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To: Fees, Salaries and Administration

SENATE BILL NO. 2897

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, Travel and Fleet
94 Management shall adopt purchasing regulations governing the
95 purchase by any agency of any commodity or commodities and
96 establishing standards and specifications for a commodity or
97 commodities and the maximum fair prices of a commodity or
98 commodities, subject to the approval of the Public Procurement
99 Review Board. It shall have the power to amend, add to or

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

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

131 (2) The Office of Purchasing, Travel and Fleet Management
132 shall adopt, subject to the approval of the Public Procurement

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

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

149 (4) The Office of Purchasing and Travel shall adopt rules
150 and regulations to carry out the purposes of Section 4 of Senate
151 Bill No. 2897, 2007 Regular Session.

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

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

165 meet the criteria of independent contractors, shall be subject to
166 the provisions of Section 25-11-127.

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

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

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

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

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

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

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

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

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

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

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

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

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

252 (5) The Personal Service Contract Review Board shall adopt
253 rules and regulations to carry out the purposes of Section 4 of
254 Senate Bill No. 2897, 2007 Regular Session.

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

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

259 (a) The authority shall provide for the development of
260 plans for the efficient acquisition and utilization of computer
261 equipment and services by all agencies of state government, and

262 provide for their implementation. In so doing, the authority may
263 use the MDITS' staff, at the discretion of the executive director
264 of the authority, or the authority may contract for the services
265 of qualified consulting firms in the field of information
266 technology and utilize the service of such consultants as may be
267 necessary for such purposes.

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

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

286 (d) The authority shall adopt rules, regulations, and
287 procedures governing the acquisition of computer and
288 telecommunications equipment and services which shall, to the
289 fullest extent practicable, insure the maximum of competition
290 between all manufacturers of supplies or equipment or services.
291 In the writing of specifications, in the making of contracts
292 relating to the acquisition of such equipment and services, and in
293 the performance of its other duties the authority shall provide
294 for the maximum compatibility of all information systems hereafter

295 installed or utilized by all state agencies and may require the
296 use of common computer languages where necessary to accomplish the
297 purposes of this chapter. The authority may establish by
298 regulation and charge reasonable fees on a nondiscriminatory basis
299 for the furnishing to bidders of copies of bid specifications and
300 other documents issued by the authority.

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

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

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

327 (h) The authority shall adopt reasonable rules and
328 regulations requiring the reporting to the authority through the
329 office of executive director of such information as may be
330 required for carrying out the purposes of this chapter and may
331 also establish such reasonable procedures to be followed in the
332 presentation of bills for payment under the terms of all contracts
333 for the acquisition of computer equipment and services now or
334 hereafter in force as may be required by the authority or by the
335 executive director in the execution of their powers and duties.

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

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

357 (k) The authority shall establish rules and regulations
358 which shall provide for the submission of all contracts proposed
359 to be executed by the executive director for computer equipment or

360 services to the authority for approval before final execution, and
361 the authority may provide that such contracts involving the
362 expenditure of less than such specified amount as may be
363 established by the authority may be finally executed by the
364 executive director without first obtaining such approval by the
365 authority.

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

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

379 (n) The authority shall adopt rules and regulations
380 governing the protest procedures to be followed by any actual or
381 prospective bidder, offerer or contractor who is aggrieved in
382 connection with the solicitation or award of a contract for the
383 acquisition of computer equipment or services. Such rules and
384 regulations shall prescribe the manner, time and procedure for
385 making protests and may provide that a protest not timely filed
386 shall be summarily denied. The authority may require the
387 protesting party, at the time of filing the protest, to post a
388 bond, payable to the state, in an amount that the authority
389 determines sufficient to cover any expense or loss incurred by the
390 state, the authority or any state agency as a result of the
391 protest if the protest subsequently is determined by a court of
392 competent jurisdiction to have been filed without any substantial

393 basis or reasonable expectation to believe that the protest was
394 meritorious; however, in no event may the amount of the bond
395 required exceed a reasonable estimate of the total project cost.
396 The authority, in its discretion, also may prohibit any
397 prospective bidder, offerer or contractor who is a party to any
398 litigation involving any such contract with the state, the
399 authority or any agency of the state to participate in any other
400 such bid, offer or contract, or to be awarded any such contract,
401 during the pendency of the litigation.

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

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

423 (p) When applicable, the authority may procure
424 equipment, systems and related services in accordance with the law
425 or regulations, or both, which govern the Bureau of Purchasing of

426 the Office of General Services or which govern the Mississippi
427 Department of Information Technology Services procurement of
428 telecommunications equipment, software and services.

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

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

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

448 (t) The authority shall adopt rules and regulations to
449 carry out the purposes of Section 4 of Senate Bill No. 2897, 2007
450 Regular Session.

451 **SECTION 8.** This act shall take effect and be in force from
452 and after July 1, 2007.