

By: Senator(s) Suber

To: County Affairs;
Municipalities

SENATE BILL NO. 2612

1 AN ACT TO BRING FORWARD SECTION 19-5-9, MISSISSIPPI CODE OF
 2 1972, WHICH REQUIRES COUNTY PERMITTING AS A CONDITION TO
 3 CONSTRUCTION WITHIN THE UNINCORPORATED AREAS OF A COUNTY, FOR THE
 4 PURPOSE OF POSSIBLE AMENDMENT; TO BRING FORWARD SECTION 21-19-25,
 5 MISSISSIPPI CODE OF 1972, WHICH REQUIRES MUNICIPAL PERMITTING AS A
 6 CONDITION TO CONSTRUCTION WITHIN A MUNICIPALITY'S JURISDICTION,
 7 FOR THE PURPOSE OF POSSIBLE AMENDMENT; TO BRING FORWARD SECTIONS
 8 73-59-1, 73-59-3, 73-59-9 AND 73-59-15, MISSISSIPPI CODE OF 1972,
 9 WHICH CONCERN LICENSING BY THE STATE BOARD OF CONTRACTORS FOR
 10 RESIDENTIAL BUILDERS AND REMODELERS, AND CERTAIN OTHER
 11 CONSTRUCTION MANAGERS, CONTRACTORS AND SUBCONTRACTORS, FOR THE
 12 PURPOSE OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** Section 19-5-9, Mississippi Code of 1972, is
 15 brought forward as follows:

16 19-5-9. (1) The construction codes published by a
 17 nationally recognized code group which sets minimum standards and
 18 has the proper provisions to maintain up-to-date amendments are
 19 adopted as minimum standard guides for building, plumbing,
 20 electrical, gas, sanitary, and other related codes in Mississippi.
 21 Any county within the State of Mississippi, in the discretion of
 22 the board of supervisors, may adopt building codes, plumbing
 23 codes, electrical codes, sanitary codes, or other related codes



24 dealing with general public health, safety or welfare, or a
25 combination of the same, within but not exceeding the provisions
26 of the construction codes published by nationally recognized code
27 groups, by order or resolution in the manner prescribed in this
28 section, but those codes so adopted shall apply only to the
29 unincorporated areas of the county. However, those codes shall
30 not apply to the erection, maintenance, repair or extension of
31 farm buildings or farm structures, except as may be required under
32 the terms of the "Flood Disaster Protection Act of 1973," and
33 shall apply to a master planned community as defined in Section
34 19-5-10 only to the extent allowed in Section 19-5-10. The
35 provisions of this section shall not be construed to authorize the
36 adoption of any code which applies to the installation, repair or
37 maintenance of electric wires, pipelines, apparatus, equipment or
38 devices by or for a utility rendering public utility services,
39 required by it to be utilized in the rendition of its duly
40 authorized service to the public. Before any such code shall be
41 adopted, it shall be either printed or typewritten and shall be
42 presented in pamphlet form to the board of supervisors at a
43 regular meeting. The order or resolution adopting the code shall
44 not set out the code in full, but shall merely identify the same.
45 The vote or passage of the order or resolution shall be the same
46 as on any other order or resolution. After its adoption, the code
47 or codes shall be certified to by the president and clerk of the
48 board of supervisors and shall be filed as a permanent record in



49 the office of the clerk who shall not be required to transcribe
50 and record the same in the minute book as other orders and
51 resolutions.

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

58 (3) All provisions of this section shall apply to amendments
59 and revisions of the codes mentioned in this section. The
60 provisions of this section shall be in addition and supplemental
61 to any existing laws authorizing the adoption, amendment or
62 revision of county orders, resolutions or codes.

63 (4) Any code adopted under the provisions of this section
64 shall not be in operation or force until sixty (60) days have
65 elapsed from the adoption of same; however, any code adopted for
66 the immediate preservation of the public health, safety and
67 general welfare may be effective from and after its adoption by a
68 unanimous vote of the members of the board. Within five (5) days
69 after the adoption or passage of an order or resolution adopting
70 that code or codes the clerk of the board of supervisors shall
71 publish in a legal newspaper published in the county the full text
72 of the order or resolution adopting and approving the code, and
73 the publication shall be inserted at least three (3) times, and



74 shall be completed within thirty (30) days after the passage of
75 the order or resolution.

76 (5) Any person or persons objecting to the code or codes may
77 object in writing to the provisions of the code or codes within
78 sixty (60) days after the passage of the order or resolution
79 approving same, and if the board of supervisors adjudicates that
80 ten percent (10%) or more of the qualified electors residing in
81 the affected unincorporated areas of the county have objected in
82 writing to the code or codes, then in such event the code shall be
83 inoperative and not in effect unless adopted for the immediate
84 preservation of the public health, safety and general welfare
85 until approved by a special election called by the board of
86 supervisors as other special elections are called and conducted by
87 the election commissioners of the county as other special
88 elections are conducted, the special election to be participated
89 in by all the qualified electors of the county residing in the
90 unincorporated areas of the county. If the voters approve the
91 code or codes in the special election it shall be in force and in
92 operation thereafter until amended or modified as provided in this
93 section. If the majority of the qualified electors voting in the
94 special election vote against the code or codes, then, in such
95 event, the code or codes shall be void and of no force and effect,
96 and no other code or codes dealing with that subject shall be
97 adopted under the provisions of this section until at least two
98 (2) years thereafter.



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

104 (7) For the purpose of promoting health, safety, morals or
105 the general welfare of the community, the governing authority of
106 any municipality, and, with respect to the unincorporated part of
107 any county, the governing authority of any county, in its
108 discretion, is empowered to regulate the height, number of stories
109 and size of building and other structures, the percentage of lot
110 that may be occupied, the size of the yards, courts and other open
111 spaces, the density or population, and the location and use of
112 buildings, structures and land for trade, industry, residence or
113 other purposes, but no permits shall be required except as may be
114 required under the terms of the "Flood Disaster Protection Act of
115 1973" for the erection, maintenance, repair or extension of farm
116 buildings or farm structures outside the corporate limits of
117 municipalities.

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

120 (9) Notwithstanding any provision of this section to the
121 contrary, any code adopted by a county before or after April 12,
122 2001, is subject to the provisions of Section 41-26-14(10).



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

127 (11) Regardless of whether a county adopts or has adopted
128 codes, as set forth in this section, each and every county in this
129 state shall require permitting as a condition to construction
130 within the unincorporated areas of the county, and such permits
131 shall contain, on their face, in conspicuous print, (a) the
132 contractor's material purchase certificate number to the extent
133 furnished by the Department of Revenue pursuant to Section
134 27-65-21(3) or the contractor's Taxpayer Identification Number as
135 furnished by the Internal Revenue Service, and either a copy of
136 such material purchase certificate furnished by the Department of
137 Revenue pursuant to Section 27-65-21(3), or a copy of the
138 contractor's W-9, as the case may be, shall be required to be
139 provided to the county as part of the prime contractor's
140 application for such permit, prior to the issuance of such permit,
141 and (b) the contractor's license or certificate of responsibility
142 number as required by either Section 31-3-14 et seq., 51-5-1 et
143 seq. or 73-59-1 et seq.

144 **SECTION 2.** Section 21-19-25, Mississippi Code of 1972, is
145 brought forward as follows:

146 21-19-25. (1) Any municipality within the State of
147 Mississippi may, in the discretion of its governing authority,



148 adopt building codes, plumbing codes, electrical codes, gas codes,
149 sanitary codes, or any other codes dealing with general public
150 health, safety or welfare, or a combination of the same, by
151 ordinance, in the manner prescribed in this section. Before any
152 such code shall be adopted, it shall be either printed or
153 typewritten, and it shall be presented in pamphlet form to the
154 governing authority of the municipality at a regular meeting. The
155 ordinance adopting the code shall not set out the code in full,
156 but shall merely identify the same. The vote on passage of the
157 ordinance shall be the same as on any other ordinances. After its
158 adoption, the code shall be certified to by the mayor and clerk of
159 the municipality, and shall be filed as a permanent record in the
160 office of the clerk, who shall not be required to transcribe and
161 record the same in the ordinance book as other ordinances. It
162 shall not be necessary that the ordinance adopting the code or the
163 code itself be published in full, but notice of the adoption of
164 the code shall be given by publication in some newspaper of the
165 municipality for one (1) time, or if there be no such newspaper,
166 by posting at three (3) or more public places within the corporate
167 limits, a notice in substantially the following form:

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



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

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

186 (4) Notwithstanding any provision of this section to the
187 contrary, any code adopted by a municipality before or after April
188 12, 2001, is subject to the provisions of Section 41-26-14(10).

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

194 (6) Regardless of whether the governing authority of any
195 municipality adopts or has adopted construction codes, as set
196 forth in this section, each and every governing authority of any



197 municipality shall require permitting as a condition to
198 construction within the municipality's jurisdiction, and any and
199 all such permits shall contain on their faces, in conspicuous
200 print, (a) the contractor's material purchase certificate number
201 to the extent one is furnished by the Department of Revenue
202 pursuant to Section 27-65-21(3) or the contractor's Taxpayer
203 Identification Number as furnished by the Internal Revenue
204 Service, and either a copy of such material purchase certificate
205 furnished by the Department of Revenue pursuant to Section
206 27-65-21(3), or a copy of the contractor's W-9, as the case may
207 be, shall be required to be provided to the governing authority of
208 such municipality as part of the contractor's application for such
209 permit, prior to the issuance of such permit, and (b) the
210 contractor's license or certificate of responsibility number as
211 required by either Section 31-3-14 et seq., 51-5-1 et seq. or
212 73-59-1 et seq.

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

217 **SECTION 3.** Section 73-59-1, Mississippi Code of 1972, is
218 brought forward as follows:

219 73-59-1. For the purposes of this chapter, the following
220 words shall have the meanings ascribed herein:



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

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

232 (c) "Remodeler" means any corporation, partnership or
233 individual who, for a fixed price, commission, fee, wage or other
234 compensation, undertakes or offers to undertake the construction,
235 or superintending of the construction, of improvements to an
236 existing residence when the total cost of the improvements exceeds
237 Ten Thousand Dollars (\$10,000.00).

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

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



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

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

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

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

259 **SECTION 4.** Section 73-59-3, Mississippi Code of 1972, is
260 brought forward as follows:

261 73-59-3. (1) Except as otherwise provided in Section
262 73-59-15 or Section 33-1-39, the following persons or entities
263 shall be licensed by the board annually as an active licensee or
264 inactive licensee, as appropriate:

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

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



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

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

276 (i) Electrical;

277 (ii) Plumbing;

278 (iii) Mechanical; and/or

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

280 and

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

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

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

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

291 (3) The board may require liability insurance to be licensed
292 under this chapter and it shall be reflected on the certificate of



293 licensure; however, liability insurance shall not be required for
294 inactive licensees.

295 (4) The board shall issue or renew a license to persons or
296 entities required by subsection (1) of this section to be
297 licensed, upon payment to the board of the license fee. The
298 initial license fee shall be Fifty Dollars (\$50.00). The license
299 fee may thereafter be increased or decreased by the board and
300 cannot exceed One Hundred Dollars (\$100.00); however, the receipts
301 from fees collected by the board shall be no greater than the
302 amount required to pay all costs and expenses incurred by the
303 board in enforcing the provisions of this chapter. Twenty-five
304 Dollars (\$25.00) of the fee required by this section which is
305 assessed to residential builders licensed under the provisions of
306 Section 73-59-1 et seq. shall be deposited to the Construction
307 Education Fund created pursuant to Section 31-3-14 and shall be
308 distributed to the Mississippi Housing Institute. The remaining
309 fees collected under this chapter shall be deposited into the
310 special fund in the State Treasury known as the "State Board of
311 Contractors Fund" created pursuant to Section 31-3-17 and shall be
312 used for the administration and enforcement of this chapter and as
313 provided in Section 31-3-14. Amounts in such fund shall not lapse
314 into the State General Fund at the end of a fiscal year. Interest
315 accrued to such fund shall remain in the fund. All expenditures
316 from the special fund shall be by requisition to the Department of
317 Finance and Administration, signed by the executive director of



318 the board and countersigned by the chairman or vice chairman of
319 the board.

320 (5) Except as provided in Section 33-1-39, the license shall
321 expire on the last day of the twelfth month following its issuance
322 or renewal and shall become invalid unless renewed. The board may
323 notify by mail or email every licensee under this chapter of the
324 date of the expiration of his license and the amount of the fee
325 required for renewal of the license for one (1) year. To receive
326 notification by email, a licensee must notify the board of his
327 desire to receive notification by email and provide an email
328 address. Such notice may be mailed or emailed within thirty (30)
329 days prior to the expiration date of the license. The failure on
330 the part of any licensee to renew his license annually in such
331 twelfth month shall not deprive such licensee of the right of
332 renewal, provided that renewal is effected within one hundred
333 eighty (180) days after the expiration date of the license by
334 payment of the license fee plus a penalty of ten percent (10%) of
335 the license fee. A new license required to replace a revoked,
336 lost, mutilated or destroyed license may be issued, subject to the
337 rules of the board, for a charge of not more than Fifty Dollars
338 (\$50.00). An inactive licensee may become an active licensee upon
339 application meeting all the requirements of this section.

340 (6) Any person who is not a resident of the State of
341 Mississippi who desires to perform residential construction or



342 residential improvement shall be licensed to perform such
343 construction or improvement as provided by this chapter.

344 **SECTION 5.** Section 73-59-9, Mississippi Code of 1972, is
345 brought forward as follows:

346 73-59-9. (1) Any person or entity required to have a
347 license under Section 73-59-3(1) who undertakes or attempts to
348 undertake the business of residential construction or improvement
349 without having a valid license as required by this chapter, or who
350 knowingly presents to the board, or files with the board, false
351 information for the purpose of obtaining such license, shall be
352 deemed guilty of a misdemeanor and, upon conviction, shall be
353 fined not less than One Hundred Dollars (\$100.00) and not more
354 than Five Thousand Dollars (\$5,000.00) or be imprisoned for not
355 less than thirty (30) nor more than sixty (60) days in the county
356 jail, or both.

357 (2) Any person or entity required to have a license under
358 Section 73-59-3(1) who does not have the license provided by this
359 chapter at the time construction, building or remodeling services
360 are rendered may not bring any action, either at law or in equity,
361 to enforce any contract for residential building or remodeling or
362 to enforce a sales contract, but instead shall be only permitted
363 to recover as damages actual documented expenses for labor,
364 materials or both, incurred as a result of the construction,
365 building or remodeling services rendered, but only for those
366 expenses which can be shown by clear and convincing evidence.



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

370 **SECTION 6.** Section 73-59-15, Mississippi Code of 1972, is
371 brought forward as follows:

372 73-59-15. (1) This chapter shall not apply to:

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

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

380 (c) Any person who undertakes residential construction
381 or improvement, or who acts as a general contractor in the
382 performance of residential construction or improvement, or who
383 acts under supervision of the owner-occupant with respect to
384 residential construction or improvement, when the owner of such
385 construction or improvement is related to such person by
386 consanguinity or direct affinity, and the property or improvement
387 will not be for sale, rent, public use or public assembly;

388 (d) The owners of property who supervise, superintend,
389 oversee, direct or in any manner assume charge of the
390 construction, alteration, repair, improvement, movement,
391 demolition, putting up, tearing down or maintenance of any



392 building, railroad, excavation, project, development, improvement,
393 plant facility or any other construction undertaking on such
394 property for use by such owner and which will not be for sale,
395 rent, public use or public assembly;

396 (e) Any contractor holding a valid license or
397 certificate of responsibility for general construction from the
398 board;

399 (f) Any nonresident contractor holding a valid license
400 or certificate of responsibility for building construction;

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

406 (2) A person specified in subsection (1)(b) or (c) shall not
407 make more than one (1) application for a permit to construct a
408 single residence or shall not construct more than one (1) single
409 residence within a period of one (1) year. There shall be a
410 rebuttable presumption that such person intends to construct for
411 the purpose of sale, lease, rent or any similar purpose if more
412 than one (1) application is made for a permit to construct a
413 single residence or if more than one (1) single residence is
414 constructed within a period of one (1) year.

415 **SECTION 7.** This act shall take effect and be in force from
416 and after its passage.

