

By: Guice

To: Judiciary B

HOUSE BILL NO. 1098

1 AN ACT TO ALLOW THE USE OF CONSTRUCTION MANAGERS OR THE BID
2 PROCESS IN CERTAIN PUBLIC PROJECTS; TO AMEND SECTION 31-3-13,
3 MISSISSIPPI CODE OF 1972, TO LICENSE AND REGULATE CONSTRUCTION
4 MANAGERS; AND FOR RELATED PURPOSES.

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

6 SECTION 1. The Legislature finds and declares that in order
7 to secure public trust in the letting of public contracts any
8 construction projects using public funds should utilize the bid
9 procedures as provided by law.

10 SECTION 2. In any construction contract involving public
11 funds for construction the following shall apply:

12 (a) If the cost for the construction of a building is
13 Twenty Million Dollars (\$20,000,000.00) or more, a construction
14 manager may be used on the project or the bid procedure may be
15 used.

16 (b) If the cost for the construction of a building is
17 less than Twenty million Dollars (\$20,000,000.00) the bid
18 procedure shall be used.

19 (c) If a construction manager is used, he shall not bid
20 on any part of the project.

21 (d) For the purposes of this section the construction
22 of a separate building in a project containing more than one (1)
23 building shall be considered a separate project for the purposes
24 of the monetary requirements of paragraphs (a) and (b) of this
25 subsection.

26 (e) The use of program managers for projects subject to
27 the provisions of this section is prohibited.

28 (f) If a construction manager is used, all parts of a
29 project shall be subject to the bid procedure.

30 SECTION 3. Section 31-3-13, Mississippi Code of 1972, is
31 amended as follows:[BD1]

32 31-3-13. The board shall have the following powers and
33 responsibilities:

34 (a) To receive applications for certificates of
35 responsibility, to investigate and examine applicants for same by
36 holding hearings and securing information, to conduct
37 examinations, and to issue certificates of responsibility to such
38 contractors as the board finds to be responsible. One-fourth
39 (1/4) of the certificates scheduled for renewal on the last day of
40 December 1980, shall be reviewed by the board on the first Tuesday
41 in January 1981. The remaining certificates shall be subject to
42 renewal in the following manner: One-fourth (1/4) on the first
43 Tuesday in April 1981; one-fourth (1/4) on the first Tuesday in
44 July 1981; and one-fourth (1/4) on the first Tuesday in October
45 1981. The board is authorized to extend the dates of expiration
46 of certificates to coincide with the scheduled date of review of
47 individual contractors. Except for the certificates extended from
48 December 31, 1980, to the first Tuesday in January 1981, the board
49 shall charge fees for the extension of certificates as follows:

50 (i) Twenty-five Dollars (\$25.00) if the date of
51 renewal of the extended certificate is the first Tuesday in April
52 1981;

53 (ii) Fifty Dollars (\$50.00) if the date of renewal
54 of the extended certificate is the first Tuesday in July 1981; and

55 (iii) Seventy-five Dollars (\$75.00) if the date of
56 renewal of the extended certificate is the first Tuesday in
57 October 1981.

58 The extended certificates renewed in compliance with this
59 paragraph (a) and all original certificates and renewals thereof
60 issued on or after July 1, 1980, shall expire one (1) year from

61 the date of issuance. No certificate or any renewal thereof shall
62 be issued until the application has been on file with the board
63 for at least thirty (30) days. Application for renewal of
64 certificates of responsibility, together with the payment of a
65 special privilege license tax as provided under this chapter,
66 shall serve to extend the current certificate until the board
67 either renews the certificate or denies the application.

68 No certificate of responsibility or any renewal thereof shall
69 be issued until the applicant furnishes to the board his
70 Mississippi state sales tax number or Mississippi state use tax
71 number and his state income tax identification numbers.

72 Additional fees may be required as provided in Section
73 31-3-14.

74 The board shall conduct an objective, standardized
75 examination of an applicant for a certificate to ascertain the
76 ability of the applicant to make practical application of his
77 knowledge of the profession or business of construction in the
78 category or categories for which he has applied for a certificate
79 of responsibility. The cost of the test and the cost of
80 administering the test shall be paid for by applicants for
81 certificates of responsibility at the time applications are filed.
82 The board shall investigate thoroughly the past record of all
83 applicants, which will include an effort toward ascertaining the
84 qualifications of applicants in reading plans and specifications,
85 estimating costs, construction ethics, and other similar matters.
86 The board shall take all applicants under consideration after
87 having examined him or them and go thoroughly into the records and
88 examinations, prior to granting any certificate of responsibility.
89 If the applicant is an individual, examination may be taken by his
90 personal appearance for examination or by the appearance for
91 examination of one or more of his responsible managing employees;
92 and if a copartnership or corporation or any other combination or
93 organization, by the examination of one or more of the responsible

94 managing officers or members of the executive staff of the
95 applicant's firm, according to its own designation.

96 (b) To conduct thorough investigations of all
97 applicants seeking renewal of their licenses and of all complaints
98 filed with the board concerning the performance of a contractor on
99 a public or private project.

100 (c) To obtain information concerning the responsibility
101 of any applicant for a certificate of responsibility or a holder
102 of a certificate of responsibility under this chapter. Such
103 information may be obtained by investigation, by hearings, or by
104 any other reasonable and lawful means. The board shall keep such
105 information appropriately filed and shall disseminate same to any
106 interested person. The board shall have the power of subpoena.

107 (d) To maintain a list of contractors to whom
108 certificates of responsibility are issued, refused, revoked or
109 suspended, which list shall be available to any interested person.
110 Such list shall indicate the kind or kinds of works or projects
111 for which a certificate of responsibility was issued, refused,
112 revoked or suspended.

113 (e) To revoke by order entered on its minutes a
114 certificate of responsibility upon a finding by the board that a
115 particular contractor is not responsible, and to suspend such
116 certificate of responsibility in particular cases pending
117 investigation, upon cause to be stated in the board's order of
118 suspension. No such revocation or suspension shall be ordered
119 without a hearing conducted upon not less than ten (10) days'
120 notice to such certificate holder by certified or registered mail,
121 wherein the holder of the certificate of responsibility shall be
122 given an opportunity to present all lawful evidence which he may
123 offer.

124 (f) To adopt rules and regulations setting forth the
125 requirements for certificates of responsibility, the revocation or
126 suspension thereof, and all other matters concerning same; rules

127 and regulations governing the conduct of the business of the board
128 and its employees; and such other rules and regulations as the
129 board finds necessary for the proper administration of this
130 chapter, including those for the conduct of its hearings on the
131 revocation or suspension of certificates of responsibility. Such
132 rules and regulations shall not conflict with the provisions of
133 this chapter.

134 (g) The board shall have the power and responsibility
135 to classify the kind or kinds of works or projects that a
136 contractor is qualified and entitled to perform under the
137 certificate of responsibility issued to him. Such classification
138 shall be specified in the certificate of responsibility.

139 The powers of the State Board of Contractors shall not extend
140 to fixing a maximum limit in the bid amount of any contractor, or
141 the bonding capacity, or a maximum amount of work which a
142 contractor may have under contract at any time, except as stated
143 in paragraph (a) of this section; and the Board of Contractors
144 shall not have jurisdiction or the power or authority to determine
145 the maximum bond a contractor may be capable of obtaining. The
146 board, in determining the qualifications of any applicant for an
147 original certificate of responsibility or any renewal thereof,
148 shall, among other things, take into consideration the following:

149 (1) experience and ability, (2) character, (3) the manner of
150 performance of previous contracts, (4) financial condition, (5)
151 equipment, (6) personnel, (7) work completed, (8) work on hand,
152 (9) ability to perform satisfactorily work under contract at the
153 time of an application for a certificate of responsibility or a
154 renewal thereof, (10) default in complying with provisions of this
155 law, or any other law of the state, and (11) the results of
156 objective, standardized examinations. A record shall be made and
157 preserved by the board of each examination of an applicant and the
158 findings of the board thereon, and a certified copy of the record
159 and findings shall be furnished to any applicant desiring to

160 appeal from any order or decision of the board.

161 (h) The board shall enter upon its minutes an order or
162 decision upon each application filed with it, and it may state in
163 such order or decision the reason or reasons for its order or
164 decision.

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

169 The holder of any valid certificate of responsibility issued
170 by the Board of Public Contractors prior to January 1, 1986, shall
171 be automatically issued a certificate of responsibility by the
172 State Board of Contractors for the same classification or
173 classifications of work which the holder was entitled to perform
174 under the State Board of Public Contractors Act.

175 (i) To license and regulate construction managers
176 through the certification process provided in this chapter. The
177 board shall develop certification standards and provide
178 examinations for certification as a construction manager. For the
179 purposes of this paragraph the term "construction manager" means
180 any person who covenants with an owner to further the interests of
181 the owner by furnishing construction management skills and
182 judgment in cooperation with, and reliance upon, the services of
183 an architect and who agrees to furnish business administration and
184 management services and to perform in an expeditious and
185 economical manner consistent with the interests of the owner.

186 SECTION 4. This act shall take effect and be in force from
187 and after July 1, 2000.