

By: Guice

To: Judiciary B; Public
Buildings, Grounds
and Lands

HOUSE BILL NO. 145

1 AN ACT TO AMEND SECTION 31-3-14, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE PUBLIC AGENCIES TO PAY A SURCHARGE ON PUBLIC CONSTRUCTION
3 PROJECTS FOR THE PURPOSE OF SUPPORTING THE MISSISSIPPI
4 CONSTRUCTION EDUCATION FOUNDATION'S SCHOOL-TO-WORK PROGRAM; TO
5 AMEND SECTION 31-3-21, MISSISSIPPI CODE OF 1972, TO REQUIRE
6 CONTRACTORS TO CALCULATE THE SURCHARGE AMOUNT IN BIDS SUBMITTED
7 FOR PUBLIC PROJECTS; AND FOR RELATED PURPOSES.

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

9 SECTION 1. Section 31-3-14, Mississippi Code of 1972, is
10 amended as follows:

11 31-3-14. (1) In addition to the fees required for
12 application and renewal for certification and registration of all
13 contractors in Section 31-3-13, all holders of a certificate of
14 responsibility shall pay a fee equal to One Hundred Dollars
15 (\$100.00) at the time of application or renewal of certificates of
16 responsibility. Any residential builder licensed under * * *
17 Section 73-59-1 et seq., Mississippi Code of 1972, shall be exempt
18 from the fee imposed under this section. The revenue derived from
19 such additional fees shall be deposited into the "Construction
20 Education Fund," a special fund * * * created in the State
21 Treasury, and distributed by the State Board of Contractors
22 created in Section 31-3-3, to Mississippi state institutions of
23 higher learning and public community or junior colleges, the

24 Mississippi Construction Education Foundation, public high schools
25 that participate in the Mississippi Construction Education
26 Foundation's "school-to-work" program and certain construction
27 educational trusts approved by the State Board of Contractors in
28 the manner * * * provided in this section to offer courses for
29 construction education and construction craft training to meet the
30 needs of the construction industry of the State of Mississippi.

31 (2) (a) Each public agency that lets a contract for a
32 public project shall pay a surcharge in an amount equal to
33 one-tenth of one percent (.1%) of the total cost of the project to
34 the State Board of Contractors for deposit into the Construction
35 Education Fund created under subsection (1) of this section. The
36 surcharge must be paid by the governing authority of the public
37 agency to the executive secretary of the board in accordance with
38 the payment schedule for sums due the contractor under Section
39 31-5-25. Partial payments of the surcharge must be in the same
40 proportion to the total surcharge due, as based upon the total
41 estimated project cost, as the partial payment made to the
42 contractor bears to the total estimated project cost. The
43 executive secretary shall deposit promptly all amounts received
44 under this subsection into the Construction Education Fund.

45 (b) The revenue derived from the surcharge imposed
46 under this subsection shall be allocated to the State Department
47 of Education for distribution to those public high schools
48 participating in the Mississippi Construction Education
49 Foundation's school-to-work program to assist in defraying the
50 costs of the program. This subsection shall not preclude
51 additional support for the school-to-work program which may be
52 made available from any other source of funds.

53 (3) The State Board of Contractors * * *, on an annual
54 basis, shall solicit from the Mississippi state institutions of

55 higher learning, all the public community and junior colleges, the
56 Mississippi Construction Education Foundation, public high schools
57 that participate in the Mississippi Construction Education
58 Foundation's school-to-work program and certain construction
59 educational trusts, applications for the use of such funds in
60 construction education and craft training programs in a manner
61 prescribed by the board. The board shall appoint a technical
62 advisory committee, which shall include the director of the Office
63 of Vocational and Technical Education of the State Department of
64 Education, to advise the board on the most needed areas of
65 construction education and craft training, continuing education or
66 research relating to the construction education and craft training
67 in the state, based on significant changes in the construction
68 industry's practices, economic development or on problems costing
69 public or private contractors substantial waste. The board shall
70 ensure that the monies distributed from this fund are properly
71 spent to promote construction education and craft training in
72 programs in the state which are approved by the board. At least
73 fifty percent (50%) of the monies distributed by the board,
74 pursuant to this section, must be used for construction craft
75 training.

76 (4) Each university, * * * community or junior college, the
77 Mississippi Construction Education Foundation, public high school
78 that participates in the foundation's school-to-work program or
79 construction educational trust receiving funds pursuant to this
80 section for construction education or construction craft training
81 programs shall utilize such funds only for construction education
82 and craft training curricula and program development, faculty

83 development, equipment, student scholarships, student
84 assistantships and for continuing education programs related to
85 construction education and craft training. Such funds shall not
86 be commingled with the normal operating funds of the educational
87 institution, regardless of the source of such funds.

88 (5) The State Board of Contractors shall ensure the
89 distribution of reports and the availability of construction
90 education programs established pursuant to this section to all
91 segments of the construction industry which are subject to the fee
92 provided under this section. The board shall cause a report to be
93 made to the Legislature in October of each year, summarizing the
94 allocation of funds by institution or program and summarizing the
95 new projects funded and the status of previously funded projects.

96 (6) All monies deposited into the Construction Education
97 Fund shall be used exclusively for construction education and
98 craft training, and any unspent funds at the end of the fiscal
99 year shall not revert to the General Fund of the State Treasury
100 but shall be available for construction education and craft
101 training in subsequent fiscal years.

102 (7) All expenditures from the Construction Education Fund
103 shall be by requisition to the State Auditor, signed by the
104 executive secretary of the board and countersigned by the chairman
105 or vice chairman of the board, and the State Treasurer shall issue
106 his warrants thereon.

107 SECTION 2. Section 31-3-21, Mississippi Code of 1972, is
108 amended as follows:

109 31-3-21. (1) It shall be unlawful for any person who does
110 not hold a certificate of responsibility issued under this

111 chapter, or a similar certificate issued by another state
112 recognizing such certificate issued by the State of Mississippi,
113 to submit a bid, enter into a contract, or otherwise engage in or
114 continue in this state in the business of a contractor, as defined
115 in this chapter. Any bid which is submitted without a certificate
116 of responsibility number issued under this chapter and without
117 that number appearing on the exterior of the bid envelope, as and
118 if herein required, at the time designated for the opening of such
119 bid, shall not be considered further, and the person or public
120 agency soliciting bids shall not enter into a contract with a
121 contractor submitting a bid in violation of this section. In
122 addition, any person violating this section by knowingly and
123 willfully submitting a bid for projects without holding a
124 certificate of responsibility number issued under this chapter, as
125 and if herein required, at the time of the submission or opening
126 of such bid shall be guilty of a misdemeanor and, upon conviction,
127 shall be punished by a fine of not more than One Thousand Dollars
128 (\$1,000.00), or by imprisonment for not more than six (6) months,
129 or by both such fine and imprisonment.

130 (2) All bids submitted for public or private projects where
131 said bid is in excess of Fifty Thousand Dollars (\$50,000.00) with
132 respect to public projects and in excess of One Hundred Thousand
133 Dollars (\$100,000.00) with respect to private projects shall
134 contain on the outside or exterior of the envelope or container of
135 such bid the contractor's current certificate number, and no bid
136 shall be opened or considered unless such contractor's current
137 certificate number appears on the outside or exterior of said
138 envelope or container, or unless there appears a statement on the

139 outside or exterior of such envelope or container to the effect
140 that the bid enclosed therewith did not exceed Fifty Thousand
141 Dollars (\$50,000.00) with respect to public projects or One
142 Hundred Thousand Dollars (\$100,000.00) with respect to private
143 projects. Any person violating the provisions of this subsection
144 shall be guilty of a misdemeanor and, upon conviction, shall be
145 punished by a fine of not more than One Thousand Dollars
146 (\$1,000.00), or by imprisonment for not more than six (6) months,
147 or by both such fine and imprisonment.

148 (3) Each bid submitted for a public project must include a
149 line item establishing the amount of the surcharge the public
150 agency is responsible for paying to the State Board of Contractors
151 under Section 31-3-14. However, the failure of a contractor to
152 include the surcharge amount in its bid shall not absolve the
153 public agency of its obligation to pay the surcharge. The
154 contractor shall determine the amount of the surcharge in
155 accordance with the formula in Section 31-3-14. An
156 underestimation of the total project cost upon which the surcharge
157 is based or a miscalculation of the surcharge amount in the bid
158 shall not reduce the liability of the public agency for the total
159 surcharge due.

160 (4) In the letting of public contracts preference shall be
161 given to resident contractors, and a nonresident bidder domiciled
162 in a state having laws granting preference to local contractors
163 shall be awarded Mississippi public contracts only on the same
164 basis as the nonresident bidder's state awards contracts to
165 Mississippi contractors bidding under similar circumstances; and
166 resident contractors actually domiciled in Mississippi, be they

167 corporate, individuals, or partnerships, are to be granted
168 preference over nonresidents in awarding of contracts in the same
169 manner and to the same extent as provided by the laws of the state
170 of domicile of the nonresident. When a nonresident contractor
171 submits a bid for a public project, he shall attach thereto a copy
172 of his resident state's current law pertaining to such state's
173 treatment of nonresident contractors. As used in this section,
174 the term "resident contractors" includes a nonresident person,
175 firm or corporation that has been qualified to do business in this
176 state and has maintained a permanent full-time office in the State
177 of Mississippi for two (2) years prior to January 1, 1986, and the
178 subsidiaries and affiliates of such a person, firm or corporation.
179 Any public agency awarding a contract shall promptly report to the
180 State Tax Commission the following information:

181 (a) The amount of the contract.

182 (b) The name and address of the contractor reviewing
183 the contract.

184 (c) The name and location of the project.

185 (5) In addition to any other penalties provided in this
186 chapter, and upon a finding of a violation of this chapter, the
187 State Board of Contractors may, after notice and hearing, issue an
188 order of abatement directing the contractor to cease all actions
189 constituting violations of this chapter until such time as the
190 contractor complies with Mississippi state law, and to pay to the
191 board a civil penalty to be deposited into the State Board of
192 Contractors' Fund, created in Section 31-3-17, of not more than
193 three percent (3%) of the total contract being performed by the
194 contractor. The funds collected from civil penalty payments shall

195 be used by the State Board of Contractors for enforcement and
196 education.

197 SECTION 3. This act shall take effect and be in force from
198 and after July 1, 2000.