

By: Senator(s) Brown

To: Accountability,
Efficiency, Transparency

SENATE BILL NO. 2797

1 AN ACT TO CREATE THE "MISSISSIPPI EMPLOYMENT FAIRNESS ACT";
 2 TO PROVIDE THAT NO LAW, ORDINANCE, OR REGULATION SHALL IMPOSE ANY
 3 CONTRACTUAL, ZONING, PERMITTING, LICENSING OR OTHER CONDITION THAT
 4 REQUIRES ANY EMPLOYER OR EMPLOYEE TO WAIVE THEIR RIGHTS UNDER THE
 5 NATIONAL LABOR RELATIONS ACT; TO PROVIDE THAT ANY AGREEMENT,
 6 CONTRACT, UNDERSTANDING OR PRACTICE, WRITTEN OR ORAL, IMPLIED OR
 7 EXPRESSED, BETWEEN ANY EMPLOYER AND ANY LABOR ORGANIZATION
 8 REQUIRED IN VIOLATION OF THIS SECTION IS DECLARED TO BE UNLAWFUL,
 9 NULL AND VOID, AND OF NO LEGAL EFFECT; TO AMEND SECTION 31-7-13,
 10 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING PROVISION;
 11 AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** This act shall be known and may be cited as the
 14 "Mississippi Employment Fairness Act."

15 **SECTION 2.** Employers and employees alike benefit from
 16 consistent and established standards regulating fair employment
 17 practices. Existing federal and state laws, including, but not
 18 limited to, Title VII of the Civil Rights Act of 1964, the Age
 19 Discrimination in Employment Act, the Americans with Disabilities
 20 Act, the Equal Pay Act, the Genetic Information Nondiscrimination
 21 Act; which seek to protect individuals from discrimination in
 22 employment while also providing appropriate due process to



23 employers; and without limiting the employers ability to maintain
24 a secure, safe and productive workplace.

25 Mississippi is a right-to-work state, which is governed by
26 the right-to-work laws. Such laws are premised on the belief of
27 free choice whereby employees have a right to freely decide
28 whether to join, be represented by, or financially support a union
29 or employee organization. A labor neutrality agreement is used as
30 a tool to pressure company ownership and management to agree to
31 union demands before ever approaching employees, which is unfair
32 to the employer as well as the employee or potential employee.
33 This state recognizes that these agreements have become
34 increasingly common in recent years. As a result of this
35 increase, the need to regulate the use of such agreements is
36 necessary to ensure that both the employer and employee are
37 treated in the fairest way possible.

38 **SECTION 3.** For purpose of this act, the following words
39 shall have the following meaning, unless the context clearly
40 describes otherwise:

41 (a) "Employee" means a natural person who performs
42 services for an employer for valuable consideration, and does not
43 include a self-employed independent contractor.

44 (b) "Employers" means a person, association, or legal
45 or commercial entity receiving services from an employee and, in
46 return, giving compensation of any kind to such employee.



47 (c) "Discrimination" means when an employer takes an
48 action or makes a distinction adversely affecting an employee or
49 job applicant based on the group, class, or category to which that
50 person belongs.

51 (d) "Federal labor laws" means the National Labor
52 Relations Act, compiled in 29 USCS, Section 151 et seq., and the
53 Labor Management Relations Act, compiled in 29 USCS, Section 141
54 et seq., as amended, presidential executive orders, and federal
55 administrative regulations relating to labor and management or
56 employee and employer issues, and the United States Constitution
57 as amended.

58 (e) "Multiemployer association" means a bargaining unit
59 composed of independent employers who associate together to
60 negotiate jointly with one (1) or more labor organizations
61 representing the employees of the independent employers within the
62 bargaining unit.

63 (f) "State" means the State of Mississippi and
64 municipalities, counties, agencies and political subdivisions of
65 this state.

66 **SECTION 4.** (1) No law, ordinance, or regulation shall
67 impose any contractual, zoning, permitting, licensing or other
68 condition that requires any employer or employee to waive their
69 rights under The National Labor Relations Act, compiled in 29
70 USCS, Section 151 et seq.



71 (2) No law, regulation, or ordinance shall require, in whole
72 or in part, an employer or multiemployer association to accept or
73 otherwise agree to any provisions that are mandatory or
74 nonmandatory subjects of collective bargaining under federal labor
75 laws, including, but not limited to, any limitations on an
76 employer or multiemployer association's rights to engage in
77 collective bargaining with a labor organization, to lock out
78 employees, or to operate during a work stoppage; however, this
79 subsection shall not invalidate or otherwise restrict the state
80 from requiring the use of project labor agreements to the extent
81 permissible under federal labor laws.

82 (3) This section shall be interpreted and enforced
83 consistent with the National Labor Relations Act, compiled in 29
84 USCS, Section 151 et seq.

85 (4) Any agreement, contract, understanding or practice,
86 written or oral, implied or expressed, between any employer and
87 any labor organization required in violation of this section is
88 declared to be unlawful, null and void, and of no legal effect.

89 (5) An employer or employee may seek injunctive relief in
90 the chancery court of Hinds County, Mississippi, to prevent the
91 state from violating this section.

92 **SECTION 5.** (1) No plans, specifications or contract
93 documents issued pursuant to any public purchasing law of this
94 state, including Section 31-7-13, shall:



95 (a) Require a bidder, contractor or subcontractor to
96 enter into or comply with an agreement with a labor organization
97 on the same or a related public works project;

98 (b) Discriminate against a bidder, contractor or
99 subcontractor for refusing to enter into, remain signatory to, or
100 comply with an agreement with a labor organization on the same or
101 a related public works project; or

102 (c) Require a bidder, contractor or subcontractor to
103 enter into or comply with an agreement that requires an employee
104 of the bidder, contractor or subcontractor, as a condition of
105 employment, to do either of the following:

106 (i) Become a member of or become affiliated with a
107 labor organization; or

108 (ii) Over the objection of an employee, pay dues
109 or fees to a labor organization that exceeds the employee's share
110 of the labor organization's cost relating to collective
111 bargaining, contract administration, or grievance adjustment.

112 (2) A bidder, contractor or subcontractor has a cause of
113 action to challenge the award of a public works contract that
114 violates any part of this section.

115 (3) A bidder, contractor or subcontractor that prevails in
116 an action under this section is entitled to the following relief:

117 (a) A declaration that the provisions of the public
118 contract that violate the section herein are void;

119 (b) Costs and attorneys' fees; and



120 (c) Any other appropriate and reasonable relief
121 requested by the interested party.

122 (4) This section does not prohibit an employer or any other
123 person covered by the National Labor Relations Act compiled in 29
124 USCS, Section 131 from entering into agreements or engaging in any
125 other activity protected by law. This section may not be
126 interpreted to interfere with the labor relations of persons
127 covered by the National Labor Relations Act.

128 (5) Relief that would interfere with the labor relations of
129 persons covered by the National Labor Relations Act may not be
130 granted under this section.

131 **SECTION 6.** Section 31-7-13, Mississippi Code of 1972, is
132 amended as follows:

133 31-7-13. All agencies and governing authorities shall
134 purchase their commodities and printing; contract for garbage
135 collection or disposal; contract for solid waste collection or
136 disposal; contract for sewage collection or disposal; contract for
137 public construction; and contract for rentals as herein provided.

138 (a) **Bidding procedure for purchases not over \$5,000.00.**
139 Purchases which do not involve an expenditure of more than Five
140 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
141 charges, may be made without advertising or otherwise requesting
142 competitive bids. However, nothing contained in this paragraph
143 (a) shall be construed to prohibit any agency or governing



144 authority from establishing procedures which require competitive
145 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

146 (b) **Bidding procedure for purchases over \$5,000.00 but**
147 **not over \$50,000.00.** Purchases which involve an expenditure of
148 more than Five Thousand Dollars (\$5,000.00) but not more than
149 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and
150 shipping charges may be made from the lowest and best bidder
151 without publishing or posting advertisement for bids, provided at
152 least two (2) competitive written bids have been obtained. Any
153 state agency or community/junior college purchasing commodities or
154 procuring construction pursuant to this paragraph (b) may
155 authorize its purchasing agent, or his designee, to accept the
156 lowest competitive written bid under Fifty Thousand Dollars
157 (\$50,000.00). Any governing authority purchasing commodities
158 pursuant to this paragraph (b) may authorize its purchasing agent,
159 or his designee, with regard to governing authorities other than
160 counties, or its purchase clerk, or his designee, with regard to
161 counties, to accept the lowest and best competitive written bid.
162 Such authorization shall be made in writing by the governing
163 authority and shall be maintained on file in the primary office of
164 the agency and recorded in the official minutes of the governing
165 authority, as appropriate. The purchasing agent or the purchase
166 clerk, or their designee, as the case may be, and not the
167 governing authority, shall be liable for any penalties and/or
168 damages as may be imposed by law for any act or omission of the



169 purchasing agent or purchase clerk, or their designee,
170 constituting a violation of law in accepting any bid without
171 approval by the governing authority. The term "competitive
172 written bid" shall mean a bid submitted on a bid form furnished by
173 the buying agency or governing authority and signed by authorized
174 personnel representing the vendor, or a bid submitted on a
175 vendor's letterhead or identifiable bid form and signed by
176 authorized personnel representing the vendor. "Competitive" shall
177 mean that the bids are developed based upon comparable
178 identification of the needs and are developed independently and
179 without knowledge of other bids or prospective bids. Any bid item
180 for construction in excess of Five Thousand Dollars (\$5,000.00)
181 shall be broken down by components to provide detail of component
182 description and pricing. These details shall be submitted with
183 the written bids and become part of the bid evaluation criteria.
184 Bids may be submitted by facsimile, electronic mail or other
185 generally accepted method of information distribution. Bids
186 submitted by electronic transmission shall not require the
187 signature of the vendor's representative unless required by
188 agencies or governing authorities.

189 (c) **Bidding procedure for purchases over \$50,000.00.**

190 (i) **Publication requirement.**

191 1. Purchases which involve an expenditure of
192 more than Fifty Thousand Dollars (\$50,000.00), exclusive of
193 freight and shipping charges, may be made from the lowest and best



194 bidder after advertising for competitive bids once each week for
195 two (2) consecutive weeks in a regular newspaper published in the
196 county or municipality in which such agency or governing authority
197 is located. However, all American Recovery and Reinvestment Act
198 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
199 shall be bid. All references to American Recovery and
200 Reinvestment Act projects in this section shall not apply to
201 programs identified in Division B of the American Recovery and
202 Reinvestment Act.

203 2. The purchasing entity may designate the
204 method by which the bids will be received, including, but not
205 limited to, bids sealed in an envelope, bids received
206 electronically in a secure system, bids received via a reverse
207 auction, or bids received by any other method that promotes open
208 competition and has been approved by the Office of Purchasing and
209 Travel. However, reverse auction shall not be used for any public
210 contract for design or construction of public facilities,
211 including buildings, roads and bridges.

212 3. The date as published for the bid opening
213 shall not be less than seven (7) working days after the last
214 published notice; however, if the purchase involves a construction
215 project in which the estimated cost is in excess of Fifty Thousand
216 Dollars (\$50,000.00), such bids shall not be opened in less than
217 fifteen (15) working days after the last notice is published and
218 the notice for the purchase of such construction shall be



219 published once each week for two (2) consecutive weeks. However,
220 all American Recovery and Reinvestment Act projects in excess of
221 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any
222 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
223 under the American Recovery and Reinvestment Act, publication
224 shall be made one (1) time and the bid opening for construction
225 projects shall not be less than ten (10) working days after the
226 date of the published notice. The notice of intention to let
227 contracts or purchase equipment shall state the time and place at
228 which bids shall be received, list the contracts to be made or
229 types of equipment or supplies to be purchased, and, if all plans
230 and/or specifications are not published, refer to the plans and/or
231 specifications on file. If there is no newspaper published in the
232 county or municipality, then such notice shall be given by posting
233 same at the courthouse, or for municipalities at the city hall,
234 and at two (2) other public places in the county or municipality,
235 and also by publication once each week for two (2) consecutive
236 weeks in some newspaper having a general circulation in the county
237 or municipality in the above-provided manner. On the same date
238 that the notice is submitted to the newspaper for publication, the
239 agency or governing authority involved shall mail written notice
240 to, or provide electronic notification to the main office of the
241 Mississippi Procurement Technical Assistance Program under the
242 Mississippi Development Authority that contains the same
243 information as that in the published notice. Submissions received



244 by the Mississippi Procurement Technical Assistance Program for
245 projects funded by the American Recovery and Reinvestment Act
246 shall be displayed on a separate and unique Internet web page
247 accessible to the public and maintained by the Mississippi
248 Development Authority for the Mississippi Procurement Technical
249 Assistance Program. Those American Recovery and Reinvestment Act
250 related submissions shall be publicly posted within twenty-four
251 (24) hours of receipt by the Mississippi Development Authority and
252 the bid opening shall not occur until the submission has been
253 posted for ten (10) consecutive days. The Department of Finance
254 and Administration shall maintain information regarding contracts
255 and other expenditures from the American Recovery and Reinvestment
256 Act, on a unique Internet web page accessible to the public. The
257 Department of Finance and Administration shall promulgate rules
258 regarding format, content and deadlines, unless otherwise
259 specified by law, of the posting of award notices, contract
260 execution and subsequent amendments, links to the contract
261 documents, expenditures against the awarded contracts and general
262 expenditures of funds from the American Recovery and Reinvestment
263 Act. Within one (1) working day of the contract award, the agency
264 or governing authority shall post to the designated web page
265 maintained by the Department of Finance and Administration, notice
266 of the award, including the award recipient, the contract amount,
267 and a brief summary of the contract in accordance with rules
268 promulgated by the department. Within one (1) working day of the



269 contract execution, the agency or governing authority shall post
270 to the designated web page maintained by the Department of Finance
271 and Administration a summary of the executed contract and make a
272 copy of the appropriately redacted contract documents available
273 for linking to the designated web page in accordance with the
274 rules promulgated by the department. The information provided by
275 the agency or governing authority shall be posted to the web page
276 for the duration of the American Recovery and Reinvestment Act
277 funding or until the project is completed, whichever is longer.

278 (ii) **Bidding process amendment procedure.** If all
279 plans and/or specifications are published in the notification,
280 then the plans and/or specifications may not be amended. If all
281 plans and/or specifications are not published in the notification,
282 then amendments to the plans/specifications, bid opening date, bid
283 opening time and place may be made, provided that the agency or
284 governing authority maintains a list of all prospective bidders
285 who are known to have received a copy of the bid documents and all
286 such prospective bidders are sent copies of all amendments. This
287 notification of amendments may be made via mail, facsimile,
288 electronic mail or other generally accepted method of information
289 distribution. No addendum to bid specifications may be issued
290 within two (2) working days of the time established for the
291 receipt of bids unless such addendum also amends the bid opening
292 to a date not less than five (5) working days after the date of
293 the addendum.



294 (iii) **Filing requirement.** In all cases involving
295 governing authorities, before the notice shall be published or
296 posted, the plans or specifications for the construction or
297 equipment being sought shall be filed with the clerk of the board
298 of the governing authority. In addition to these requirements, a
299 bid file shall be established which shall indicate those vendors
300 to whom such solicitations and specifications were issued, and
301 such file shall also contain such information as is pertinent to
302 the bid.

303 (iv) **Specification restrictions.**

304 1. Specifications pertinent to such bidding
305 shall be written so as not to exclude comparable equipment of
306 domestic manufacture. However, if valid justification is
307 presented, the Department of Finance and Administration or the
308 board of a governing authority may approve a request for specific
309 equipment necessary to perform a specific job. Further, such
310 justification, when placed on the minutes of the board of a
311 governing authority, may serve as authority for that governing
312 authority to write specifications to require a specific item of
313 equipment needed to perform a specific job. In addition to these
314 requirements, from and after July 1, 1990, vendors of relocatable
315 classrooms and the specifications for the purchase of such
316 relocatable classrooms published by local school boards shall meet
317 all pertinent regulations of the State Board of Education,



318 including prior approval of such bid by the State Department of
319 Education.

320 2. Specifications for construction projects
321 may include an allowance for commodities, equipment, furniture,
322 construction materials or systems in which prospective bidders are
323 instructed to include in their bids specified amounts for such
324 items so long as the allowance items are acquired by the vendor in
325 a commercially reasonable manner and approved by the
326 agency/governing authority. Such acquisitions shall not be made
327 to circumvent the public purchasing laws.

328 (v) Agencies and governing authorities may
329 establish secure procedures by which bids may be submitted via
330 electronic means.

331 (d) **Lowest and best bid decision procedure.**

332 (i) **Decision procedure.** Purchases may be made
333 from the lowest and best bidder. In determining the lowest and
334 best bid, freight and shipping charges shall be included.
335 Life-cycle costing, total cost bids, warranties, guaranteed
336 buy-back provisions and other relevant provisions may be included
337 in the best bid calculation. All best bid procedures for state
338 agencies must be in compliance with regulations established by the
339 Department of Finance and Administration. If any governing
340 authority accepts a bid other than the lowest bid actually
341 submitted, it shall place on its minutes detailed calculations and
342 narrative summary showing that the accepted bid was determined to



343 be the lowest and best bid, including the dollar amount of the
344 accepted bid and the dollar amount of the lowest bid. No agency
345 or governing authority shall accept a bid based on items not
346 included in the specifications.

347 (ii) **Decision procedure for Certified Purchasing**
348 **Offices.** In addition to the decision procedure set forth in
349 paragraph (d)(i), Certified Purchasing Offices may also use the
350 following procedure: Purchases may be made from the bidder
351 offering the best value. In determining the best value bid,
352 freight and shipping charges shall be included. Life-cycle
353 costing, total cost bids, warranties, guaranteed buy-back
354 provisions, documented previous experience, training costs and
355 other relevant provisions, including, but not limited to, a bidder
356 having a local office and inventory located within the
357 jurisdiction of the governing authority, may be included in the
358 best value calculation. This provision shall authorize Certified
359 Purchasing Offices to utilize a Request For Proposals (RFP)
360 process when purchasing commodities. All best value procedures
361 for state agencies must be in compliance with regulations
362 established by the Department of Finance and Administration. No
363 agency or governing authority shall accept a bid based on items or
364 criteria not included in the specifications.

365 (iii) **Decision procedure for Mississippi**
366 **Landmarks.** In addition to the decision procedure set forth in
367 paragraph (d)(i), where purchase involves renovation, restoration,



368 or both, of the State Capitol Building or any other historical
369 building designated for at least five (5) years as a Mississippi
370 Landmark by the Board of Trustees of the Department of Archives
371 and History under the authority of Sections 39-7-7 and 39-7-11,
372 the agency or governing authority may use the following procedure:
373 Purchases may be made from the lowest and best prequalified
374 bidder. Prequalification of bidders shall be determined not less
375 than fifteen (15) working days before the first published notice
376 of bid opening. Prequalification criteria shall be limited to
377 bidder's knowledge and experience in historical restoration,
378 preservation and renovation. In determining the lowest and best
379 bid, freight and shipping charges shall be included. Life-cycle
380 costing, total cost bids, warranties, guaranteed buy-back
381 provisions and other relevant provisions may be included in the
382 best bid calculation. All best bid and prequalification
383 procedures for state agencies must be in compliance with
384 regulations established by the Department of Finance and
385 Administration. If any governing authority accepts a bid other
386 than the lowest bid actually submitted, it shall place on its
387 minutes detailed calculations and narrative summary showing that
388 the accepted bid was determined to be the lowest and best bid,
389 including the dollar amount of the accepted bid and the dollar
390 amount of the lowest bid. No agency or governing authority shall
391 accept a bid based on items not included in the specifications.



392 (iv) **Construction project negotiations authority.**

393 If the lowest and best bid is not more than ten percent (10%)
394 above the amount of funds allocated for a public construction or
395 renovation project, then the agency or governing authority shall
396 be permitted to negotiate with the lowest bidder in order to enter
397 into a contract for an amount not to exceed the funds allocated.

398 (e) **Lease-purchase authorization.** For the purposes of
399 this section, the term "equipment" shall mean equipment, furniture
400 and, if applicable, associated software and other applicable
401 direct costs associated with the acquisition. Any lease-purchase
402 of equipment which an agency is not required to lease-purchase
403 under the master lease-purchase program pursuant to Section
404 31-7-10 and any lease-purchase of equipment which a governing
405 authority elects to lease-purchase may be acquired by a
406 lease-purchase agreement under this paragraph (e). Lease-purchase
407 financing may also be obtained from the vendor or from a
408 third-party source after having solicited and obtained at least
409 two (2) written competitive bids, as defined in paragraph (b) of
410 this section, for such financing without advertising for such
411 bids. Solicitation for the bids for financing may occur before or
412 after acceptance of bids for the purchase of such equipment or,
413 where no such bids for purchase are required, at any time before
414 the purchase thereof. No such lease-purchase agreement shall be
415 for an annual rate of interest which is greater than the overall
416 maximum interest rate to maturity on general obligation



417 indebtedness permitted under Section 75-17-101, and the term of
418 such lease-purchase agreement shall not exceed the useful life of
419 equipment covered thereby as determined according to the upper
420 limit of the asset depreciation range (ADR) guidelines for the
421 Class Life Asset Depreciation Range System established by the
422 Internal Revenue Service pursuant to the United States Internal
423 Revenue Code and regulations thereunder as in effect on December
424 31, 1980, or comparable depreciation guidelines with respect to
425 any equipment not covered by ADR guidelines. Any lease-purchase
426 agreement entered into pursuant to this paragraph (e) may contain
427 any of the terms and conditions which a master lease-purchase
428 agreement may contain under the provisions of Section 31-7-10(5),
429 and shall contain an annual allocation dependency clause
430 substantially similar to that set forth in Section 31-7-10(8).
431 Each agency or governing authority entering into a lease-purchase
432 transaction pursuant to this paragraph (e) shall maintain with
433 respect to each such lease-purchase transaction the same
434 information as required to be maintained by the Department of
435 Finance and Administration pursuant to Section 31-7-10(13).
436 However, nothing contained in this section shall be construed to
437 permit agencies to acquire items of equipment with a total
438 acquisition cost in the aggregate of less than Ten Thousand
439 Dollars (\$10,000.00) by a single lease-purchase transaction. All
440 equipment, and the purchase thereof by any lessor, acquired by
441 lease-purchase under this paragraph and all lease-purchase



442 payments with respect thereto shall be exempt from all Mississippi
443 sales, use and ad valorem taxes. Interest paid on any
444 lease-purchase agreement under this section shall be exempt from
445 State of Mississippi income taxation.

446 (f) **Alternate bid authorization.** When necessary to
447 ensure ready availability of commodities for public works and the
448 timely completion of public projects, no more than two (2)
449 alternate bids may be accepted by a governing authority for
450 commodities. No purchases may be made through use of such
451 alternate bids procedure unless the lowest and best bidder cannot
452 deliver the commodities contained in his bid. In that event,
453 purchases of such commodities may be made from one (1) of the
454 bidders whose bid was accepted as an alternate.

455 (g) **Construction contract change authorization.** In the
456 event a determination is made by an agency or governing authority
457 after a construction contract is let that changes or modifications
458 to the original contract are necessary or would better serve the
459 purpose of the agency or the governing authority, such agency or
460 governing authority may, in its discretion, order such changes
461 pertaining to the construction that are necessary under the
462 circumstances without the necessity of further public bids;
463 provided that such change shall be made in a commercially
464 reasonable manner and shall not be made to circumvent the public
465 purchasing statutes. In addition to any other authorized person,
466 the architect or engineer hired by an agency or governing



467 authority with respect to any public construction contract shall
468 have the authority, when granted by an agency or governing
469 authority, to authorize changes or modifications to the original
470 contract without the necessity of prior approval of the agency or
471 governing authority when any such change or modification is less
472 than one percent (1%) of the total contract amount. The agency or
473 governing authority may limit the number, manner or frequency of
474 such emergency changes or modifications.

475 (h) **Petroleum purchase alternative.** In addition to
476 other methods of purchasing authorized in this chapter, when any
477 agency or governing authority shall have a need for gas, diesel
478 fuel, oils and/or other petroleum products in excess of the amount
479 set forth in paragraph (a) of this section, such agency or
480 governing authority may purchase the commodity after having
481 solicited and obtained at least two (2) competitive written bids,
482 as defined in paragraph (b) of this section. If two (2)
483 competitive written bids are not obtained, the entity shall comply
484 with the procedures set forth in paragraph (c) of this section.
485 In the event any agency or governing authority shall have
486 advertised for bids for the purchase of gas, diesel fuel, oils and
487 other petroleum products and coal and no acceptable bids can be
488 obtained, such agency or governing authority is authorized and
489 directed to enter into any negotiations necessary to secure the
490 lowest and best contract available for the purchase of such
491 commodities.



492 (i) **Road construction petroleum products price**
493 **adjustment clause authorization.** Any agency or governing
494 authority authorized to enter into contracts for the construction,
495 maintenance, surfacing or repair of highways, roads or streets,
496 may include in its bid proposal and contract documents a price
497 adjustment clause with relation to the cost to the contractor,
498 including taxes, based upon an industry-wide cost index, of
499 petroleum products including asphalt used in the performance or
500 execution of the contract or in the production or manufacture of
501 materials for use in such performance. Such industry-wide index
502 shall be established and published monthly by the Mississippi
503 Department of Transportation with a copy thereof to be mailed,
504 upon request, to the clerks of the governing authority of each
505 municipality and the clerks of each board of supervisors
506 throughout the state. The price adjustment clause shall be based
507 on the cost of such petroleum products only and shall not include
508 any additional profit or overhead as part of the adjustment. The
509 bid proposals or document contract shall contain the basis and
510 methods of adjusting unit prices for the change in the cost of
511 such petroleum products.

512 (j) **State agency emergency purchase procedure.** If the
513 governing board or the executive head, or his designee, of any
514 agency of the state shall determine that an emergency exists in
515 regard to the purchase of any commodities or repair contracts, so
516 that the delay incident to giving opportunity for competitive



517 bidding would be detrimental to the interests of the state, then
518 the provisions herein for competitive bidding shall not apply and
519 the head of such agency shall be authorized to make the purchase
520 or repair. Total purchases so made shall only be for the purpose
521 of meeting needs created by the emergency situation. In the event
522 such executive head is responsible to an agency board, at the
523 meeting next following the emergency purchase, documentation of
524 the purchase, including a description of the commodity purchased,
525 the purchase price thereof and the nature of the emergency shall
526 be presented to the board and placed on the minutes of the board
527 of such agency. The head of such agency, or his designee, shall,
528 at the earliest possible date following such emergency purchase,
529 file with the Department of Finance and Administration (i) a
530 statement explaining the conditions and circumstances of the
531 emergency, which shall include a detailed description of the
532 events leading up to the situation and the negative impact to the
533 entity if the purchase is made following the statutory
534 requirements set forth in paragraph (a), (b) or (c) of this
535 section, and (ii) a certified copy of the appropriate minutes of
536 the board of such agency, if applicable.

537 (k) **Governing authority emergency purchase procedure.**
538 If the governing authority, or the governing authority acting
539 through its designee, shall determine that an emergency exists in
540 regard to the purchase of any commodities or repair contracts, so
541 that the delay incident to giving opportunity for competitive



542 bidding would be detrimental to the interest of the governing
543 authority, then the provisions herein for competitive bidding
544 shall not apply and any officer or agent of such governing
545 authority having general or special authority therefor in making
546 such purchase or repair shall approve the bill presented therefor,
547 and he shall certify in writing thereon from whom such purchase
548 was made, or with whom such a repair contract was made. At the
549 board meeting next following the emergency purchase or repair
550 contract, documentation of the purchase or repair contract,
551 including a description of the commodity purchased, the price
552 thereof and the nature of the emergency shall be presented to the
553 board and shall be placed on the minutes of the board of such
554 governing authority.

555 (1) **Hospital purchase, lease-purchase and lease**
556 **authorization.**

557 (i) The commissioners or board of trustees of any
558 public hospital may contract with such lowest and best bidder for
559 the purchase or lease-purchase of any commodity under a contract
560 of purchase or lease-purchase agreement whose obligatory payment
561 terms do not exceed five (5) years.

562 (ii) In addition to the authority granted in
563 subparagraph (i) of this paragraph (1), the commissioners or board
564 of trustees is authorized to enter into contracts for the lease of
565 equipment or services, or both, which it considers necessary for
566 the proper care of patients if, in its opinion, it is not



567 financially feasible to purchase the necessary equipment or
568 services. Any such contract for the lease of equipment or
569 services executed by the commissioners or board shall not exceed a
570 maximum of five (5) years' duration and shall include a
571 cancellation clause based on unavailability of funds. If such
572 cancellation clause is exercised, there shall be no further
573 liability on the part of the lessee. Any such contract for the
574 lease of equipment or services executed on behalf of the
575 commissioners or board that complies with the provisions of this
576 subparagraph (ii) shall be excepted from the bid requirements set
577 forth in this section.

578 (m) **Exceptions from bidding requirements.** Excepted
579 from bid requirements are:

580 (i) **Purchasing agreements approved by department.**
581 Purchasing agreements, contracts and maximum price regulations
582 executed or approved by the Department of Finance and
583 Administration.

584 (ii) **Outside equipment repairs.** Repairs to
585 equipment, when such repairs are made by repair facilities in the
586 private sector; however, engines, transmissions, rear axles and/or
587 other such components shall not be included in this exemption when
588 replaced as a complete unit instead of being repaired and the need
589 for such total component replacement is known before disassembly
590 of the component; however, invoices identifying the equipment,
591 specific repairs made, parts identified by number and name,



592 supplies used in such repairs, and the number of hours of labor
593 and costs therefor shall be required for the payment for such
594 repairs.

595 (iii) **In-house equipment repairs.** Purchases of
596 parts for repairs to equipment, when such repairs are made by
597 personnel of the agency or governing authority; however, entire
598 assemblies, such as engines or transmissions, shall not be
599 included in this exemption when the entire assembly is being
600 replaced instead of being repaired.

601 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
602 of gravel or fill dirt which are to be removed and transported by
603 the purchaser.

604 (v) **Governmental equipment auctions.** Motor
605 vehicles or other equipment purchased from a federal agency or
606 authority, another governing authority or state agency of the
607 State of Mississippi, or any governing authority or state agency
608 of another state at a public auction held for the purpose of
609 disposing of such vehicles or other equipment. Any purchase by a
610 governing authority under the exemption authorized by this
611 subparagraph (v) shall require advance authorization spread upon
612 the minutes of the governing authority to include the listing of
613 the item or items authorized to be purchased and the maximum bid
614 authorized to be paid for each item or items.

615 (vi) **Intergovernmental sales and transfers.**
616 Purchases, sales, transfers or trades by governing authorities or



617 state agencies when such purchases, sales, transfers or trades are
618 made by a private treaty agreement or through means of
619 negotiation, from any federal agency or authority, another
620 governing authority or state agency of the State of Mississippi,
621 or any state agency or governing authority of another state.
622 Nothing in this section shall permit such purchases through public
623 auction except as provided for in subparagraph (v) of this
624 section. It is the intent of this section to allow governmental
625 entities to dispose of and/or purchase commodities from other
626 governmental entities at a price that is agreed to by both
627 parties. This shall allow for purchases and/or sales at prices
628 which may be determined to be below the market value if the
629 selling entity determines that the sale at below market value is
630 in the best interest of the taxpayers of the state. Governing
631 authorities shall place the terms of the agreement and any
632 justification on the minutes, and state agencies shall obtain
633 approval from the Department of Finance and Administration, prior
634 to releasing or taking possession of the commodities.

635 (vii) **Perishable supplies or food.** Perishable
636 supplies or food purchased for use in connection with hospitals,
637 the school lunch programs, homemaking programs and for the feeding
638 of county or municipal prisoners.

639 (viii) **Single source items.** Noncompetitive items
640 available from one (1) source only. In connection with the
641 purchase of noncompetitive items only available from one (1)



642 source, a certification of the conditions and circumstances
643 requiring the purchase shall be filed by the agency with the
644 Department of Finance and Administration and by the governing
645 authority with the board of the governing authority. Upon receipt
646 of that certification the Department of Finance and Administration
647 or the board of the governing authority, as the case may be, may,
648 in writing, authorize the purchase, which authority shall be noted
649 on the minutes of the body at the next regular meeting thereafter.
650 In those situations, a governing authority is not required to
651 obtain the approval of the Department of Finance and
652 Administration.

653 (ix) **Waste disposal facility construction**
654 **contracts.** Construction of incinerators and other facilities for
655 disposal of solid wastes in which products either generated
656 therein, such as steam, or recovered therefrom, such as materials
657 for recycling, are to be sold or otherwise disposed of; however,
658 in constructing such facilities, a governing authority or agency
659 shall publicly issue requests for proposals, advertised for in the
660 same manner as provided herein for seeking bids for public
661 construction projects, concerning the design, construction,
662 ownership, operation and/or maintenance of such facilities,
663 wherein such requests for proposals when issued shall contain
664 terms and conditions relating to price, financial responsibility,
665 technology, environmental compatibility, legal responsibilities
666 and such other matters as are determined by the governing



667 authority or agency to be appropriate for inclusion; and after
668 responses to the request for proposals have been duly received,
669 the governing authority or agency may select the most qualified
670 proposal or proposals on the basis of price, technology and other
671 relevant factors and from such proposals, but not limited to the
672 terms thereof, negotiate and enter contracts with one or more of
673 the persons or firms submitting proposals.

674 (x) **Hospital group purchase contracts.** Supplies,
675 commodities and equipment purchased by hospitals through group
676 purchase programs pursuant to Section 31-7-38.

677 (xi) **Information technology products.** Purchases
678 of information technology products made by governing authorities
679 under the provisions of purchase schedules, or contracts executed
680 or approved by the Mississippi Department of Information
681 Technology Services and designated for use by governing
682 authorities.

683 (xii) **Energy efficiency services and equipment.**
684 Energy efficiency services and equipment acquired by school
685 districts, community and junior colleges, institutions of higher
686 learning and state agencies or other applicable governmental
687 entities on a shared-savings, lease or lease-purchase basis
688 pursuant to Section 31-7-14.

689 (xiii) **Municipal electrical utility system fuel.**
690 Purchases of coal and/or natural gas by municipally owned electric



691 power generating systems that have the capacity to use both coal
692 and natural gas for the generation of electric power.

693 (xiv) **Library books and other reference materials.**

694 Purchases by libraries or for libraries of books and periodicals;
695 processed film, video cassette tapes, filmstrips and slides;
696 recorded audio tapes, cassettes and diskettes; and any such items
697 as would be used for teaching, research or other information
698 distribution; however, equipment such as projectors, recorders,
699 audio or video equipment, and monitor televisions are not exempt
700 under this subparagraph.

701 (xv) **Unmarked vehicles.** Purchases of unmarked
702 vehicles when such purchases are made in accordance with
703 purchasing regulations adopted by the Department of Finance and
704 Administration pursuant to Section 31-7-9(2).

705 (xvi) **Election ballots.** Purchases of ballots
706 printed pursuant to Section 23-15-351.

707 (xvii) **Multichannel interactive video systems.**

708 From and after July 1, 1990, contracts by Mississippi Authority
709 for Educational Television with any private educational
710 institution or private nonprofit organization whose purposes are
711 educational in regard to the construction, purchase, lease or
712 lease-purchase of facilities and equipment and the employment of
713 personnel for providing multichannel interactive video systems
714 (ITSF) in the school districts of this state.



715 (xviii) **Purchases of prison industry products by**
716 **the Department of Corrections, regional correctional facilities or**
717 **privately owned prisons.** Purchases made by the Mississippi
718 Department of Corrections, regional correctional facilities or
719 privately owned prisons involving any item that is manufactured,
720 processed, grown or produced from the state's prison industries.

721 (xix) **Undercover operations equipment.** Purchases
722 of surveillance equipment or any other high-tech equipment to be
723 used by law enforcement agents in undercover operations, provided
724 that any such purchase shall be in compliance with regulations
725 established by the Department of Finance and Administration.

726 (xx) **Junior college books for rent.** Purchases by
727 community or junior colleges of textbooks which are obtained for
728 the purpose of renting such books to students as part of a book
729 service system.

730 (xxi) **Certain school district purchases.**
731 Purchases of commodities made by school districts from vendors
732 with which any levying authority of the school district, as
733 defined in Section 37-57-1, has contracted through competitive
734 bidding procedures for purchases of the same commodities.

735 (xxii) **Garbage, solid waste and sewage contracts.**
736 Contracts for garbage collection or disposal, contracts for solid
737 waste collection or disposal and contracts for sewage collection
738 or disposal.



739 (xxiii) **Municipal water tank maintenance**
740 **contracts.** Professional maintenance program contracts for the
741 repair or maintenance of municipal water tanks, which provide
742 professional services needed to maintain municipal water storage
743 tanks for a fixed annual fee for a duration of two (2) or more
744 years.

745 (xxiv) **Purchases of Mississippi Industries for the**
746 **Blind products.** Purchases made by state agencies or governing
747 authorities involving any item that is manufactured, processed or
748 produced by the Mississippi Industries for the Blind.

749 (xxv) **Purchases of state-adopted textbooks.**
750 Purchases of state-adopted textbooks by public school districts.

751 (xxvi) **Certain purchases under the Mississippi**
752 **Major Economic Impact Act.** Contracts entered into pursuant to the
753 provisions of Section 57-75-9(2), (3) and (4).

754 (xxvii) **Used heavy or specialized machinery or**
755 **equipment for installation of soil and water conservation**
756 **practices purchased at auction.** Used heavy or specialized
757 machinery or equipment used for the installation and
758 implementation of soil and water conservation practices or
759 measures purchased subject to the restrictions provided in
760 Sections 69-27-331 through 69-27-341. Any purchase by the State
761 Soil and Water Conservation Commission under the exemption
762 authorized by this subparagraph shall require advance
763 authorization spread upon the minutes of the commission to include



764 the listing of the item or items authorized to be purchased and
765 the maximum bid authorized to be paid for each item or items.

766 (xxviii) **Hospital lease of equipment or services.**

767 Leases by hospitals of equipment or services if the leases are in
768 compliance with paragraph (1)(ii).

769 (xxix) **Purchases made pursuant to qualified**
770 **cooperative purchasing agreements.** Purchases made by certified
771 purchasing offices of state agencies or governing authorities
772 under cooperative purchasing agreements previously approved by the
773 Office of Purchasing and Travel and established by or for any
774 municipality, county, parish or state government or the federal
775 government, provided that the notification to potential
776 contractors includes a clause that sets forth the availability of
777 the cooperative purchasing agreement to other governmental
778 entities. Such purchases shall only be made if the use of the
779 cooperative purchasing agreements is determined to be in the best
780 interest of the governmental entity.

781 (xxx) **School yearbooks.** Purchases of school
782 yearbooks by state agencies or governing authorities; provided,
783 however, that state agencies and governing authorities shall use
784 for these purchases the RFP process as set forth in the
785 Mississippi Procurement Manual adopted by the Office of Purchasing
786 and Travel.



787 (xxxix) **Design-build method and dual-phase**
788 **design-build method of contracting.** Contracts entered into under
789 the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

790 (xxxii) **Toll roads and bridge construction**
791 **projects.** Contracts entered into under the provisions of Section
792 65-43-1 or 65-43-3.

793 (xxxiii) **Certain purchases under Section 57-1-221.**
794 Contracts entered into pursuant to the provisions of Section
795 57-1-221.

796 (xxxiv) **Certain transfers made pursuant to the**
797 **provisions of Section 57-105-1(7).** Transfers of public property
798 or facilities under Section 57-105-1(7) and construction related
799 to such public property or facilities.

800 (xxxv) **Certain purchases or transfers entered into**
801 **with local electrical power associations.** Contracts or agreements
802 entered into under the provisions of Section 55-3-33.

803 (n) **Term contract authorization.** All contracts for the
804 purchase of:

805 (i) All contracts for the purchase of commodities,
806 equipment and public construction (including, but not limited to,
807 repair and maintenance), may be let for periods of not more than
808 sixty (60) months in advance, subject to applicable statutory
809 provisions prohibiting the letting of contracts during specified
810 periods near the end of terms of office. Term contracts for a
811 period exceeding twenty-four (24) months shall also be subject to



812 ratification or cancellation by governing authority boards taking
813 office subsequent to the governing authority board entering the
814 contract.

815 (ii) Bid proposals and contracts may include price
816 adjustment clauses with relation to the cost to the contractor
817 based upon a nationally published industry-wide or nationally
818 published and recognized cost index. The cost index used in a
819 price adjustment clause shall be determined by the Department of
820 Finance and Administration for the state agencies and by the
821 governing board for governing authorities. The bid proposal and
822 contract documents utilizing a price adjustment clause shall
823 contain the basis and method of adjusting unit prices for the
824 change in the cost of such commodities, equipment and public
825 construction.

826 (o) **Purchase law violation prohibition and vendor**
827 **penalty.** No contract or purchase as herein authorized shall be
828 made for the purpose of circumventing the provisions of this
829 section requiring competitive bids, nor shall it be lawful for any
830 person or concern to submit individual invoices for amounts within
831 those authorized for a contract or purchase where the actual value
832 of the contract or commodity purchased exceeds the authorized
833 amount and the invoices therefor are split so as to appear to be
834 authorized as purchases for which competitive bids are not
835 required. Submission of such invoices shall constitute a
836 misdemeanor punishable by a fine of not less than Five Hundred



837 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
838 or by imprisonment for thirty (30) days in the county jail, or
839 both such fine and imprisonment. In addition, the claim or claims
840 submitted shall be forfeited.

841 (p) **Electrical utility petroleum-based equipment**
842 **purchase procedure.** When in response to a proper advertisement
843 therefor, no bid firm as to price is submitted to an electric
844 utility for power transformers, distribution transformers, power
845 breakers, reclosers or other articles containing a petroleum
846 product, the electric utility may accept the lowest and best bid
847 therefor although the price is not firm.

848 (q) **Fuel management system bidding procedure.** Any
849 governing authority or agency of the state shall, before
850 contracting for the services and products of a fuel management or
851 fuel access system, enter into negotiations with not fewer than
852 two (2) sellers of fuel management or fuel access systems for
853 competitive written bids to provide the services and products for
854 the systems. In the event that the governing authority or agency
855 cannot locate two (2) sellers of such systems or cannot obtain
856 bids from two (2) sellers of such systems, it shall show proof
857 that it made a diligent, good-faith effort to locate and negotiate
858 with two (2) sellers of such systems. Such proof shall include,
859 but not be limited to, publications of a request for proposals and
860 letters soliciting negotiations and bids. For purposes of this
861 paragraph (q), a fuel management or fuel access system is an



862 automated system of acquiring fuel for vehicles as well as
863 management reports detailing fuel use by vehicles and drivers, and
864 the term "competitive written bid" shall have the meaning as
865 defined in paragraph (b) of this section. Governing authorities
866 and agencies shall be exempt from this process when contracting
867 for the services and products of fuel management or fuel access
868 systems under the terms of a state contract established by the
869 Office of Purchasing and Travel.

870 (r) **Solid waste contract proposal procedure.** Before
871 entering into any contract for garbage collection or disposal,
872 contract for solid waste collection or disposal or contract for
873 sewage collection or disposal, which involves an expenditure of
874 more than Fifty Thousand Dollars (\$50,000.00), a governing
875 authority or agency shall issue publicly a request for proposals
876 concerning the specifications for such services which shall be
877 advertised for in the same manner as provided in this section for
878 seeking bids for purchases which involve an expenditure of more
879 than the amount provided in paragraph (c) of this section. Any
880 request for proposals when issued shall contain terms and
881 conditions relating to price, financial responsibility,
882 technology, legal responsibilities and other relevant factors as
883 are determined by the governing authority or agency to be
884 appropriate for inclusion; all factors determined relevant by the
885 governing authority or agency or required by this paragraph (r)
886 shall be duly included in the advertisement to elicit proposals.



887 After responses to the request for proposals have been duly
888 received, the governing authority or agency shall select the most
889 qualified proposal or proposals on the basis of price, technology
890 and other relevant factors and from such proposals, but not
891 limited to the terms thereof, negotiate and enter into contracts
892 with one or more of the persons or firms submitting proposals. If
893 the governing authority or agency deems none of the proposals to
894 be qualified or otherwise acceptable, the request for proposals
895 process may be reinitiated. Notwithstanding any other provisions
896 of this paragraph, where a county with at least thirty-five
897 thousand (35,000) nor more than forty thousand (40,000)
898 population, according to the 1990 federal decennial census, owns
899 or operates a solid waste landfill, the governing authorities of
900 any other county or municipality may contract with the governing
901 authorities of the county owning or operating the landfill,
902 pursuant to a resolution duly adopted and spread upon the minutes
903 of each governing authority involved, for garbage or solid waste
904 collection or disposal services through contract negotiations.

905 (s) **Minority set-aside authorization.** Notwithstanding
906 any provision of this section to the contrary, any agency or
907 governing authority, by order placed on its minutes, may, in its
908 discretion, set aside not more than twenty percent (20%) of its
909 anticipated annual expenditures for the purchase of commodities
910 from minority businesses; however, all such set-aside purchases
911 shall comply with all purchasing regulations promulgated by the



912 Department of Finance and Administration and shall be subject to
913 bid requirements under this section. Set-aside purchases for
914 which competitive bids are required shall be made from the lowest
915 and best minority business bidder. For the purposes of this
916 paragraph, the term "minority business" means a business which is
917 owned by a majority of persons who are United States citizens or
918 permanent resident aliens (as defined by the Immigration and
919 Naturalization Service) of the United States, and who are Asian,
920 Black, Hispanic or Native American, according to the following
921 definitions:

922 (i) "Asian" means persons having origins in any of
923 the original people of the Far East, Southeast Asia, the Indian
924 subcontinent, or the Pacific Islands.

925 (ii) "Black" means persons having origins in any
926 black racial group of Africa.

927 (iii) "Hispanic" means persons of Spanish or
928 Portuguese culture with origins in Mexico, South or Central
929 America, or the Caribbean Islands, regardless of race.

930 (iv) "Native American" means persons having
931 origins in any of the original people of North America, including
932 American Indians, Eskimos and Aleuts.

933 (t) **Construction punch list restriction.** The
934 architect, engineer or other representative designated by the
935 agency or governing authority that is contracting for public
936 construction or renovation may prepare and submit to the



937 contractor only one (1) preliminary punch list of items that do
938 not meet the contract requirements at the time of substantial
939 completion and one (1) final list immediately before final
940 completion and final payment.

941 (u) **Procurement of construction services by state**
942 **institutions of higher learning.** Contracts for privately financed
943 construction of auxiliary facilities on the campus of a state
944 institution of higher learning may be awarded by the Board of
945 Trustees of State Institutions of Higher Learning to the lowest
946 and best bidder, where sealed bids are solicited, or to the
947 offeror whose proposal is determined to represent the best value
948 to the citizens of the State of Mississippi, where requests for
949 proposals are solicited.

950 (v) **Insurability of bidders for public construction or**
951 **other public contracts.** In any solicitation for bids to perform
952 public construction or other public contracts to which this
953 section applies including, but not limited to, contracts for
954 repair and maintenance, for which the contract will require
955 insurance coverage in an amount of not less than One Million
956 Dollars (\$1,000,000.00), bidders shall be permitted to either
957 submit proof of current insurance coverage in the specified amount
958 or demonstrate ability to obtain the required coverage amount of
959 insurance if the contract is awarded to the bidder. Proof of
960 insurance coverage shall be submitted within five (5) business
961 days from bid acceptance.



962 (w) **Purchase authorization clarification.** Nothing in
963 this section shall be construed as authorizing any purchase not
964 authorized by law.

965 (x) **Labor organization agreements prohibited.**

966 (i) Unless required by federal law, each public
967 entity, when engaged in procuring products or services or letting
968 contracts for construction, manufacture or operation of public
969 works paid for, in whole or in part, by state or local funds, or
970 when overseeing or administering such procurement, construction,
971 manufacture or operation, shall ensure that bid specification,
972 project agreements and other controlling documents, entered into,
973 required or subject to approval by the public entity do not:

974 1. Require bidders, offerors, contractors,
975 subcontractors or operators to:

976 a. Enter into or adhere to agreements
977 with one or more labor organizations on the same or related
978 projects.

979 b. Enter into any agreement whereby it
980 must remain neutral toward any labor organization.

981 c. Pay predetermined or prevailing
982 wages.

983 2. Discriminate against bidders, offerors,
984 contractors, subcontractors or operators for refusing to:



985 a. Become or remain signatories or
986 otherwise adhere to agreements with one or more labor
987 organizations on the same or related projects.

988 b. Enter into any agreement whereby it
989 must remain neutral toward any labor organizations.

990 3. Require any bidders, offerors,
991 contractors, subcontractors or operators to enter into, adhere to
992 or enforce any agreement that requires its employers as a
993 condition of employment to:

994 a. Become members of or become
995 affiliated with a labor organization.

996 b. Pay dues or fees to a labor
997 organization over an employee's objection.

998 (ii) Public entities shall not provide financial
999 assistance, issue grants or enter into cooperative agreements for
1000 projects, a condition of which requires that bid specifications,
1001 project agreements or other controlling documents pertaining to
1002 the grant or cooperative agreement contain any of the elements
1003 specified in subparagraph (i) of this paragraph (x). Furthermore,
1004 public entities shall exercise such authority as may be required
1005 to preclude a grant recipient or party to a cooperative agreement
1006 from imposing any of the elements specified in subparagraph (i) of
1007 this paragraph (x) in connection with any grant or cooperative
1008 agreement awarded or entered into.



1009 (iii) Nothing herein shall prohibit contractors or
1010 subcontractors from voluntarily entering into agreements described
1011 in this section.

1012 (iv) Any interested party, which shall include a
1013 bidder, offeror, contractor, subcontractor, operator or taxpayer,
1014 shall have standing to challenge any bid specification, project
1015 agreement, neutrality agreement, controlling document, grant or
1016 cooperative agreement, which violates this section. Furthermore,
1017 such party is enabled to and shall receive injunctive relief to
1018 prevent violations of this section upon a proper showing.

1019 **SECTION 7.** This act shall take effect and be in force from
1020 and after July 1, 2014.

