

By: Representative Fleming

To: Judiciary B

HOUSE BILL NO. 566

1 AN ACT TO AMEND SECTION 31-3-13, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT THE BOARD OF CONTRACTORS MAY ENLIST THE ASSISTANCE OF
3 THE COURTS TO COLLECT FINES AND ENFORCE ORDERS; TO PROVIDE THAT
4 SHERIFFS SHALL ENFORCE ORDERS OF THE BOARD; TO AMEND SECTION
5 31-3-21, MISSISSIPPI CODE OF 1972, TO CLARIFY BID REQUIREMENTS FOR
6 CONTRACTORS; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 31-3-13, Mississippi Code of 1972, is
9 amended as follows:

10 31-3-13. The board shall have the following powers and
11 responsibilities:

12 (a) To receive applications for certificates of
13 responsibility, to investigate and examine applicants for same by
14 holding hearings and securing information, to conduct
15 examinations, and to issue certificates of responsibility to such
16 contractors as the board finds to be responsible. One-fourth
17 (1/4) of the certificates scheduled for renewal on the last day of
18 December 1980, shall be reviewed by the board on the first Tuesday
19 in January 1981. The remaining certificates shall be subject to
20 renewal in the following manner: one-fourth (1/4) on the first
21 Tuesday in April 1981; one-fourth (1/4) on the first Tuesday in
22 July 1981; and one-fourth (1/4) on the first Tuesday in October
23 1981. The board is authorized to extend the dates of expiration
24 of certificates to coincide with the scheduled date of review of
25 individual contractors. Except for the certificates extended from
26 December 31, 1980, to the first Tuesday in January 1981, the board
27 shall charge fees for the extension of certificates as follows:

28 (i) Twenty-five Dollars (\$25.00) if the date of
29 renewal of the extended certificate is the first Tuesday in April
30 1981;

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

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

36 The extended certificates renewed in compliance with this
37 paragraph (a) and all original certificates and renewals thereof
38 issued on or after July 1, 1980, shall expire one (1) year from
39 the date of issuance. No certificate or any renewal thereof shall
40 be issued until the application has been on file with the board
41 for at least thirty (30) days. Application for renewal of
42 certificates of responsibility, together with the payment of a
43 special privilege license tax as provided under this chapter,
44 shall serve to extend the current certificate until the board
45 either renews the certificate or denies the application.

46 No certificate of responsibility or any renewal thereof shall
47 be issued until the applicant furnishes to the board his
48 Mississippi state sales tax number or Mississippi state use tax
49 number and his state income tax identification numbers.

50 Additional fees may be required as provided in Section
51 31-3-14.

52 The board shall conduct an objective, standardized
53 examination of an applicant for a certificate to ascertain the
54 ability of the applicant to make practical application of his
55 knowledge of the profession or business of construction in the
56 category or categories for which he has applied for a certificate
57 of responsibility. The cost of the test and the cost of
58 administering the test shall be paid for by applicants for
59 certificates of responsibility at the time applications are filed.
60 The board shall investigate thoroughly the past record of all

61 applicants, which will include an effort toward ascertaining the
62 qualifications of applicants in reading plans and specifications,
63 estimating costs, construction ethics, and other similar matters.
64 The board shall take all applicants under consideration after
65 having examined him or them and go thoroughly into the records and
66 examinations, prior to granting any certificate of responsibility.
67 If the applicant is an individual, examination may be taken by his
68 personal appearance for examination or by the appearance for
69 examination of one or more of his responsible managing employees;
70 and if a copartnership or corporation or any other combination or
71 organization, by the examination of one or more of the responsible
72 managing officers or members of the executive staff of the
73 applicant's firm, according to its own designation.

74 (b) To conduct thorough investigations of all
75 applicants seeking renewal of their licenses and of all complaints
76 filed with the board concerning the performance of a contractor on
77 a public or private project.

78 (c) To obtain information concerning the responsibility
79 of any applicant for a certificate of responsibility or a holder
80 of a certificate of responsibility under this chapter. Such
81 information may be obtained by investigation, by hearings, or by
82 any other reasonable and lawful means. The board shall keep such
83 information appropriately filed and shall disseminate same to any
84 interested person. The board shall have the power of subpoena.

85 (d) To maintain a list of contractors to whom
86 certificates of responsibility are issued, refused, revoked or
87 suspended, which list shall be available to any interested person.
88 Such list shall indicate the kind or kinds of works or projects
89 for which a certificate of responsibility was issued, refused,
90 revoked or suspended.

91 (e) To revoke by order entered on its minutes a
92 certificate of responsibility upon a finding by the board that a
93 particular contractor is not responsible, and to suspend such

94 certificate of responsibility in particular cases pending
95 investigation, upon cause to be stated in the board's order of
96 suspension. No such revocation or suspension shall be ordered
97 without a hearing conducted upon not less than ten (10) days'
98 notice to such certificate holder by certified or registered mail,
99 wherein the holder of the certificate of responsibility shall be
100 given an opportunity to present all lawful evidence which he may
101 offer.

102 (f) To adopt rules and regulations setting forth the
103 requirements for certificates of responsibility, the revocation or
104 suspension thereof, and all other matters concerning same; rules
105 and regulations governing the conduct of the business of the board
106 and its employees; and such other rules and regulations as the
107 board finds necessary for the proper administration of this
108 chapter, including those for the conduct of its hearings on the
109 revocation or suspension of certificates of responsibility. Such
110 rules and regulations shall not conflict with the provisions of
111 this chapter.

112 (g) The board shall have the power and responsibility
113 to classify the kind or kinds of works or projects that a
114 contractor is qualified and entitled to perform under the
115 certificate of responsibility issued to him. Such classification
116 shall be specified in the certificate of responsibility.

117 The powers of the State Board of Contractors shall not extend
118 to fixing a maximum limit in the bid amount of any contractor, or
119 the bonding capacity, or a maximum amount of work which a
120 contractor may have under contract at any time, except as stated
121 in paragraph (a) of this section; and the Board of Contractors
122 shall not have jurisdiction or the power or authority to determine
123 the maximum bond a contractor may be capable of obtaining. The
124 board, in determining the qualifications of any applicant for an
125 original certificate of responsibility or any renewal thereof,
126 shall, among other things, take into consideration the following:

127 (1) experience and ability, (2) character, (3) the manner of
128 performance of previous contracts, (4) financial condition, (5)
129 equipment, (6) personnel, (7) work completed, (8) work on hand,
130 (9) ability to perform satisfactorily work under contract at the
131 time of an application for a certificate of responsibility or a
132 renewal thereof, (10) default in complying with provisions of this
133 law, or any other law of the state, and (11) the results of
134 objective, standardized examinations. A record shall be made and
135 preserved by the board of each examination of an applicant and the
136 findings of the board thereon, and a certified copy of the record
137 and findings shall be furnished to any applicant desiring to
138 appeal from any order or decision of the board.

139 (h) The board shall enter upon its minutes an order or
140 decision upon each application filed with it, and it may state in
141 such order or decision the reason or reasons for its order or
142 decision.

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

147 The holder of any valid certificate of responsibility issued
148 by the Board of Public Contractors prior to January 1, 1986, shall
149 be automatically issued a certificate of responsibility by the
150 State Board of Contractors for the same classification or
151 classifications of work which the holder was entitled to perform
152 under the State Board of Public Contractors Act.

153 (i) To enlist the assistance of the courts in
154 collecting fines and enforcing orders.

155 (j) The sheriffs of the state shall enforce any orders
156 of the board when so requested by the board.

157 **SECTION 2.** Section 31-3-21, Mississippi Code of 1972, is
158 amended as follows:

159 31-3-21. (1) It shall be unlawful for any person who does
160 not hold a certificate of responsibility issued under this
161 chapter, or a similar certificate issued by another state
162 recognizing such certificate issued by the State of Mississippi,
163 to submit a bid, enter into a contract for any public, residential
164 or any other job, or otherwise engage in or continue in this state
165 in the business of a contractor, as defined in this chapter. Any
166 bid which is submitted without a certificate of responsibility
167 number issued under this chapter and without that number appearing
168 on the exterior of the bid envelope, as and if herein required, at
169 the time designated for the opening of such bid, shall not be
170 considered further, and the person or public agency soliciting
171 bids shall not enter into a contract with a contractor submitting
172 a bid in violation of this section. In addition, any person
173 violating this section by knowingly and willfully submitting a bid
174 for projects without holding a certificate of responsibility
175 number issued under this chapter, as and if herein required, at
176 the time of the submission or opening of such bid shall be guilty
177 of a misdemeanor and, upon conviction, shall be punished by a fine
178 of not more than One Thousand Dollars (\$1,000.00), or by
179 imprisonment for not more than six (6) months, or by both such
180 fine and imprisonment.

181 (2) All bids submitted for public or private projects where
182 said bid is in excess of Fifty Thousand Dollars (\$50,000.00) with
183 respect to public projects and in excess of One Hundred Thousand
184 Dollars (\$100,000.00) with respect to private projects shall
185 contain on the outside or exterior of the envelope or container of
186 such bid the contractor's current certificate number, and no bid
187 shall be opened or considered unless such contractor's current
188 certificate number appears on the outside or exterior of said
189 envelope or container, or unless there appears a statement on the
190 outside or exterior of such envelope or container to the effect
191 that the bid enclosed therewith did not exceed Fifty Thousand

192 Dollars (\$50,000.00) with respect to public projects or One
193 Hundred Thousand Dollars (\$100,000.00) with respect to private
194 projects. Any person violating the provisions of this subsection
195 shall be guilty of a misdemeanor and, upon conviction, shall be
196 punished by a fine of not more than One Thousand Dollars
197 (\$1,000.00), or by imprisonment for not more than six (6) months,
198 or by both such fine and imprisonment.

199 (3) In the letting of public contracts preference shall be
200 given to resident contractors, and a nonresident bidder domiciled
201 in a state having laws granting preference to local contractors
202 shall be awarded Mississippi public contracts only on the same
203 basis as the nonresident bidder's state awards contracts to
204 Mississippi contractors bidding under similar circumstances; and
205 resident contractors actually domiciled in Mississippi, be they
206 corporate, individuals, or partnerships, are to be granted
207 preference over nonresidents in awarding of contracts in the same
208 manner and to the same extent as provided by the laws of the state
209 of domicile of the nonresident. When a nonresident contractor
210 submits a bid for a public project, he shall attach thereto a copy
211 of his resident state's current law pertaining to such state's
212 treatment of nonresident contractors. As used in this section,
213 the term "resident contractors" includes a nonresident person,
214 firm or corporation that has been qualified to do business in this
215 state and has maintained a permanent full-time office in the State
216 of Mississippi for two (2) years prior to January 1, 1986, and the
217 subsidiaries and affiliates of such a person, firm or corporation.
218 Any public agency awarding a contract shall promptly report to the
219 State Tax Commission the following information:

- 220 (a) The amount of the contract.
- 221 (b) The name and address of the contractor reviewing
222 the contract.
- 223 (c) The name and location of the project.

224 (4) In addition to any other penalties provided in this
225 chapter, and upon a finding of a violation of this chapter, the
226 State Board of Contractors may, after notice and hearing, issue an
227 order of abatement directing the contractor to cease all actions
228 constituting violations of this chapter until such time as the
229 contractor complies with Mississippi state law, and to pay to the
230 board a civil penalty to be deposited into the State Board of
231 Contractors' Fund, created in Section 31-3-17, of not more than
232 three percent (3%) of the total contract being performed by the
233 contractor. The funds collected from civil penalty payments shall
234 be used by the State Board of Contractors for enforcement and
235 education.

236 **SECTION 3.** This act shall take effect and be in force from
237 and after July 1, 2005.