

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
(As Passed the Senate)

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 SECTION 31-7-9, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE OFFICE
13 OF PURCHASING AND TRAVEL TO ADOPT REGULATIONS FOR THE NEGOTIATION
14 OF A LIMITATION OF LIABILITY OF PROSPECTIVE ENERGY CONTRACTORS TO
15 THE STATE; TO AMEND SECTIONS 25-9-120 AND 25-53-5, MISSISSIPPI
16 CODE OF 1972, TO REQUIRE CERTAIN AGENCIES TO ADOPT RULES AND
17 REGULATIONS TO CARRY OUT THE PURPOSES OF THIS ACT; AND FOR RELATED
18 PURPOSES.

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

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

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

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

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

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

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

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

65 **SECTION 4.** (1) Any public officer, contractor,
66 superintendent or agent engaged in or in charge of contracts of
67 any kind for the State of Mississippi or for any board, city
68 commission, governmental agency or municipality of the State of

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

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

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

97 31-7-9. (1) (a) The Office of Purchasing and Travel shall
98 adopt purchasing regulations governing the purchase by any agency
99 of any commodity or commodities and establishing standards and
100 specifications for a commodity or commodities and the maximum fair
101 prices of a commodity or commodities, subject to the approval of

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

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

134 (2) The Office of Purchasing and Travel shall adopt, subject
135 to the approval of the Public Procurement Review Board, purchasing
136 regulations governing the purchase of unmarked vehicles to be used
137 by the Bureau of Narcotics and Department of Public Safety in
138 official investigations pursuant to Section 25-1-87. Such
139 regulations shall ensure that purchases of such vehicles shall be
140 at a fair price and shall take into consideration the peculiar
141 needs of the Bureau of Narcotics and Department of Public Safety
142 in undercover operations.

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

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

155 (5) The Office of Purchasing and Travel shall adopt, subject
156 to the approval of the Public Procurement Review Board,
157 regulations governing the negotiation of a limitation on the
158 liability of prospective energy contractors to the state provided
159 such limitation affords the state reasonable protection.

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

162 25-9-120. (1) Contract personnel, whether classified as
163 contract workers or independent contractors shall not be deemed
164 state service or nonstate service employees of the State of
165 Mississippi, and shall not be eligible to participate in the
166 Public Employees' Retirement System, or the state employee health

167 plan, nor be allowed credit for personal and sick leave and other
168 leave benefits as employees of the State of Mississippi,
169 notwithstanding Sections 25-3-91 through 25-3-101; 25-9-101
170 through 25-9-151; 25-11-1 through 25-11-126; 25-11-128 through
171 25-11-131; 25-15-1 through 25-15-23 and for the purpose set forth
172 herein. Contract workers, i.e., contract personnel who do not
173 meet the criteria of independent contractors, shall be subject to
174 the provisions of Section 25-11-127.

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

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

197 (a) Promulgate rules and regulations governing the
198 solicitation and selection of contractual services personnel
199 including personal and professional services contracts for any

200 form of consulting, policy analysis, public relations, marketing,
201 public affairs, legislative advocacy services or any other
202 contract that the board deems appropriate for oversight, with the
203 exception of any personal service contracts entered into for
204 computer or information technology-related services governed by
205 the Mississippi Department of Information Technology Services, any
206 personal service contracts entered into by the Mississippi
207 Department of Transportation, and any contract for attorney,
208 accountant, auditor, physician, dentist, architect, engineer,
209 veterinarian and utility rate expert services. Any such rules and
210 regulations shall provide for maintaining continuous internal
211 audit covering the activities of such agency affecting its revenue
212 and expenditures as required under Section 7-7-3(6)(d),
213 Mississippi Code of 1972;

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

217 (c) Develop standards with respect to contractual
218 services personnel which require invitations for public bid,
219 requests for proposals, record keeping and financial
220 responsibility of contractors. The Personal Service Contract
221 Review Board may, in its discretion, require the agency involved
222 to advertise such contract for public bid, and may reserve the
223 right to reject any or all bids;

224 (d) Prescribe certain circumstances whereby agency
225 heads may enter into contracts for personal and professional
226 services without receiving prior approval from the Personal
227 Service Contract Review Board. The Personal Service Contract
228 Review Board may establish a pre-approved list of providers of
229 various personal and professional services for set prices with
230 which state agencies may contract without bidding or prior
231 approval from the board;

232 (e) To provide standards for the issuance of requests
233 for proposals, the evaluation of proposals received, consideration
234 of costs and quality of services proposed, contract negotiations,
235 the administrative monitoring of contract performance by the
236 agency and successful steps in terminating a contract;

237 (f) To present recommendations for governmental
238 privatization and to evaluate privatization proposals submitted by
239 any state agency;

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

248 (h) To request the State Auditor to conduct a
249 performance audit on any personal or professional service
250 contract;

251 (i) Prepare an annual report to the Legislature
252 concerning the issuance of personal service contracts during the
253 previous year, collecting any necessary information from state
254 agencies in making such report.

255 (4) No member of the Personal Service Contract Review Board
256 shall use his official authority or influence to coerce, by threat
257 of discharge from employment, or otherwise, the purchase of
258 commodities or the contracting for personal or professional
259 services under this section.

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

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

265 25-53-5. The authority shall have the following powers,
266 duties, and responsibilities:

267 (a) The authority shall provide for the development of
268 plans for the efficient acquisition and utilization of computer
269 equipment and services by all agencies of state government, and
270 provide for their implementation. In so doing, the authority may
271 use the MDITS staff, at the discretion of the executive director
272 of the authority, or the authority may contract for the services
273 of qualified consulting firms in the field of information
274 technology and utilize the service of such consultants as may be
275 necessary for such purposes.

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

288 (c) Title of whatever nature of all computer equipment
289 now vested in any agency of the State of Mississippi is hereby
290 vested in the authority, and no such equipment shall be disposed
291 of in any manner except in accordance with the direction of the
292 authority or under the provisions of such rules and regulations as
293 may hereafter be adopted by the authority in relation thereto.

294 (d) The authority shall adopt rules, regulations, and
295 procedures governing the acquisition of computer and
296 telecommunications equipment and services which shall, to the
297 fullest extent practicable, insure the maximum of competition

298 between all manufacturers of supplies or equipment or services.
299 In the writing of specifications, in the making of contracts
300 relating to the acquisition of such equipment and services, and in
301 the performance of its other duties the authority shall provide
302 for the maximum compatibility of all information systems hereafter
303 installed or utilized by all state agencies and may require the
304 use of common computer languages where necessary to accomplish the
305 purposes of this chapter. The authority may establish by
306 regulation and charge reasonable fees on a nondiscriminatory basis
307 for the furnishing to bidders of copies of bid specifications and
308 other documents issued by the authority.

309 (e) The authority shall adopt rules and regulations
310 governing the sharing with, or the sale or lease of information
311 technology services to any nonstate agency or person. Such
312 regulations shall provide that any such sharing, sale or lease
313 shall be restricted in that same shall be accomplished only where
314 such services are not readily available otherwise within the
315 state, and then only at a charge to the user not less than the
316 prevailing rate of charge for similar services by private
317 enterprise within this state.

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

329 (g) The authority may provide for the development and
330 require the adoption of standardized computer programs and may

331 provide for the dissemination of information to and the
332 establishment of training programs for the personnel of the
333 various information technology centers of state agencies and
334 personnel of the agencies utilizing the services thereof.

335 (h) The authority shall adopt reasonable rules and
336 regulations requiring the reporting to the authority through the
337 office of executive director of such information as may be
338 required for carrying out the purposes of this chapter and may
339 also establish such reasonable procedures to be followed in the
340 presentation of bills for payment under the terms of all contracts
341 for the acquisition of computer equipment and services now or
342 hereafter in force as may be required by the authority or by the
343 executive director in the execution of their powers and duties.

344 (i) The authority shall require such adequate
345 documentation of information technology procedures utilized by the
346 various state agencies and may require the establishment of such
347 organizational structures within state agencies relating to
348 information technology operations as may be necessary to
349 effectuate the purposes of this chapter.

350 (j) The authority may adopt such further reasonable
351 rules and regulations as may be necessary to fully implement the
352 purposes of this chapter. All rules and regulations adopted by
353 the authority shall be published and disseminated in readily
354 accessible form to all affected state agencies, and to all current
355 suppliers of computer equipment and services to the state, and to
356 all prospective suppliers requesting the same. Such rules and
357 regulations shall be kept current, be periodically revised, and
358 copies thereof shall be available at all times for inspection by
359 the public at reasonable hours in the offices of the authority.
360 Whenever possible no rule, regulation or any proposed amendment to
361 such rules and regulations shall be finally adopted or enforced
362 until copies of said proposed rules and regulations have been

363 furnished to all interested parties for their comment and
364 suggestions.

365 (k) The authority shall establish rules and regulations
366 which shall provide for the submission of all contracts proposed
367 to be executed by the executive director for computer equipment or
368 services to the authority for approval before final execution, and
369 the authority may provide that such contracts involving the
370 expenditure of less than such specified amount as may be
371 established by the authority may be finally executed by the
372 executive director without first obtaining such approval by the
373 authority.

374 (l) The authority is authorized to purchase, lease, or
375 rent computer equipment or services and to operate said equipment
376 and utilize said services in providing services to one or more
377 state agencies when in its opinion such operation will provide
378 maximum efficiency and economy in the functions of any such agency
379 or agencies.

380 (m) Upon the request of the governing body of a
381 political subdivision or instrumentality, the authority shall
382 assist the political subdivision or instrumentality in its
383 development of plans for the efficient acquisition and utilization
384 of computer equipment and services. An appropriate fee shall be
385 charged the political subdivision by the authority for such
386 assistance.

387 (n) The authority shall adopt rules and regulations
388 governing the protest procedures to be followed by any actual or
389 prospective bidder, offerer or contractor who is aggrieved in
390 connection with the solicitation or award of a contract for the
391 acquisition of computer equipment or services. Such rules and
392 regulations shall prescribe the manner, time and procedure for
393 making protests and may provide that a protest not timely filed
394 shall be summarily denied. The authority may require the
395 protesting party, at the time of filing the protest, to post a

396 bond, payable to the state, in an amount that the authority
397 determines sufficient to cover any expense or loss incurred by the
398 state, the authority or any state agency as a result of the
399 protest if the protest subsequently is determined by a court of
400 competent jurisdiction to have been filed without any substantial
401 basis or reasonable expectation to believe that the protest was
402 meritorious; however, in no event may the amount of the bond
403 required exceed a reasonable estimate of the total project cost.
404 The authority, in its discretion, also may prohibit any
405 prospective bidder, offerer or contractor who is a party to any
406 litigation involving any such contract with the state, the
407 authority or any agency of the state to participate in any other
408 such bid, offer or contract, or to be awarded any such contract,
409 during the pendency of the litigation.

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

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

429 the lowest bid. If the authority accepts one (1) of such bids, it
430 shall be that which is the lowest and best.

431 (p) When applicable, the authority may procure
432 equipment, systems and related services in accordance with the law
433 or regulations, or both, which govern the Bureau of Purchasing of
434 the Office of General Services or which govern the Mississippi
435 Department of Information Technology Services procurement of
436 telecommunications equipment, software and services.

437 (q) The authority is authorized to purchase, lease, or
438 rent information technology and services for the purpose of
439 establishing pilot projects to investigate emerging technologies.
440 These acquisitions shall be limited to new technologies and shall
441 be limited to an amount set by annual appropriation of the
442 Legislature. These acquisitions shall be exempt from the
443 advertising and bidding requirement.

444 (r) All fees collected by the Mississippi Department of
445 Information Technology Services shall be deposited into the
446 Mississippi Department of Information Technology Services
447 Revolving Fund unless otherwise specified by the Legislature.

448 (s) The authority shall work closely with the council
449 to bring about effective coordination of policies, standards and
450 procedures relating to procurement of remote sensing and
451 geographic information systems (GIS) resources. In addition, the
452 authority is responsible for development, operation and
453 maintenance of a delivery system infrastructure for geographic
454 information systems data. The authority shall provide a warehouse
455 for Mississippi's geographic information systems data.

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

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