

By: Representative Guice

To: Judiciary B

HOUSE BILL NO. 364
(As Passed the House)

1 AN ACT TO AMEND SECTION 31-3-13, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE THE STATE BOARD OF CONTRACTORS TO CREATE AND MAINTAIN A
3 REGISTRY FOR COMPLAINTS INVOLVING RESIDENTIAL AND COMMERCIAL
4 PROJECTS; AND FOR RELATED 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 (b) To conduct thorough investigations of all
73 applicants seeking renewal of their licenses and of all complaints
74 filed with the board concerning the performance of a contractor on
75 a public or private project.

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

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

89 (e) To revoke by order entered on its minutes a
90 certificate of responsibility upon a finding by the board that a
91 particular contractor is not responsible, and to suspend such
92 certificate of responsibility in particular cases pending
93 investigation, upon cause to be stated in the board's order of
94 suspension. No such revocation or suspension shall be ordered

95 without a hearing conducted upon not less than ten (10) days'
96 notice to such certificate holder by certified or registered mail,
97 wherein the holder of the certificate of responsibility shall be
98 given an opportunity to present all lawful evidence which he may
99 offer.

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

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

115 The powers of the State Board of Contractors shall not extend
116 to fixing a maximum limit in the bid amount of any contractor, or
117 the bonding capacity, or a maximum amount of work which a
118 contractor may have under contract at any time, except as stated
119 in paragraph (a) of this section; and the Board of Contractors
120 shall not have jurisdiction or the power or authority to determine
121 the maximum bond a contractor may be capable of obtaining. The
122 board, in determining the qualifications of any applicant for an
123 original certificate of responsibility or any renewal thereof,
124 shall, among other things, take into consideration the following:
125 (1) experience and ability, (2) character, (3) the manner of
126 performance of previous contracts, (4) financial condition, (5)
127 equipment, (6) personnel, (7) work completed, (8) work on hand,

128 (9) ability to perform satisfactorily work under contract at the
129 time of an application for a certificate of responsibility or a
130 renewal thereof, (10) default in complying with provisions of this
131 law, or any other law of the state, and (11) the results of
132 objective, standardized examinations. A record shall be made and
133 preserved by the board of each examination of an applicant and the
134 findings of the board thereon, and a certified copy of the record
135 and findings shall be furnished to any applicant desiring to
136 appeal from any order or decision of the board.

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

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

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

151 The board shall create and maintain a registry of complaints
152 that the board has determined to be valid and true. The
153 information compiled of these valid complaints shall be available
154 to the general public on the Internet and otherwise, at no cost.

155 **SECTION 2.** This act shall take effect and be in force from
156 and after July 1, 2007.