

Senate Amendments to House Bill No. 1163

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

23 **SECTION 1.** Section 19-5-9, Mississippi Code of 1972, is
24 amended as follows:
25 19-5-9. (1) The construction codes published by a
26 nationally recognized code group which sets minimum standards and
27 has the proper provisions to maintain up-to-date amendments are
28 adopted as minimum standard guides for building, plumbing,
29 electrical, gas, sanitary, and other related codes in Mississippi.
30 Any county within the State of Mississippi, in the discretion of
31 the board of supervisors, may adopt building codes, plumbing
32 codes, electrical codes, sanitary codes, or other related codes
33 dealing with general public health, safety or welfare, or a
34 combination of the same, within but not exceeding the provisions
35 of the construction codes published by nationally recognized code
36 groups, by order or resolution in the manner prescribed in this
37 section, but those codes so adopted shall apply only to the
38 unincorporated areas of the county. However, those codes shall
39 not apply to the erection, maintenance, repair or extension of

40 farm buildings or farm structures, except as may be required under
41 the terms of the "Flood Disaster Protection Act of 1973," and
42 shall apply to a master planned community as defined in Section
43 19-5-10 only to the extent allowed in Section 19-5-10. The
44 provisions of this section shall not be construed to authorize the
45 adoption of any code which applies to the installation, repair or
46 maintenance of electric wires, pipelines, apparatus, equipment or
47 devices by or for a utility rendering public utility services,
48 required by it to be utilized in the rendition of its duly
49 authorized service to the public. Before any such code shall be
50 adopted, it shall be either printed or typewritten and shall be
51 presented in pamphlet form to the board of supervisors at a
52 regular meeting. The order or resolution adopting the code shall
53 not set out the code in full, but shall merely identify the same.
54 The vote or passage of the order or resolution shall be the same
55 as on any other order or resolution. After its adoption, the code
56 or codes shall be certified to by the president and clerk of the
57 board of supervisors and shall be filed as a permanent record in
58 the office of the clerk who shall not be required to transcribe
59 and record the same in the minute book as other orders and
60 resolutions.

61 (2) If the board of supervisors of any county adopts or has
62 adopted construction codes which do not have proper provisions to
63 maintain up-to-date amendments, specifications in such codes for
64 cements used in portland cement concrete shall be superseded by

65 nationally recognized specifications referenced in any code
66 adopted by the Mississippi Building Code Council.

67 (3) All provisions of this section shall apply to amendments
68 and revisions of the codes mentioned in this section. The
69 provisions of this section shall be in addition and supplemental
70 to any existing laws authorizing the adoption, amendment or
71 revision of county orders, resolutions or codes.

72 (4) Any code adopted under the provisions of this section
73 shall not be in operation or force until sixty (60) days have
74 elapsed from the adoption of same; however, any code adopted for
75 the immediate preservation of the public health, safety and
76 general welfare may be effective from and after its adoption by a
77 unanimous vote of the members of the board. Within five (5) days
78 after the adoption or passage of an order or resolution adopting
79 that code or codes the clerk of the board of supervisors shall
80 publish in a legal newspaper published in the county the full text
81 of the order or resolution adopting and approving the code, and
82 the publication shall be inserted at least three (3) times, and
83 shall be completed within thirty (30) days after the passage of
84 the order or resolution.

85 (5) Any person or persons objecting to the code or codes may
86 object in writing to the provisions of the code or codes within
87 sixty (60) days after the passage of the order or resolution
88 approving same, and if the board of supervisors adjudicates that
89 ten percent (10%) or more of the qualified electors residing in
90 the affected unincorporated areas of the county have objected in

91 writing to the code or codes, then in such event the code shall be
92 inoperative and not in effect unless adopted for the immediate
93 preservation of the public health, safety and general welfare
94 until approved by a special election called by the board of
95 supervisors as other special elections are called and conducted by
96 the election commissioners of the county as other special
97 elections are conducted, the special election to be participated
98 in by all the qualified electors of the county residing in the
99 unincorporated areas of the county. If the voters approve the
100 code or codes in the special election it shall be in force and in
101 operation thereafter until amended or modified as provided in this
102 section. If the majority of the qualified electors voting in the
103 special election vote against the code or codes, then, in such
104 event, the code or codes shall be void and of no force and effect,
105 and no other code or codes dealing with that subject shall be
106 adopted under the provisions of this section until at least two
107 (2) years thereafter.

108 (6) After any such code shall take effect the board of
109 supervisors is authorized to employ such directors and other
110 personnel as the board, in its discretion, deems necessary and to
111 expend general county funds or any other funds available to the
112 board to fulfill the purposes of this section.

113 (7) For the purpose of promoting health, safety, morals or
114 the general welfare of the community, the governing authority of
115 any municipality, and, with respect to the unincorporated part of
116 any county, the governing authority of any county, in its

discretion, is empowered to regulate the height, number of stories and size of building and other structures, the percentage of lot that may be occupied, the size of the yards, courts and other open spaces, the density or population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes, but no permits shall be required except as may be required under the terms of the "Flood Disaster Protection Act of 1973" for the erection, maintenance, repair or extension of farm buildings or farm structures outside the corporate limits of municipalities.

(8) The authority granted in this section is cumulative and supplemental to any other authority granted by law.

(9) Notwithstanding any provision of this section to the contrary, any code adopted by a county before or after April 12, 2001, is subject to the provisions of Section 41-26-14(10).

(10) Notwithstanding any provision of this section to the contrary, the Boards of Supervisors of Jackson, Harrison, Hancock, Stone and Pearl River Counties shall enforce the requirements imposed under Section 17-2-1 as provided in such section.

(11) Regardless of whether a county adopts or has adopted codes, as set forth in this section, each and every county in this state shall require permitting as a condition to construction within the unincorporated areas of the county, and such permits shall contain, on their face, in conspicuous print, (a) the contractor's material purchase certificate number to the extent furnished by the Department of Revenue pursuant to Section

27-65-21(4) or the contractor's Taxpayer Identification Number as
furnished by the Internal Revenue Service, and either a copy of
such material purchase certificate furnished by the Department of
Revenue pursuant to Section 27-65-21(4), or a copy of the
contractor's W-9, as the case may be, shall be required to be
provided to the county as part of the prime contractor's
application for such permit, prior to the issuance of such permit,
and (b) the contractor's license or certificate of responsibility
number as required by either Section 31-3-14 et seq., 51-5-1 et
seq. or 73-59-1 et seq.

SECTION 2. Section 21-19-25, Mississippi Code of 1972, is amended as follows:

21-19-25. (1) Any municipality within the State of Mississippi may, in the discretion of its governing authority, adopt building codes, plumbing codes, electrical codes, gas codes, sanitary codes, or any other codes dealing with general public health, safety or welfare, or a combination of the same, by ordinance, in the manner prescribed in this section. Before any such code shall be adopted, it shall be either printed or typewritten, and it shall be presented in pamphlet form to the governing authority of the municipality at a regular meeting. The ordinance adopting the code shall not set out the code in full, but shall merely identify the same. The vote on passage of the ordinance shall be the same as on any other ordinances. After its adoption, the code shall be certified to by the mayor and clerk of the municipality, and shall be filed as a permanent record in the

office of the clerk, who shall not be required to transcribe and record the same in the ordinance book as other ordinances. It shall not be necessary that the ordinance adopting the code or the code itself be published in full, but notice of the adoption of the code shall be given by publication in some newspaper of the municipality for one (1) time, or if there be no such newspaper, by posting at three (3) or more public places within the corporate limits, a notice in substantially the following form:

Notice is given that the city (or town or village) of _____, on the (give date of ordinance adopting code), adopted (state type of code and other information serving to identify the same) code.

(2) If the governing authority of any municipality adopts or has adopted construction codes which do not have proper provisions to maintain up-to-date amendments, specifications in such codes for cements used in portland cement concrete shall be superseded by nationally recognized specifications referenced in any code adopted by the Mississippi Building Code Council.

(3) All the provisions of this section shall apply to amendments and revisions of the code mentioned in this section. Any code adopted in accordance with this section shall not be in force for one (1) month after its passage, unless the municipal authorities in the ordinance authorize to the contrary. The provisions of this section shall be in addition and supplemental to any existing laws authorizing the adoption, amendment or revision of municipal ordinances or codes.

195 (4) Notwithstanding any provision of this section to the
196 contrary, any code adopted by a municipality before or after April
197 12, 2001, is subject to the provisions of Section 41-26-14(10).

198 (5) Notwithstanding any provision of this section to the
199 contrary, the governing authorities of each municipality in
200 Jackson, Harrison, Hancock, Stone and Pearl River Counties shall
201 enforce the requirements imposed under Section 17-2-1 as provided
202 in such section.

203 (6) Regardless of whether the governing authority of any
204 municipality adopts or has adopted construction codes, as set
205 forth in this section, each and every governing authority of any
206 municipality shall require permitting as a condition to
207 construction within the municipality's jurisdiction, and any and
208 all such permits shall contain on their faces, in conspicuous
209 print, (a) the contractor's material purchase certificate number
210 to the extent one is furnished by the Department of Revenue
211 pursuant to Section 27-65-21(4) or the contractor's Taxpayer
212 Identification Number as furnished by the Internal Revenue
213 Service, and either a copy of such material purchase certificate
214 furnished by the Department of Revenue pursuant to Section
215 27-65-21(4), or a copy of the contractor's W-9, as the case may
216 be, shall be required to be provided to the governing authority of
217 such municipality as part of the contractor's application for such
218 permit, prior to the issuance of such permit, and (b) the
219 contractor's license or certificate of responsibility number as

required by either Section 31-3-14 et seq., 51-5-1 et seq. or
73-59-1 et seq.

(7) The provisions of this section shall apply to all
municipalities of this state, whether operating under the code
charter, a special charter, commission form, or other form of
government.

SECTION 3. Section 73-59-1, Mississippi Code of 1972, is
amended as follows:

73-59-1. For the purposes of this chapter, the following
words shall have the meanings ascribed herein:

(a) "Board" means the State Board of Contractors
created in Section 31-3-3, Mississippi Code of 1972.

(b) "Residential builder" means any corporation,
partnership or individual who constructs a building or structure
for sale for use by another as a residence or who, for a fixed
price, commission, fee, wage or other compensation, undertakes or
offers to undertake the construction, or superintending of the
construction, of any building or structure which is not more than
three (3) floors in height, to be used by another as a residence,
when the total cost of the undertaking exceeds Fifty Thousand
Dollars (\$50,000.00).

(c) "Remodeler" means any corporation, partnership or
individual who, for a fixed price, commission, fee, wage or other
compensation, undertakes or offers to undertake the construction,
or superintending of the construction, of improvements to an

existing residence when the total cost of the improvements exceeds
Ten Thousand Dollars (\$10,000.00).

(d) "Residential construction" means any undertaking
described in paragraph (b) of this section performed by a
residential builder.

(e) "Residential improvement" means any undertaking
described in paragraph (c) of this section performed by a
remodeler.

(f) "Active licensee" means any builder or remodeler
licensed under this chapter and engaged in building and
remodeling.

(g) "Inactive licensee" means any builder or remodeler
licensed under this chapter and not engaged in building or
remodeling.

(h) "Construction manager" means any person or entity,
other than a residential builder, remodeler or owner, who has a
contract or agreement with the owner of the property for
residential construction or residential improvement, no matter if
that owner himself is the general contractor or a holder of a
building permit.

(i) "Residential solar contractor" means any person or
entity who installs, modifies, maintains, and repairs thermal and
photovoltaic solar energy systems.

SECTION 4. Section 73-59-3, Mississippi Code of 1972, is
amended as follows:

73-59-3. (1) Except as otherwise provided in Section 73-59-15 or Section 33-1-39, the following persons * * * or entities shall be licensed by the board annually as an active licensee or inactive licensee, as appropriate * * *:

(a) Persons or entities acting in the capacity as a residential builder;

(b) Persons or entities acting in the capacity as a residential remodeler;

(c) Persons or entities acting in the capacity as a construction manager through a contract or an agreement with the owner of the property being improved or constructed upon;

(d) Any subcontractor, of any tier, performing the following work or within the following trade, on any residential construction or residential improvement project, no matter the dollar amount of the construction or improvements:

(i) Electrical;

(ii) Plumbing;

(iii) Mechanical; and/or

(iv) Heating, ventilation and/or air conditioning;

and

(e) Persons or entities acting in the capacity as a residential solar contractor.

(2) As a prerequisite to obtaining a license or renewal thereof, each of the persons or entities in subsection (1) of this section shall submit to the board:

(a) Proof of workers' compensation insurance, if
required by applicable law; however, workers' compensation
insurance shall not be required for inactive licensees;

(b) A federal employment identification number or
social security number.

(* * *3) The board may require liability insurance to be
licensed under this chapter and it shall be reflected on the
certificate of licensure; however, liability insurance shall not
be required for inactive licensees.

(* * *4) The board shall issue or renew a license to * * *
persons or entities required by subsection (1) of this section to
be licensed, upon payment to the board of the license fee. The
initial license fee shall be Fifty Dollars (\$50.00). The license
fee may thereafter be increased or decreased by the board and
cannot exceed One Hundred Dollars (\$100.00); however, the receipts
from fees collected by the board shall be no greater than the
amount required to pay all costs and expenses incurred by the
board in enforcing the provisions of this chapter. Twenty-five
Dollars (\$25.00) of the fee required by this section which is
assessed to residential builders licensed under the provisions of
Section 73-59-1 et seq. shall be deposited to the Construction
Education Fund created pursuant to Section 31-3-14 and shall be
distributed to the Mississippi Housing Institute. The remaining
fees collected under this chapter shall be deposited into the
special fund in the State Treasury known as the "State Board of
Contractors Fund" created pursuant to Section 31-3-17 and shall be

used for the administration and enforcement of this chapter and as provided in Section 31-3-14. Amounts in such fund shall not lapse into the State General Fund at the end of a fiscal year. Interest accrued to such fund shall remain in the fund. All expenditures from the special fund shall be by requisition to the Department of Finance and Administration, signed by the executive director of the board and countersigned by the chairman or vice chairman of the board.

(* * *5) Except as provided in Section 33-1-39, the license shall expire on the last day of the twelfth month following its issuance or renewal and shall become invalid unless renewed. The board may notify by mail or email every licensee under this chapter of the date of the expiration of his license and the amount of the fee required for renewal of the license for one (1) year. To receive notification by email, a licensee must notify the board of his desire to receive notification by email and provide an email address. Such notice may be mailed or emailed within thirty (30) days prior to the expiration date of the license. The failure on the part of any licensee to renew his license annually in such twelfth month shall not deprive such licensee of the right of renewal, provided that renewal is effected within one hundred eighty (180) days after the expiration date of the license by payment of the license fee plus a penalty of ten percent (10%) of the license fee. A new license required to replace a revoked, lost, mutilated or destroyed license may be issued, subject to the rules of the board, for a charge of not

more than Fifty Dollars (\$50.00). An inactive licensee may become an active licensee upon application meeting all the requirements of this section.

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

SECTION 5. Section 73-59-9, Mississippi Code of 1972, is amended as follows:

73-59-9. (1) Any * * * person or entity required to have a license under Section 73-59-3(1) who undertakes or attempts to undertake the business of residential construction or improvement without having a valid license as required by this chapter, or who knowingly presents to the board, or files with the board, false information for the purpose of obtaining such license, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not less than One Hundred Dollars (\$100.00) and not more than Five Thousand Dollars (\$5,000.00) or be imprisoned for not less than thirty (30) nor more than sixty (60) days in the county jail, or both.

* * *

(* * *2) * * * Any person or entity required to have a license under Section 73-59-3(1) who does not have the license provided by this chapter at the time construction, building or remodeling services are rendered may not bring any action, either at law or in equity, to enforce any contract for residential

building or remodeling or to enforce a sales contract, but instead shall be only permitted to recover as damages actual documented expenses for labor, materials or both, incurred as a result of the construction, building or remodeling services rendered, but only for those expenses which can be shown by clear and convincing evidence.

(* * *3) The board shall have the authority to issue a citation and may stop work of a residential builder or remodeler performing work without having a valid license as required by this chapter.

SECTION 6. Section 73-59-15, Mississippi Code of 1972, is amended as follows:

73-59-15. (1) This chapter shall not apply to:

(a) Agricultural buildings, buildings used for agricultural purposes, buildings constructed as a community effort, or tenant houses;

(b) Any person who undertakes construction or improvement on his own residence, or who acts as his own general contractor in the performance of construction or improvement on his own residence;

(c) Any person who undertakes residential construction or improvement, or who acts as a general contractor in the performance of residential construction or improvement, or who acts under supervision of the owner-occupant with respect to residential construction or improvement, when the owner of such construction or improvement is related to such person by

399 consanguinity or direct affinity, and the property or improvement
400 will not be for sale, rent, public use or public assembly;

401 (d) The owners of property who supervise, superintend,
402 oversee, direct or in any manner assume charge of the
403 construction, alteration, repair, improvement, movement,
404 demolition, putting up, tearing down or maintenance of any
405 building, railroad, excavation, project, development, improvement,
406 plant facility or any other construction undertaking on such
407 property for use by such owner and which will not be for sale,
408 rent, public use or public assembly;

409 (e) Any contractor holding a valid license or
410 certificate of responsibility for general construction from the
411 board;

412 (f) Any nonresident contractor holding a valid license
413 or certificate of responsibility for * * * building construction;

414 (g) Any person who constructs two (2) single residences
415 or less within a period of one (1) year in any county or
416 municipality which does not require a building permit or any local
417 certification for such construction, provided that the person is
418 not building the residences for sale, profit or remuneration.

419 (2) A person specified in subsection (1)(b) or (c) shall not
420 make more than * * * one (1) application for a permit to construct
421 a single residence or shall not construct more than * * * one (1)
422 single residence within a period of one (1) year. There shall be
423 a rebuttable presumption that such person intends to construct for
424 the purpose of sale, lease, rent or any similar purpose if more

425 than * * * one (a) application is made for a permit to construct a
426 single residence or if more than * * * one (1) single residence is
427 constructed within a period of one (1) year.

428 **SECTION 7.** This act shall take effect and be in force from
429 and after July 1, 2022, and shall stand repealed on June 30, 2022.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTIONS 19-5-9 AND 21-19-25, MISSISSIPPI
2 CODE OF 1972, TO PROVIDE THAT, REGARDLESS OF WHETHER A COUNTY OR
3 MUNICIPALITY HAS ADOPTED CERTAIN CONSTRUCTION CODES, A COUNTY OR
4 MUNICIPALITY, AS THE CASE MAY BE, SHALL REQUIRE PERMITTING AS A
5 CONDITION TO CONSTRUCTION, AND THAT SUCH PERMITS SHALL CONTAIN ON
6 THEIR FACE THE CONTRACTOR'S MATERIAL PURCHASE CERTIFICATE NUMBER
7 TO THE EXTENT FURNISHED BY THE DEPARTMENT OF REVENUE AND THE
8 CONTRACTOR'S LICENSE OR CERTIFICATE OF RESPONSIBILITY NUMBER AS
9 REQUIRED BY CERTAIN SECTIONS OF LAW; TO AMEND SECTIONS 73-59-1,
10 73-59-3, 73-59-9 AND 73-59-15, MISSISSIPPI CODE OF 1972, WHICH ARE
11 SECTIONS OF LAWS REGULATING RESIDENTIAL BUILDERS AND REMODELERS,
12 TO DEFINE THE TERMS "CONSTRUCTION MANAGER" AND "RESIDENTIAL SOLAR
13 CONTRACTOR" FOR PURPOSES OF SUCH SECTIONS OF LAW, TO REVISE THE
14 PERSONS OR ENTITIES THAT MUST BE LICENSED BY THE STATE BOARD OF
15 CONTRACTORS UNDER SUCH LAWS, TO REVISE CERTAIN PROVISIONS
16 REGARDING PENALTIES FOR PERSONS WHO UNDERTAKE TO PERFORM THE
17 BUSINESS OF RESIDENTIAL CONSTRUCTION OR IMPROVEMENT WITHOUT FIRST
18 HAVING A LICENSE; TO REVISE THE TYPES OF REMEDIES AVAILABLE TO
19 SUCH PERSONS OR ENTITIES AND TO REVISE THE TYPES OF RESIDENTIAL
20 CONSTRUCTION TO WHICH SUCH SECTIONS OF LAWS DO NOT APPLY; AND FOR
21 RELATED PURPOSES.

SS26\HB1163A.J

Eugene S. Clarke
Secretary of the Senate