

By: Senator(s) Kirby, Albritton, Burton, Carmichael, Chassaniol, Clarke, Davis, Doxey, Fillingane, Flowers, Jackson (15th), King, Lee (35th), Moffatt, Nunnelee, Pickering, Ross, Walley, Wilemon

To: Fees, Salaries and Administration

SENATE BILL NO. 2897
(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 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). In cases
32 where the work is being lawfully conducted outside the United
33 States of America, the utilization of workmen and laborers shall

34 be in strict compliance with the laws of the country in which the
35 work is conducted.

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. A knowing or willing failure to comply with such
44 provision shall be grounds for cancellation by the agencies and
45 institutions of the State of Mississippi, or any of its political
46 subdivisions, of all contracts held with the contractor. In
47 addition to the cancellation of the contract, the contractor shall
48 be liable for any additional costs incurred by the agencies and
49 institutions of the State of Mississippi, or any of its political
50 subdivisions, 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, Travel and Fleet
98 Management shall adopt purchasing regulations governing the
99 purchase by any agency of any commodity or commodities and

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

126 (b) The Office of Purchasing, Travel and Fleet
127 Management may adopt purchasing regulations governing the use of
128 credit cards, procurement cards and purchasing club membership
129 cards to be used by state agencies, governing authorities of
130 counties and municipalities and the Chickasawhay Natural Gas
131 District. Use of the cards shall be in strict compliance with the
132 regulations promulgated by the office. Any amounts due on the

133 cards shall incur interest charges as set forth in Section
134 31-7-305 and shall not be considered debt.

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

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

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

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

158 25-9-120. (1) Contract personnel, whether classified as
159 contract workers or independent contractors shall not be deemed
160 state service or nonstate service employees of the State of
161 Mississippi, and shall not be eligible to participate in the
162 Public Employees' Retirement System, or the state employee health
163 plan, nor be allowed credit for personal and sick leave and other
164 leave benefits as employees of the State of Mississippi,
165 notwithstanding Sections 25-3-91 through 25-3-101; 25-9-101

166 through 25-9-151; 25-11-1 through 25-11-126; 25-11-128 through
167 25-11-131; 25-15-1 through 25-15-23 and for the purpose set forth
168 herein. Contract workers, i.e., contract personnel who do not
169 meet the criteria of independent contractors, shall be subject to
170 the provisions of Section 25-11-127.

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

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

193 (a) Promulgate rules and regulations governing the
194 solicitation and selection of contractual services personnel
195 including personal and professional services contracts for any
196 form of consulting, policy analysis, public relations, marketing,
197 public affairs, legislative advocacy services or any other
198 contract that the board deems appropriate for oversight, with the

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

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

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

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

228 (e) To provide standards for the issuance of requests
229 for proposals, the evaluation of proposals received, consideration
230 of costs and quality of services proposed, contract negotiations,

231 the administrative monitoring of contract performance by the
232 agency and successful steps in terminating a contract;

233 (f) To present recommendations for governmental
234 privatization and to evaluate privatization proposals submitted by
235 any state agency;

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

244 (h) To request the State Auditor to conduct a
245 performance audit on any personal or professional service
246 contract;

247 (i) Prepare an annual report to the Legislature
248 concerning the issuance of personal service contracts during the
249 previous year, collecting any necessary information from state
250 agencies in making such report.

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

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

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

261 25-53-5. The authority shall have the following powers,
262 duties and responsibilities:

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

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

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

290 (d) The authority shall adopt rules, regulations, and
291 procedures governing the acquisition of computer and
292 telecommunications equipment and services which shall, to the
293 fullest extent practicable, insure the maximum of competition
294 between all manufacturers of supplies or equipment or services.
295 In the writing of specifications, in the making of contracts

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

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

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

325 (g) The authority may provide for the development and
326 require the adoption of standardized computer programs and may
327 provide for the dissemination of information to and the
328 establishment of training programs for the personnel of the

329 various information technology centers of state agencies and
330 personnel of the agencies utilizing the services thereof.

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

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

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

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

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

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

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

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

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

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

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

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

440 (r) All fees collected by the Mississippi Department of
441 Information Technology Services shall be deposited into the
442 Mississippi Department of Information Technology Services
443 Revolving Fund unless otherwise specified by the Legislature.

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

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

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