearance for
67 examination of one or more of his responsible managing employees;
68 and if a copartnership or corporation or any other combination or
69 organization, by the examination of one or more of the responsible
70 managing officers or members of the executive staff of the
71 applicant's firm, according to its own designation.

72 The board shall require each applicant to enter into a bond,
73 which shall apply statewide, guaranteeing the faithful performance
74 of such applicant in performing obligations as a contractor. The
75 amount of such bond shall be in the amount of Fifty Thousand
76 Dollars (\$50,000.00).

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

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

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

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

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

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

120 The powers of the State Board of Contractors shall not extend
121 to fixing a maximum limit in the bid amount of any contractor, or
122 the bonding capacity, or a maximum amount of work which a
123 contractor may have under contract at any time, except as stated
124 in paragraph (a) of this section; and the Board of Contractors
125 shall not have jurisdiction or the power or authority to determine
126 the maximum bond a contractor may be capable of obtaining. The

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

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

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

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

156 **SECTION 2.** Section 73-59-3, Mississippi Code of 1972, is
157 amended as follows:

158 73-59-3. (1) Except as otherwise provided in Section
159 73-59-15, persons who perform residential construction or

160 residential improvement shall be licensed by the board annually,
161 and, as a prerequisite to obtaining a license or renewal thereof,
162 each shall submit to the board:

163 (a) Proof of workers' compensation insurance, if
164 applicable;

165 (b) A federal employment identification number or
166 social security number; and

167 (c) A performance bond in the amount of Fifty Thousand
168 Dollars (\$50,000.00) which shall apply statewide.

169 (2) The board shall not require liability insurance to be
170 licensed under this chapter but if a licensee has liability
171 insurance it shall be reflected on the certificate of licensure.

172 (3) The board shall issue or renew a license to a
173 residential builder or remodeler upon payment to the board of the
174 license fee. The initial license fee shall be Fifty Dollars
175 (\$50.00). The license fee may thereafter be increased or
176 decreased by the board and cannot exceed One Hundred Dollars
177 (\$100.00); however, the receipts from fees collected by the board
178 shall be no greater than the amount required to pay all costs and
179 expenses incurred by the board in enforcing the provisions of this
180 chapter. Twenty-five Dollars (\$25.00) of the fee required by this
181 section which is assessed to residential builders licensed under
182 the provisions of Section 73-59-1 et seq. shall be deposited to
183 the Construction Education Fund created pursuant to Section
184 31-3-14 and shall be distributed to the Mississippi Housing
185 Institute. The remaining fees collected under this chapter shall
186 be deposited into the special fund in the State Treasury known as
187 the "State Board of Contractor's Fund" created pursuant to Section
188 31-3-17 and shall be used for the administration and enforcement
189 of this chapter and as provided in Section 31-3-14. Amounts in
190 such fund shall not lapse into the State General Fund at the end
191 of a fiscal year. Interest accrued to such fund shall remain in
192 the fund. All expenditures from the special fund shall be by

193 requisition to the Department of Finance and Administration,
194 signed by the executive secretary of the board and countersigned
195 by the chairman or vice chairman of the board.

196 (4) The license shall expire on the last day of the twelfth
197 month following its issuance or renewal and shall become invalid
198 unless renewed. The board shall notify by mail every licensee
199 under this chapter of the date of the expiration of his license
200 and the amount of the fee required for renewal of the license for
201 one (1) year. Such notice shall be mailed within thirty (30) days
202 prior to the expiration date of the license. The failure on the
203 part of any licensee to renew his license annually in such twelfth
204 month shall not deprive such licensee of the right of renewal,
205 provided that renewal is effected within one hundred twenty (120)
206 days after the expiration date of the license by payment of the
207 license fee plus a penalty of ten percent (10%) of the license
208 fee. A new license required to replace a revoked, lost, mutilated
209 or destroyed license may be issued, subject to the rules of the
210 board, for a charge of not more than Twenty-five Dollars (\$25.00).

211 (5) Any person who is not a resident of the State of
212 Mississippi who desires to perform residential construction or
213 residential improvement shall be licensed to perform such
214 construction or improvement as provided by this chapter.

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