

By: Senator(s) Thames, Albritton, Brown, Burton, Clarke, Cuevas, Davis, Dearing, Doxey, Jackson (15th), King, Lee (47th), Little, Pickering, Posey, Ross, Walley, Kirby, White

To: Fees, Salaries and Administration

SENATE BILL NO. 2433

1 AN ACT TO AMEND SECTION 31-5-17, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE LABOR USED ON PUBLIC WORKS TO BE PERFORMED BY WORKMEN AND
3 LABORERS WHO ARE LEGAL CITIZENS OF THE UNITED STATES OR LEGAL
4 ALIENS; TO AMEND SECTION 31-5-19, MISSISSIPPI CODE OF 1972, TO
5 REQUIRE PUBLIC WORK CONTRACTS TO INCLUDE A PROVISION REQUIRING THE
6 CONTRACTOR TO BE IN COMPLIANCE WITH FEDERAL AND STATE LAWS; TO
7 AMEND SECTION 31-5-21, MISSISSIPPI CODE OF 1972, TO REVISE THE
8 PENALTY FOR VIOLATING SUCH LABOR REQUIREMENTS ON PUBLIC WORKS; TO
9 CREATE A NEW CODE SECTION TO REQUIRE LABOR USED UNDER PUBLIC
10 CONTRACTS OF ANY KIND TO BE PERFORMED BY WORKMEN AND LABORERS WHO
11 ARE LEGAL CITIZENS OF THE UNITED STATES OR LEGAL ALIENS; TO AMEND
12 SECTIONS 31-7-9, 25-9-120 AND 25-53-5, MISSISSIPPI CODE OF 1972,
13 TO REQUIRE CERTAIN AGENCIES TO ADOPT RULES AND REGULATIONS TO
14 CARRY OUT THE PURPOSES OF THIS ACT; AND FOR RELATED PURPOSES.

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

16 **SECTION 1.** Section 31-5-17, Mississippi Code of 1972, is
17 amended as follows:

18 31-5-17. Every public officer, contractor, superintendent or
19 agent engaged in or in charge of the construction of any state or
20 public building or public work of any kind for the State of
21 Mississippi or for any board, city commission, governmental agency
22 or municipality of the State of Mississippi shall employ only
23 workmen and laborers who are legal citizens of the United States
24 of America or are legal aliens. For purposes of this section, a
25 legal alien is an individual who was lawfully admitted at the time
26 such services were performed, was lawfully present for purposes of
27 performing such services, or was permanently residing in the
28 United States under color of law at the time such services were
29 performed (including an alien who was lawfully present in the
30 United States as a result of the application of Section 207, 208
31 or 212(d)(5) of the Immigration and Nationality Act.

32 **SECTION 2.** Section 31-5-19, Mississippi Code of 1972, is
33 amended as follows:

34 31-5-19. All contracts entered into by agencies and
35 institutions of the State of Mississippi, or any of its political
36 subdivisions, shall include a provision requiring the contractor
37 to be in compliance during the term of the contract with all
38 federal and state laws, including, but not limited to, Section
39 31-5-17. Failure to comply with such provision shall be grounds
40 for cancellation by the agencies and institutions of the State of
41 Mississippi, or any of its political subdivisions, of all
42 contracts held with the contractor. In addition to the
43 cancellation of the contract, the contractor shall be liable for
44 any additional costs incurred by the agencies and institutions of
45 the State of Mississippi, or any of its political subdivisions,
46 because of the cancellation.

47 **SECTION 3.** Section 31-5-21, Mississippi Code of 1972, is
48 amended as follows:

49 31-5-21. Any contractor, public officer, superintendent,
50 agent or person in charge of such work, who shall violate any of
51 the provisions of Section 31-5-17, shall be liable upon conviction
52 before a court of competent jurisdiction to a fine of not more
53 than One Hundred Dollars (\$100.00) or to imprisonment of not more
54 than sixty (60) days, or both, at the discretion of the court; and
55 every day's employment of each workman or laborer in such
56 violation shall constitute a separate offense.

57 However, if the contract for such work includes the provision
58 required by Section 31-5-19 and the public officer makes a
59 reasonable effort to ensure compliance with that provision, the
60 public officer shall not be subject to the fine or imprisonment.

61 **SECTION 4.** (1) Any public officer, contractor,
62 superintendent or agent engaged in or in charge of contracts of
63 any kind for the State of Mississippi or for any board, city
64 commission, governmental agency or municipality of the State of
65 Mississippi shall employ only workmen and laborers who are legal
66 citizens of the United States of America or are legal aliens. For

67 purposes of this section, a legal alien is an individual who was
68 lawfully admitted at the time such services were performed, was
69 lawfully present for purposes of performing such services, or was
70 permanently residing in the United States under color of law at
71 the time such services were performed (including an alien who was
72 lawfully present in the United States as a result of the
73 application of Section 207, 208 or 212(d)(5) of the Immigration
74 and Nationality Act). In cases where the work is being lawfully
75 conducted outside the United States of America, the utilization of
76 workmen and laborers shall be in strict compliance with the laws
77 of the country in which the work is conducted.

78 (2) All contracts entered into by agencies and institutions
79 of the State of Mississippi, or any of its political subdivisions,
80 shall include a provision requiring the contractor to be in
81 compliance during the term of the contract with all federal and
82 state laws, including, but not limited to, subsection (1) of this
83 section. Failure to comply with such provision shall be grounds
84 for cancellation by the agencies and institutions of the State of
85 Mississippi, or any of its political subdivisions, of all
86 contracts held with the contractor. In addition to the
87 cancellation of the contract, the contractor shall be liable for
88 any additional costs incurred by the agencies and institutions of
89 the State of Mississippi, or any of its political subdivisions,
90 because of the cancellation.

91 **SECTION 5.** Section 31-7-9, Mississippi Code of 1972, is
92 amended as follows:

93 31-7-9. (1) (a) The Office of Purchasing and Travel shall
94 adopt purchasing regulations governing the purchase by any agency
95 of any commodity or commodities and establishing standards and
96 specifications for a commodity or commodities and the maximum fair
97 prices of a commodity or commodities, subject to the approval of
98 the Public Procurement Review Board. It shall have the power to
99 amend, add to or eliminate purchasing regulations. The adoption

100 of, amendment, addition to or elimination of purchasing
101 regulations shall be based upon a determination by the Office of
102 Purchasing and Travel with the approval of the Public Procurement
103 Review Board, that such action is reasonable and practicable and
104 advantageous to promote efficiency and economy in the purchase of
105 commodities by the agencies of the state. Upon the adoption of
106 any purchasing regulation, or an amendment, addition or
107 elimination therein, copies of same shall be furnished to the
108 State Auditor and to all agencies affected thereby. Thereafter,
109 and except as otherwise may be provided in subsection (2) of this
110 section, no agency of the state shall purchase any commodities
111 covered by existing purchasing regulations unless such commodities
112 be in conformity with the standards and specifications set forth
113 in the purchasing regulations and unless the price thereof does
114 not exceed the maximum fair price established by such purchasing
115 regulations. The said Office of Purchasing and Travel shall
116 furnish to any county or municipality or other local public agency
117 of the state requesting same, copies of purchasing regulations
118 adopted by the Office of Purchasing and Travel and any amendments,
119 changes or eliminations of same that may be made from time to
120 time.

121 (b) The Office of Purchasing and Travel may adopt
122 purchasing regulations governing the use of credit cards,
123 procurement cards and purchasing club membership cards to be used
124 by state agencies, governing authorities of counties and
125 municipalities and the Chickasawhay Natural Gas District. Use of
126 the cards shall be in strict compliance with the regulations
127 promulgated by the office. Any amounts due on the cards shall
128 incur interest charges as set forth in Section 31-7-305 and shall
129 not be considered debt.

130 (2) The Office of Purchasing and Travel shall adopt, subject
131 to the approval of the Public Procurement Review Board, purchasing
132 regulations governing the purchase of unmarked vehicles to be used

133 by the Bureau of Narcotics and Department of Public Safety in
134 official investigations pursuant to Section 25-1-87. Such
135 regulations shall ensure that purchases of such vehicles shall be
136 at a fair price and shall take into consideration the peculiar
137 needs of the Bureau of Narcotics and Department of Public Safety
138 in undercover operations.

139 (3) The Office of Purchasing and Travel shall adopt, subject
140 to the approval of the Public Procurement Review Board,
141 regulations governing the certification process for certified
142 purchasing offices. Such regulations shall require entities
143 desiring to be classified as certified purchasing offices to
144 submit applications and applicable documents on an annual basis,
145 at which time the Office of Purchasing and Travel may provide the
146 governing entity with a certification valid for one (1) year from
147 the date of issuance.

148 (4) The Office of Purchasing and Travel shall adopt rules
149 and regulations to carry out the purposes of Section 4 of Senate
150 Bill No. 2433, 2006 Regular Session.

151 **SECTION 6.** Section 25-9-120, Mississippi Code of 1972, is
152 amended as follows:

153 25-9-120. (1) Contract personnel, whether classified as
154 contract workers or independent contractors shall not be deemed
155 state service or nonstate service employees of the State of
156 Mississippi, and shall not be eligible to participate in the
157 Public Employees' Retirement System, or the state employee health
158 plan, nor be allowed credit for personal and sick leave and other
159 leave benefits as employees of the State of Mississippi,
160 notwithstanding Sections 25-3-91 through 25-3-101; 25-9-101
161 through 25-9-151; 25-11-1 through 25-11-126; 25-11-128 through
162 25-11-131; 25-15-1 through 25-15-23 and for the purpose set forth
163 herein. Contract workers, i.e., contract personnel who do not
164 meet the criteria of independent contractors, shall be subject to
165 the provisions of Section 25-11-127.

166 (2) There is hereby created the Personal Service Contract
167 Review Board, which shall be composed of the State Personnel
168 Director, the Executive Director of the Department of Finance and
169 Administration, or his designee, the Commissioner of Corrections,
170 or his designee, the Executive Director of the Mississippi
171 Department of Wildlife and Fisheries, or his designee, and the
172 Executive Director of the Department of Environmental Quality, or
173 his designee. The State Personnel Director shall be chairman and
174 shall preside over the meetings of the board. The board shall
175 annually elect a vice chairman, who shall serve in the absence of
176 the chairman. No business shall be transacted, including adoption
177 of rules of procedure, without the presence of a quorum of the
178 board. Three (3) members shall be a quorum. No action shall be
179 valid unless approved by the chairman and two (2) other of those
180 members present and voting, entered upon the minutes of the board
181 and signed by the chairman. Necessary clerical and administrative
182 support for the board shall be provided by the State Personnel
183 Board. Minutes shall be kept of the proceedings of each meeting,
184 copies of which shall be filed on a monthly basis with the
185 Legislative Budget Office.

186 (3) The Personal Service Contract Review Board shall have
187 the following powers and responsibilities:

188 (a) Promulgate rules and regulations governing the
189 solicitation and selection of contractual services personnel
190 including personal and professional services contracts for any
191 form of consulting, policy analysis, public relations, marketing,
192 public affairs, legislative advocacy services or any other
193 contract that the board deems appropriate for oversight, with the
194 exception of any personal service contracts entered into for
195 computer or information technology-related services governed by
196 the Mississippi Department of Information Technology Services, any
197 personal service contracts entered into by the Mississippi
198 Department of Transportation, and any contract for attorney,

199 accountant, auditor, physician, dentist, architect, engineer,
200 veterinarian and utility rate expert services. Any such rules and
201 regulations shall provide for maintaining continuous internal
202 audit covering the activities of such agency affecting its revenue
203 and expenditures as required under Section 7-7-3(6)(d),
204 Mississippi Code of 1972;

205 (b) Approve all personal and professional services
206 contracts involving the expenditures of funds in excess of One
207 Hundred Thousand Dollars (\$100,000.00);

208 (c) Develop standards with respect to contractual
209 services personnel which require invitations for public bid,
210 requests for proposals, record keeping and financial
211 responsibility of contractors. The Personal Service Contract
212 Review Board may, in its discretion, require the agency involved
213 to advertise such contract for public bid, and may reserve the
214 right to reject any or all bids;

215 (d) Prescribe certain circumstances whereby agency
216 heads may enter into contracts for personal and professional
217 services without receiving prior approval from the Personal
218 Service Contract Review Board. The Personal Service Contract
219 Review Board may establish a pre-approved list of providers of
220 various personal and professional services for set prices with
221 which state agencies may contract without bidding or prior
222 approval from the board;

223 (e) To provide standards for the issuance of requests
224 for proposals, the evaluation of proposals received, consideration
225 of costs and quality of services proposed, contract negotiations,
226 the administrative monitoring of contract performance by the
227 agency and successful steps in terminating a contract;

228 (f) To present recommendations for governmental
229 privatization and to evaluate privatization proposals submitted by
230 any state agency;

231 (g) To authorize personal and professional service
232 contracts to be effective for more than one (1) year provided a
233 funding condition is included in any such multiple year contract,
234 except the State Board of Education, which shall have the
235 authority to enter into contractual agreements for student
236 assessment for a period up to ten (10) years. The State Board of
237 Education shall procure these services in accordance with the
238 Personal Service Contract Review Board procurement regulations;

239 (h) To request the State Auditor to conduct a
240 performance audit on any personal or professional service
241 contract;

242 (i) Prepare an annual report to the Legislature
243 concerning the issuance of personal service contracts during the
244 previous year, collecting any necessary information from state
245 agencies in making such report.

246 (4) No member of the Personal Service Contract Review Board
247 shall use his official authority or influence to coerce, by threat
248 of discharge from employment, or otherwise, the purchase of
249 commodities or the contracting for personal or professional
250 services under this section.

251 (5) The Personal Service Contract Review Board shall adopt
252 rules and regulations to carry out the purposes of Section 4 of
253 Senate Bill No. 2433, 2006 Regular Session.

254 **SECTION 7.** Section 25-53-5, Mississippi Code of 1972, is
255 amended as follows:

256 25-53-5. The authority shall have the following powers,
257 duties, and responsibilities:

258 (a) The authority shall provide for the development of
259 plans for the efficient acquisition and utilization of computer
260 equipment and services by all agencies of state government, and
261 provide for their implementation. In so doing, the authority may
262 use the MDITS staff, at the discretion of the executive director
263 of the authority, or the authority may contract for the services

264 of qualified consulting firms in the field of information
265 technology and utilize the service of such consultants as may be
266 necessary for such purposes.

267 (b) The authority shall immediately institute
268 procedures for carrying out the purposes of this chapter and
269 supervise the efficient execution of the powers and duties of the
270 office of executive director of the authority. In the execution
271 of its functions under this chapter, the authority shall maintain
272 as a paramount consideration the successful internal organization
273 and operation of the several agencies so that efficiency existing
274 therein shall not be adversely affected or impaired. In executing
275 its functions in relation to the institutions of higher learning
276 and junior colleges in the state, the authority shall take into
277 consideration the special needs of such institutions in relation
278 to the fields of teaching and scientific research.

279 (c) Title of whatever nature of all computer equipment
280 now vested in any agency of the State of Mississippi is hereby
281 vested in the authority, and no such equipment shall be disposed
282 of in any manner except in accordance with the direction of the
283 authority or under the provisions of such rules and regulations as
284 may hereafter be adopted by the authority in relation thereto.

285 (d) The authority shall adopt rules, regulations, and
286 procedures governing the acquisition of computer and
287 telecommunications equipment and services which shall, to the
288 fullest extent practicable, insure the maximum of competition
289 between all manufacturers of supplies or equipment or services.
290 In the writing of specifications, in the making of contracts
291 relating to the acquisition of such equipment and services, and in
292 the performance of its other duties the authority shall provide
293 for the maximum compatibility of all information systems hereafter
294 installed or utilized by all state agencies and may require the
295 use of common computer languages where necessary to accomplish the
296 purposes of this chapter. The authority may establish by

297 regulation and charge reasonable fees on a nondiscriminatory basis
298 for the furnishing to bidders of copies of bid specifications and
299 other documents issued by the authority.

300 (e) The authority shall adopt rules and regulations
301 governing the sharing with, or the sale or lease of information
302 technology services to any nonstate agency or person. Such
303 regulations shall provide that any such sharing, sale or lease
304 shall be restricted in that same shall be accomplished only where
305 such services are not readily available otherwise within the
306 state, and then only at a charge to the user not less than the
307 prevailing rate of charge for similar services by private
308 enterprise within this state.

309 (f) The authority may, in its discretion, establish a
310 special technical advisory committee or committees to study and
311 make recommendations on technology matters within the competence
312 of the authority as the authority may see fit. Persons serving on
313 the Information Resource Council, its task forces, or any such
314 technical advisory committees shall be entitled to receive their
315 actual and necessary expenses actually incurred in the performance
316 of such duties, together with mileage as provided by law for state
317 employees, provided the same has been authorized by a resolution
318 duly adopted by the authority and entered on its minutes prior to
319 the performance of such duties.

320 (g) The authority may provide for the development and
321 require the adoption of standardized computer programs and may
322 provide for the dissemination of information to and the
323 establishment of training programs for the personnel of the
324 various information technology centers of state agencies and
325 personnel of the agencies utilizing the services thereof.

326 (h) The authority shall adopt reasonable rules and
327 regulations requiring the reporting to the authority through the
328 office of executive director of such information as may be
329 required for carrying out the purposes of this chapter and may

330 also establish such reasonable procedures to be followed in the
331 presentation of bills for payment under the terms of all contracts
332 for the acquisition of computer equipment and services now or
333 hereafter in force as may be required by the authority or by the
334 executive director in the execution of their powers and duties.

335 (i) The authority shall require such adequate
336 documentation of information technology procedures utilized by the
337 various state agencies and may require the establishment of such
338 organizational structures within state agencies relating to
339 information technology operations as may be necessary to
340 effectuate the purposes of this chapter.

341 (j) The authority may adopt such further reasonable
342 rules and regulations as may be necessary to fully implement the
343 purposes of this chapter. All rules and regulations adopted by
344 the authority shall be published and disseminated in readily
345 accessible form to all affected state agencies, and to all current
346 suppliers of computer equipment and services to the state, and to
347 all prospective suppliers requesting the same. Such rules and
348 regulations shall be kept current, be periodically revised, and
349 copies thereof shall be available at all times for inspection by
350 the public at reasonable hours in the offices of the authority.
351 Whenever possible no rule, regulation or any proposed amendment to
352 such rules and regulations shall be finally adopted or enforced
353 until copies of said proposed rules and regulations have been
354 furnished to all interested parties for their comment and
355 suggestions.

356 (k) The authority shall establish rules and regulations
357 which shall provide for the submission of all contracts proposed
358 to be executed by the executive director for computer equipment or
359 services to the authority for approval before final execution, and
360 the authority may provide that such contracts involving the
361 expenditure of less than such specified amount as may be
362 established by the authority may be finally executed by the

363 executive director without first obtaining such approval by the
364 authority.

365 (l) The authority is authorized to purchase, lease, or
366 rent computer equipment or services and to operate said equipment
367 and utilize said services in providing services to one or more
368 state agencies when in its opinion such operation will provide
369 maximum efficiency and economy in the functions of any such agency
370 or agencies.

371 (m) Upon the request of the governing body of a
372 political subdivision or instrumentality, the authority shall
373 assist the political subdivision or instrumentality in its
374 development of plans for the efficient acquisition and utilization
375 of computer equipment and services. An appropriate fee shall be
376 charged the political subdivision by the authority for such
377 assistance.

378 (n) The authority shall adopt rules and regulations
379 governing the protest procedures to be followed by any actual or
380 prospective bidder, offerer or contractor who is aggrieved in
381 connection with the solicitation or award of a contract for the
382 acquisition of computer equipment or services. Such rules and
383 regulations shall prescribe the manner, time and procedure for
384 making protests and may provide that a protest not timely filed
385 shall be summarily denied. The authority may require the
386 protesting party, at the time of filing the protest, to post a
387 bond, payable to the state, in an amount that the authority
388 determines sufficient to cover any expense or loss incurred by the
389 state, the authority or any state agency as a result of the
390 protest if the protest subsequently is determined by a court of
391 competent jurisdiction to have been filed without any substantial
392 basis or reasonable expectation to believe that the protest was
393 meritorious; however, in no event may the amount of the bond
394 required exceed a reasonable estimate of the total project cost.
395 The authority, in its discretion, also may prohibit any

396 prospective bidder, offerer or contractor who is a party to any
397 litigation involving any such contract with the state, the
398 authority or any agency of the state to participate in any other
399 such bid, offer or contract, or to be awarded any such contract,
400 during the pendency of the litigation.

401 (o) The authority shall make a report in writing to the
402 Legislature each year in the month of January. Such report shall
403 contain a full and detailed account of the work of the authority
404 for the preceding year as specified in Section 25-53-29(3).

405 All acquisitions of computer equipment and services involving
406 the expenditure of funds in excess of the dollar amount
407 established in Section 31-7-13(c), or rentals or leases in excess
408 of the dollar amount established in Section 31-7-13(c) for the
409 term of the contract, shall be based upon competitive and open
410 specifications, and contracts therefor shall be entered into only
411 after advertisements for bids are published in one or more daily
412 newspapers having a general circulation in the state not less than
413 fourteen (14) days prior to receiving sealed bids therefor. The
414 authority may reserve the right to reject any or all bids, and if
415 all bids are rejected, the authority may negotiate a contract
416 within the limitations of the specifications so long as the terms
417 of any such negotiated contract are equal to or better than the
418 comparable terms submitted by the lowest and best bidder, and so
419 long as the total cost to the State of Mississippi does not exceed
420 the lowest bid. If the authority accepts one (1) of such bids, it
421 shall be that which is the lowest and best.

422 (p) When applicable, the authority may procure
423 equipment, systems and related services in accordance with the law
424 or regulations, or both, which govern the Bureau of Purchasing of
425 the Office of General Services or which govern the Mississippi
426 Department of Information Technology Services procurement of
427 telecommunications equipment, software and services.

428 (q) The authority is authorized to purchase, lease, or
429 rent information technology and services for the purpose of
430 establishing pilot projects to investigate emerging technologies.
431 These acquisitions shall be limited to new technologies and shall
432 be limited to an amount set by annual appropriation of the
433 Legislature. These acquisitions shall be exempt from the
434 advertising and bidding requirement.

435 (r) All fees collected by the Mississippi Department of
436 Information Technology Services shall be deposited into the
437 Mississippi Department of Information Technology Services
438 Revolving Fund unless otherwise specified by the Legislature.

439 (s) The authority shall work closely with the council
440 to bring about effective coordination of policies, standards and
441 procedures relating to procurement of remote sensing and
442 geographic information systems (GIS) resources. In addition, the
443 authority is responsible for development, operation and
444 maintenance of a delivery system infrastructure for geographic
445 information systems data. The authority shall provide a warehouse
446 for Mississippi's geographic information systems data.

447 (t) The authority shall adopt rules and regulations to
448 carry out the purposes of Section 4 of Senate Bill No. 2433, 2006
449 Regular Session.

450 **SECTION 8.** This act shall take effect and be in force from
451 and after July 1, 2006.