

By: Representative Warren

To: Judiciary A

HOUSE BILL NO. 311
(As Passed the House)

1 AN ACT TO REENACT SECTIONS 73-2-1 THROUGH 73-2-23,
2 MISSISSIPPI CODE OF 1972, WHICH ARE THE LANDSCAPE ARCHITECTURAL
3 PRACTICE LAWS; TO AMEND SECTION 17, CHAPTER 371, LAWS OF 1999, AS
4 AMENDED BY SECTION 15, CHAPTER 406, LAWS OF 2001, TO DELETE THE
5 REPEALER ON THE LANDSCAPE ARCHITECTURAL PRACTICE LAW; AND FOR
6 RELATED PURPOSES.

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

8 **SECTION 1.** Section 73-2-1, Mississippi Code of 1972, is
9 reenacted as follows:

10 73-2-1. This chapter shall be known and may be cited as the
11 "Landscape Architectural Practice Law."

12 **SECTION 2.** Section 73-2-3, Mississippi Code of 1972, is
13 reenacted as follows:

14 73-2-3. As used in this chapter:

15 (a) "Landscape architect" means a person who is
16 licensed to practice landscape architecture in this state under
17 the authority of this chapter and is engaging in the practice of
18 landscape architecture within the meaning and intent of this
19 chapter when he performs or holds himself out as capable of
20 performing any of the services or creative works within the
21 definition of landscape architecture.

22 (b) "Landscape architecture" means any service or
23 creative work, the adequate performance of which requires
24 landscape architectural education, training and experience; the
25 performance of professional services such as consultation,
26 investigation, research, associated planning, design, preparation
27 of drawings, specifications and contract documents, and
28 responsible supervision or construction management in connection
29 with the development of land areas where, and to the extent that,

dominant purpose of such services is the preservation, enhancement or determination of proper land uses, natural land features, ground cover and plantings, naturalistic and aesthetic values; the determination of settings, grounds and approaches for buildings and structures or other improvements; the determination of environmental problems of land relating to erosion, flooding, blight and other hazards; the shaping and contouring of land and water forms; the setting of grades, determination of drainage and providing for storm drainage systems where such systems do not require structural design of system components, and determination of landscape irrigation; the design of such tangible objects and features as are necessary to the purpose outlined herein, but shall not include the design of buildings or structures with separate and self-contained purposes such as are ordinarily included in the practice of architecture or engineering.

(c) "Board" means the Mississippi State Board of Architecture as established by Section 73-1-3 et seq.

(d) "License" means a certificate granted by the Mississippi State Board of Architecture authorizing its holder to practice landscape architecture.

(e) "Mississippi chapter" means the Mississippi Chapter of the American Society of Landscape Architects.

SECTION 3. Section 73-2-5, Mississippi Code of 1972, is reenacted as follows:

73-2-5. No person shall practice landscape architecture in this state or use the title "landscape architect" on any sign, title, card or device to indicate that such person is practicing landscape architecture or is a landscape architect, unless such person shall have secured from the board a license as landscape architect in the manner hereinafter provided, and shall thereafter comply with the provisions of this chapter. Every holder of a current license shall display it in a conspicuous place in his principal office or place of employment.

SECTION 4. Section 73-2-7, Mississippi Code of 1972, is reenacted as follows:

73-2-7. In order to qualify for a license as a landscape architect, an applicant must:

(a) Submit evidence of his good moral character and integrity to the examining board.

(b) Have received a degree in landscape architecture from a college or university having a minimum four-year curriculum in landscape architecture approved by the board or have completed seven (7) years of work in the practice of landscape architecture of a grade and character suitable to the board. Graduation in a curriculum other than landscape architecture from a college or university shall be equivalent to two (2) years' experience of the seven (7) specified above in this section, except that no applicant shall receive credit for more than two (2) years' experience for any scholastic training.

(c) Pass such written examination as required in Section 73-2-9.

Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SECTION 5. Section 73-2-9, Mississippi Code of 1972, is reenacted as follows:

73-2-9. Examinations for the license shall be held by the board annually. The board shall adopt rules and regulations covering the subjects and scope of the examinations, publish appropriate announcements, and conduct the examinations at the times designated. Except as otherwise provided in this chapter, every applicant shall be required, in addition to all other requirements, to take and pass a written examination. Each written examination may be supplemented by such oral examinations as the board shall determine.

95 **SECTION 6.** Section 73-2-11, Mississippi Code of 1972, is
96 reenacted as follows:

97 73-2-11. The board may exempt from examination any applicant
98 who holds a license or certificate to practice landscape
99 architecture issued to him upon examination by a legally
100 constituted board of examiners of any other state or Washington,
101 D.C., or any other territory or possession under the control of
102 the United States, provided that such requirements of the state in
103 which the applicant is registered are equivalent to those of this
104 state.

105 Each nonresident applicant shall submit, as part of the
106 application, a sworn affidavit stating that neither such applicant
107 nor any person in or agent of the applicant's firm has practiced
108 or is practicing landscape architectural work in this state prior
109 to the applicant having been licensed by the board unless such
110 person or agent holds a license to practice landscape architecture
111 in this state. Failure to submit this affidavit or submitting an
112 affidavit which is false in any respect shall constitute just
113 cause for denial of the application.

114 An applicant who is a licensed landscape architect but who
115 was admitted in a jurisdiction which did not offer a written
116 examination acceptable to the board or was admitted without the
117 requirement of passing a written examination may be issued a
118 license to practice landscape architecture in this state upon the
119 taking and passing of any examination or procedure as may be
120 adopted by the board, provided that such applicant meets all other
121 requirements for issuance of a license to practice landscape
122 architecture in this state.

123 **SECTION 7.** Section 73-2-13, Mississippi Code of 1972, is
124 reenacted as follows:

125 73-2-13. There shall be an advisory committee to the board
126 to consist of five (5) members appointed by the Governor from a
127 list of names supplied by Mississippi Chapter of the American

Society of Landscape Architects, giving the names of no fewer than three (3) times the number of persons to be appointed. Each member of the initially appointed committee shall be qualified as described by Section 73-2-7. Appointments shall be licensed landscape architects only and shall be for five-year terms. Each member shall hold office until the appointment and qualification of his successor. Vacancies occurring prior to the expiration of the term shall be filled by appointment in like manner for the unexpired term.

The committee shall review, approve or disapprove, and make recommendations on all applications for landscape architect's license. At the direction of the board, the committee shall also review and investigate any charges brought against any landscape architect as provided for in Section 73-2-16 and make findings of fact and recommendations to the board concerning any disciplinary action which the committee deems necessary and proper pursuant to Section 73-2-16.

Each member of the committee shall be entitled to receive a per diem in such amounts as shall be set by the board, but not to exceed the amount provided for in Section 25-3-69, and shall be reimbursed for expenses that are incurred in the actual performance of his duties under the provisions of Section 25-3-41.

Before entering upon the discharge of his duties, each member of the committee shall take and subscribe to the oath of office and file it with the Secretary of State. The committee shall elect at the first meeting of every calendar year from among its members, a chairman and a secretary to hold office for one (1) year.

SECTION 8. Section 73-2-15, Mississippi Code of 1972, is reenacted as follows:

73-2-15. The board shall require that every landscape architect shall pay a biennial license renewal fee set by the board not in excess of Two Hundred Dollars (\$200.00). The renewal

fee shall be due and payable on the first day of January of each year in which the fee is required to be paid and shall become delinquent after the thirty-first day of January of such year, and if the renewal fee is not paid before it becomes delinquent, a penalty fee of Five Dollars (\$5.00) shall be added to the amount thereof per month. If the renewal fee and penalty are not paid before the first day of June in the year in which they become due, the landscape architect's certificate shall be suspended. The certificate may be reinstated upon the payment of the renewal fee, the penalty fees and a reinstatement fee of Fifty Dollars (\$50.00), and provision of such proof of the landscape architect's qualifications as may be required in the sound discretion of the board.

The board shall send a receipt to each landscape architect promptly upon payment of the renewal fee.

The board may recognize, prepare or administer continuing education programs for landscape architects as a basis for license renewal.

The board shall adopt an appropriate seal for use by licensed landscape architects.

SECTION 9. Section 73-2-16, Mississippi Code of 1972, is reenacted as follows:

73-2-16. (1) The board shall also have the power to revoke, suspend or annul the certificate or registration of a landscape architect or reprimand, censure or otherwise discipline a landscape architect.

(2) The board, upon satisfactory proof and in accordance with the provisions of this chapter, may take the disciplinary actions against any registered landscape architect for any of the following reasons:

(a) Violating any of the provisions of Sections 73-2-1 through 73-2-21 or the implementing bylaws, rules, regulations or

standards of ethics or conduct duly adopted and promulgated by the board pertaining to the practice of landscape architecture;

(b) Fraud, deceit or misrepresentation in obtaining a certificate of registration;

(c) Gross negligence, malpractice, incompetency or misconduct in the practice of landscape architecture;

(d) Any professional misconduct, as defined by the board through bylaws, rules and regulations and standards of conduct and ethics (professional misconduct shall not be defined to include bidding on contracts for a price);

(e) Practicing or offering to practice landscape architecture on an expired license or while under suspension or revocation of a license unless said suspension or revocation be abated through probation;

(f) Practicing landscape architecture under an assumed or fictitious name;

(g) Being convicted by any court of a felony, except conviction of culpable negligent manslaughter, in which case the record of conviction shall be conclusive evidence;

(h) Willfully misleading or defrauding any person employing him as a landscape architect by any artifice or false statement;

(i) Having undisclosed financial or personal interest which compromises his obligation to his client;

(j) Obtaining a certificate by fraud or deceit; or

(k) Violating any of the provisions of this chapter.

(3) Any person may prefer charges against any other person for committing any of the acts set forth in subsection (2). Such charges need not be sworn to, may be made upon actual knowledge, or upon information and belief, and shall be filed with the board. In the event any person licensed under Sections 73-2-1 through 73-2-21 is expelled from membership in any Mississippi or national professional landscape architectural society or association, the

board shall thereafter cite said person to appear at a hearing before the board and to show cause why disciplinary action should not be taken against that person.

The board shall investigate all charges filed with it and, upon finding reasonable cause to believe that the charges are not frivolous, unfounded or filed in bad faith, may, in its discretion, cause a hearing to be held, at a time and place fixed by the board, regarding the charges and may compel the accused by subpoena to appear before the board to respond to said charges.

No disciplinary action taken hereunder may be taken until the accused has been furnished both a statement of the charges against him and notice of the time and place of the hearing thereof, which shall be personally served on the accused or mailed by registered or certified mail, return receipt requested, to the last known business or residence address of the accused not less than thirty (30) days prior to the date fixed for the hearing.

(4) At any hearing held under the provisions of this section, the board shall have the power to subpoena witnesses and compel their attendance and require the production of any books, papers or documents. The hearing shall be conducted before the full board with the president of the board serving as the presiding judge. Counsel for the board shall present all evidence relating to the charges. All evidence shall be presented under oath, which may be administered by any member of the board, and thereafter the proceedings may, if necessary, be transcribed in full by the court reporter and filed as part of the record in the case. Copies of such transcription may be provided to any party to the proceedings at a cost to be fixed by the board.

All witnesses who shall be subpoenaed and who shall appear in any proceedings before the board shall receive the same fees and mileage as allowed by law in judicial civil proceedings, and all such fees shall be taxed as part of the costs of the case.

258 Where in any proceedings before the board any witness shall
259 fail or refuse to attend upon subpoena issued by the board, shall
260 refuse to testify or shall refuse to produce any books and papers,
261 the production of which is called for by the subpoena, the
262 attendance of such witness and the giving of his testimony and the
263 production of the books and papers shall be enforced by any court
264 of competent jurisdiction of this state in the manner provided for
265 the enforcement of attendance and testimony of witnesses in civil
266 cases in the courts of this state.

267 The accused shall have the right to be present at the hearing
268 in person, by counsel or other representative, or both. The
269 accused shall have the right to present evidence and to examine
270 and cross-examine all witnesses. The board is authorized to
271 continue or recess the hearing as may be necessary.

272 (5) At the conclusion of the hearing, the board may either
273 decide the issue at that time or take the case under advisement
274 for further deliberation. The board shall render its decision not
275 more than forty-five (45) days after the close of the hearing, and
276 shall forward to the last known business or residence address of
277 the accused by certified or registered mail, return receipt
278 requested, a written statement of the decision of the board.

279 If a majority of the board finds the accused guilty of the
280 charges filed, the board may: (a) issue a public or private
281 reprimand; (b) suspend or revoke the license of the accused, if
282 the accused is a registrant; or (c) in lieu of or in addition to
283 such reprimand, suspension or revocation, assess and levy upon the
284 guilty party a monetary penalty of not less than One Hundred
285 Dollars (\$100.00) nor more than Five Thousand Dollars (\$5,000.00)
286 for each violation.

287 (6) A monetary penalty assessed and levied under this
288 section shall be paid to the board upon the expiration of the
289 period allowed for appeal of such penalties under this section, or
290 may be paid sooner if the guilty party elects. Money collected by

the board under this section shall be deposited to the credit of the board's general operating fund.

When payment of a monetary penalty assessed and levied by the board in accordance with this section is not paid when due, the board shall have the power to institute and maintain proceedings in its name for enforcement of payment in the chancery court of the county and judicial district of the residence of the guilty party and if the guilty party be a nonresident of the State of Mississippi, such proceedings shall be in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

(7) When the board has taken a disciplinary action under this section, the board may, in its discretion, stay such action and place the guilty party on probation for a period not to exceed one (1) year upon the condition that the guilty party shall not further violate either the law of the State of Mississippi pertaining to the practice of landscape architecture or the bylaws, rules and regulations, or standards of conduct and ethics promulgated by the board.

(8) The board, in its discretion, may assess and tax any part or all of the costs of any disciplinary proceedings conducted under this section against the accused, if the accused is found guilty of the charges.

(9) The power and authority of the board to assess and levy the monetary penalties provided for in this section shall not be affected or diminished by any other proceeding, civil or criminal, concerning the same violation or violations except as provided in this section.

(10) The board, for sufficient cause, may reissue a revoked license of registration whenever a majority of the board members vote to do so but in no event shall a revoked license be issued within two (2) years of the revocation. A new license of registration required to replace a revoked, lost, mutilated or

destroyed license may be issued, subject to the rules of the board, for a charge not to exceed Twenty-five Dollars (\$25.00).

(11) The board may direct the advisory committee to review and investigate any charges brought against any landscape architect under this chapter and to hold the hearings provided for in this section and to make findings of fact and recommendations to the board concerning the disposition of such charges.

(12) Nothing herein contained shall preclude the board or advisory committee from initiating proceedings in any case. The advisory committee shall furnish legal advice and assistance to the board whenever such service is requested.

(13) In addition to the reasons specified in subsection (2) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SECTION 10. Section 73-2-17, Mississippi Code of 1972, is reenacted as follows:

73-2-17. Each applicant for examination as a landscape architect shall pay to the board for the purposes of procuring, administering and grading the examination, an administration fee not to exceed One Hundred Dollars (\$100.00) together with an application fee in such amount as the board may set, but in no event to exceed the actual cost to the board of purchasing, preparing and evaluating the examination. Upon passing the

examination and meeting the requirements of this chapter and upon paying an initial registration fee in an amount set by the board, an applicant shall be issued an original certificate as a licensed landscape architect and a rubber stamp bearing the seal adopted by the board for use by landscape architects. Each holder of a certificate as provided herein shall be entitled to practice as a licensed landscape architect without additional fee or charge until the next biennial renewal period, and thereafter upon payment of the biennial license fee as provided by Section 73-2-15.

A fee of Twenty-five Dollars (\$25.00) shall be charged for each duplicate certificate issued by the board.

All checks or money orders submitted to the board shall be made payable to the board.

SECTION 11. Section 73-2-19, Mississippi Code of 1972, is reenacted as follows:

73-2-19. This chapter shall not require licensing in the following cases:

(a) The practice of landscape architecture by any person who acts under the supervision of a registered landscape architect or by an employee of a person lawfully engaged in the practice of landscape architecture and who, in either event, does not assume responsible charge of design or supervision.

(b) The practice of landscape architecture by employees of the United States government while engaged within this state in the practice of landscape architecture for said government.

(c) The practice of planning as customarily done by regional and urban planners.

(d) The practice of arborists, foresters, gardeners, home builders, floriculturists and ornamental horticulturists performing their respective trades or professions.

(e) The practice of any nurseryman or landscape contractor to practice planting design, planting, and location and arrangement of plant materials.

(f) The practice of architecture or engineering as defined by the laws of the State of Mississippi including, but not limited to, such planting as might be incidental to such practice.

(g) The work or practice of a regular employee of a public service company or public utility, by rendering to such company landscape architectural service in connection with its facilities which are subject to regulation, supervision and control in order to safeguard life, health and property by the Public Service Commission of this state shall be exempt so long as such person is thus actually and exclusively employed.

(h) Any person, firm or corporation performing landscape architecture and working on his own land or property.

(i) Golf course architects engaged in the preparation of drawings and specifications for a golf course, in accordance with accepted professional standards of public health and safety.

SECTION 12. Section 73-2-21, Mississippi Code of 1972, is reenacted as follows:

73-2-21. It shall be a misdemeanor for any person to:

(a) Offer to practice or hold himself out as entitled to practice landscape architecture, unless duly certified and registered under this chapter.

(b) Present as his own the certificate of another.

(c) Give false or forged evidence to the board or any member thereof in obtaining a certificate.

(d) Falsely impersonate any other practitioner of like or different name.

(e) Use or attempt to use a certificate that has been revoked.

(f) Otherwise violate any of the provisions of this chapter.

Such misdemeanor shall be punishable by a fine of not less than Five Hundred Dollars (\$500.00) and not more than One Thousand Dollars (\$1,000.00), or imprisonment for not more than one (1) year in the county jail, or both.

If any person, firm or corporation violates any of the provisions of this chapter, the secretary of the board shall, upon direction of a majority of the board, in the name of the State of Mississippi, acting through an attorney employed by the board, apply in any chancery court of competent jurisdiction for an injunction or temporary restraining order pursuant to the Mississippi Rules of Civil Procedure enjoining such violation or for an order enforcing compliance with the provisions of this chapter. If at such hearing it is established that such person has violated or is violating this chapter, the court may, in addition to enjoining such violation or enforcing compliance with this chapter, award all cost and expenses, including reasonable attorney's fees, to the board. In case of violation of any decree issued in compliance with this paragraph, the court may try and punish the offender for contempt of court and shall fine such offender a sum of not less than Two Hundred Fifty Dollars (\$250.00) per offense. Each day of such violation shall constitute a distinct and separate offense.

SECTION 13. Section 73-2-23, Mississippi Code of 1972, is reenacted as follows:

73-2-23. All courts of competent jurisdiction within their respective territorial jurisdiction are hereby empowered to hear, try and determine such crimes without indictment and to impose in full the punishments of fines and imprisonments herein prescribed. All violations of this chapter, when reported to the board and duly substantiated by affidavits or other satisfactory evidence, shall be investigated by it, and if the report is found to be true and the evidence substantiated, the board shall report such violations to the Attorney General and request prompt prosecution.

453 **SECTION 14.** Section 17, Chapter 371, Laws of 1999, as
454 amended by Section 15, Chapter 406, Laws of 2001, is amended as
455 follows:

456 Section 17. This act shall take effect and be in force from
457 and after July 1, 1999.

458 **SECTION 15.** This act shall take effect and be in force from
459 and after July 1, 2005.