

By: Representative Guice

To: Judiciary B

HOUSE BILL NO. 363
(As Passed the House)

1 AN ACT TO AMEND SECTION 31-3-13, MISSISSIPPI CODE OF 1972, TO
2 AUTHORIZE THE STATE BOARD OF CONTRACTORS TO EMPLOY PERSONNEL TO
3 MONITOR OUT-OF-STATE CONTRACTORS; AND FOR RELATED PURPOSES.

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

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

7 31-3-13. The board shall have the following powers and
8 responsibilities:

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

25 (i) Twenty-five Dollars (\$25.00) if the date of
26 renewal of the extended certificate is the first Tuesday in April
27 1981;

28 (ii) Fifty Dollars (\$50.00) if the date of renewal
29 of the extended certificate is the first Tuesday in July 1981; and
30 (iii) Seventy-five Dollars (\$75.00) if the date of
31 renewal of the extended certificate is the first Tuesday in
32 October 1981.

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

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

47 Additional fees may be required as provided in Section
48 31-3-14.

49 The board shall conduct an objective, standardized
50 examination of an applicant for a certificate to ascertain the
51 ability of the applicant to make practical application of his
52 knowledge of the profession or business of construction in the
53 category or categories for which he has applied for a certificate
54 of responsibility. The cost of the test and the cost of
55 administering the test shall be paid for by applicants for
56 certificates of responsibility at the time applications are filed.
57 The board shall investigate thoroughly the past record of all
58 applicants, which will include an effort toward ascertaining the
59 qualifications of applicants in reading plans and specifications,
60 estimating costs, construction ethics, and other similar matters.

61 The board shall take all applicants under consideration after
62 having examined him or them and go thoroughly into the records and
63 examinations, prior to granting any certificate of responsibility.
64 If the applicant is an individual, examination may be taken by his
65 personal appearance for examination or by the appearance for
66 examination of one or more of his responsible managing employees;
67 and if a copartnership or corporation or any other combination or
68 organization, by the examination of one or more of the responsible
69 managing officers or members of the executive staff of the
70 applicant's firm, according to its own designation.

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

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

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

88 (e) To revoke by order entered on its minutes a
89 certificate of responsibility upon a finding by the board that a
90 particular contractor is not responsible, and to suspend such
91 certificate of responsibility in particular cases pending
92 investigation, upon cause to be stated in the board's order of
93 suspension. No such revocation or suspension shall be ordered

94 without a hearing conducted upon not less than ten (10) days'
95 notice to such certificate holder by certified or registered mail,
96 wherein the holder of the certificate of responsibility shall be
97 given an opportunity to present all lawful evidence which he may
98 offer.

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

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

114 The powers of the State Board of Contractors shall not extend
115 to fixing a maximum limit in the bid amount of any contractor, or
116 the bonding capacity, or a maximum amount of work which a
117 contractor may have under contract at any time, except as stated
118 in paragraph (a) of this section; and the Board of Contractors
119 shall not have jurisdiction or the power or authority to determine
120 the maximum bond a contractor may be capable of obtaining. The
121 board, in determining the qualifications of any applicant for an
122 original certificate of responsibility or any renewal thereof,
123 shall, among other things, take into consideration the following:
124 (1) experience and ability, (2) character, (3) the manner of
125 performance of previous contracts, (4) financial condition, (5)
126 equipment, (6) personnel, (7) work completed, (8) work on hand,

127 (9) ability to perform satisfactorily work under contract at the
128 time of an application for a certificate of responsibility or a
129 renewal thereof, (10) default in complying with provisions of this
130 law, or any other law of the state, and (11) the results of
131 objective, standardized examinations. A record shall be made and
132 preserved by the board of each examination of an applicant and the
133 findings of the board thereon, and a certified copy of the record
134 and findings shall be furnished to any applicant desiring to
135 appeal from any order or decision of the board.

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

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

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

150 (i) The board is authorized to employ necessary
151 personnel to monitor out-of-state contractors and such employees
152 shall be authorized to take such action, including, but not
153 limited to, obtaining injunctive relief and/or pursuing any other
154 civil and/or criminal remedies as may be available under the law,
155 to shut down a project until such out-of-state contractors comply
156 with any applicable state laws; and in the event judicial
157 intervention is obtained, the court shall be authorized to award
158 reasonable attorney's fees, costs and expenses to the board in
159 obtaining such relief.

160 **SECTION 2.** This act shall take effect and be in force from
161 and after July 1, 2007.