HOUSE BILL NO. 1038

AN ACT TO REQUIRE ENTITIES THAT ENTER CONTRACTS WITH THE
STATE OR POLITICAL SUBDIVISIONS OF THE STATE TO PROVIDE
PROFESSIONAL SERVICES IN AN AMOUNT OF MORE THAN $100,000.00 IN ANY
FISCAL YEAR TO FILE A SUBCONTRACTING OR JOINT VENTURE PLAN WITH
THE STATE OUTLINING HOW THE ENTITY PLANS TO UTILIZE MINORITY-OWNED
PROFESSIONAL SERVICES BUSINESSES IN PROVIDING THE PROFESSIONAL
SERVICES TO THE STATE OR POLITICAL SUBDIVISION; TO PROHIBIT THE
STATE AND POLITICAL SUBDIVISIONS FROM USING ANY PROFESSIONAL
SERVICES UNDER ANY SUCH CONTRACT UNTIL THE ENTITY HAS FILED THE
REQUIRED PLAN; TO AMEND SECTIONS 9-21-15, 19-3-69, 25-9-107,
25-9-120, 43-27-201 AND 65-1-141, IN CONFORMITY WITH THE PRECEDING
PROVISIONS; AND FOR RELATED PURPOSES.

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

SECTION 1. (1) Each individual, corporation, partnership,
association, organization or other entity that enters a new
contract or renews an existing contract with the State of
Mississippi or any agency, department, institution or political
subdivision of the state to provide professional services in an
amount that will or is reasonably anticipated to exceed One
Hundred Thousand Dollars ($100,000.00) in any fiscal year of the
state or the political subdivision to which the professional
services are to be provided, shall file with the State Personal
Service Contract Review Board in the case of a contract with the
state or with the State Auditor in the case of a contract with a
political subdivision, a subcontracting or joint venture plan that
outlines the manner in which the entity plans to utilize
minority-owned professional services businesses in providing the
professional services to the state or political subdivision, and
that includes a goal for the utilization of minority-owned
professional services businesses expressed as a percentage of the
total cost of the professional services to be provided under the
contract. The entity shall file the plan required by this section
before it may provide any professional services under the contract
with the state or political subdivision with which the entity has
the contract. The state and each political subdivision of the
state having a contract with an entity for which the plan required
by this section must be filed shall be prohibited from using any
professional services to be provided under the contract until the
entity has filed the plan.

(2) For the purposes of this section:

(a) "Minority-owned professional services business"
means a business providing professional services that is owned by
a majority of persons who are United States citizens or permanent
resident aliens (as defined by the Immigration and Naturalization
Service) of the United States and who are:

(i) Asian, which means persons having origins in
any of the original people of the Far East, Southeast Asia, the
Indian subcontinent, or the Pacific Islands;

(ii) Black, which means persons having origins in
any black racial group of Africa;

(iii) Hispanic, which means persons of Spanish or
Portuguese culture with origins in Mexico, South or Central
America, or the Caribbean Islands, regardless of race;

(iv) Native American, which means persons having
origins in any of the original people of North America, including
American Indians, Eskimos and Aleuts;

(v) Female; or

(vi) Any combination of the persons listed in
subparagraphs (i) through (v) of this paragraph (a).

(b) "Professional services" means any type of personal
service rendered to the public for compensation that requires as a
condition precedent to the rendering of such service the obtaining
of a license or other legal authorization, and any type of
personal service rendered to the public for compensation by a
business management, administrative or consulting firm.
SECTION 2. Section 9-21-15, Mississippi Code of 1972, is amended as follows:

9-21-15. The Administrative Director of Courts is authorized and empowered to employ consultants and consultant firms and to contract with the same for their services for reasonable compensation and as necessary to improve the administration of justice and the courts of the state. The contracts with such consultants or consultant firms shall be considered as contracts for professional services. Professional services contracts entered into under the authority of this section shall be subject to the provisions of Section 1 of this act.

SECTION 3. Section 19-3-69, Mississippi Code of 1972, is amended as follows:

19-3-69. The board of supervisors of each county may, in its discretion, contract with certain professionals when the board determines that such professional services are necessary and in the best interest of the county.

The board of supervisors shall spread upon its minutes its finding that the professional services are necessary and in the best interest of the county. The contract for professional services shall be approved by the attorney for the board of supervisors and made a part of the minutes. Professional services contracts entered into under the authority of this section shall be subject to the provisions of Section 1 of this act.

A professional within the meaning of this section shall be limited to:

(a) Attorneys at law, admitted to practice law in this state by the State Board of Bar Admissions;

(b) Accountants, certified by the State Board of Public Accountancy;

(c) Architects, licensed by the State Board of Architecture;
(d) Engineers, registered by the State Board of Registration for Professional Engineers;
(e) Physicians, licensed by the State Board of Medical Licensure;
(f) Appraisers, licensed by the Mississippi Real Estate Commission or as otherwise provided by law;
(g) Real estate brokers, licensed by the Mississippi Real Estate Commission;
(h) In the sale of personal property pursuant to the provisions of Section 19-7-5, auctioneers who meet standards established by the State Department of Audit.

SECTION 4. Section 25-9-107, Mississippi Code of 1972, is amended as follows:

25-9-107. The following terms, when used in this chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

(a) "Board" shall mean the State Personnel Board created under the provisions of this chapter.
(b) "State service" shall mean all employees of state departments, agencies and institutions as defined herein, except those officers and employees excluded by this chapter.
(c) "Nonstate service" shall mean the following officers and employees excluded from the state service by this chapter. The following are excluded from the state service:
   (i) Members of the state Legislature, their staffs and other employees of the legislative branch;
   (ii) The Governor and staff members of the immediate Office of the Governor;
   (iii) Justices and judges of the judicial branch or members of appeals boards on a per diem basis;
   (iv) The Lieutenant Governor, staff members of the immediate Office of the Lieutenant Governor and officers and employees directly appointed by the Lieutenant Governor;
(v) Officers and officials elected by popular vote and persons appointed to fill vacancies in elective offices;

(vi) Members of boards and commissioners appointed by the Governor, Lieutenant Governor or the state Legislature;

(vii) All academic officials, members of the teaching staffs and employees of the state institutions of higher learning, the State Board for Community and Junior Colleges, and community and junior colleges;

(viii) Officers and enlisted members of the National Guard of the state;

(ix) Prisoners, inmates, student or patient help working in or about institutions;

(x) Contract personnel; provided, that any agency which employs state service employees may enter into contracts for personal and professional services only if such contracts are approved in compliance with the rules and regulations promulgated by the State Personal Service Contract Review Board under Section 25-9-120(3). Before paying any warrant for such contractual services in excess of One Hundred Thousand Dollars ($100,000.00), the State Fiscal Officer shall determine whether the contract involved was for personal or professional services, and, if so, was approved by the State Personal Service Contract Review Board.

Professional services contracts entered into by any agency shall be subject to the provisions of Section 1 of this act;

(xi) Part-time employees; provided, however, part-time employees shall only be hired into authorized employment positions classified by the board, shall meet minimum qualifications as set by the board, and shall be paid in accordance with the Variable Compensation Plan as certified by the board;

(xii) Persons appointed on an emergency basis for the duration of the emergency; the effective date of the emergency appointments shall not be earlier than the date approved by the
State Personnel Director, and shall be limited to thirty (30) working days. Emergency appointments may be extended to sixty (60) working days by the State Personnel Board;

(xiii) Physicians, dentists, veterinarians, nurse practitioners and attorneys, while serving in their professional capacities in authorized employment positions who are required by statute to be licensed, registered or otherwise certified as such, provided that the State Personnel Director shall verify that the statutory qualifications are met prior to issuance of a payroll warrant by the auditor;

(xiv) Personnel who are employed and paid from funds received from a federal grant program which has been approved by the Legislature or the Department of Finance and Administration whose length of employment has been determined to be time-limited in nature. This subparagraph shall apply to personnel employed under the provisions of the Comprehensive Employment and Training Act of 1973, as amended, and other special federal grant programs which are not a part of regular federally funded programs wherein appropriations and employment positions are appropriated by the Legislature. Such employees shall be paid in accordance with the Variable Compensation Plan and shall meet all qualifications required by federal statutes or by the Mississippi Classification Plan;

(xv) The administrative head who is in charge of any state department, agency, institution, board or commission, wherein the statute specifically authorizes the Governor, board, commission or other authority to appoint said administrative head; provided, however, that the salary of such administrative head shall be determined by the State Personnel Board in accordance with the Variable Compensation Plan unless otherwise fixed by statute;

(xvi) The State Personnel Board shall exclude top level positions if the incumbents determine and publicly advocate
substantive program policy and report directly to the agency head, or the incumbents are required to maintain a direct confidential working relationship with a key excluded official. Provided further, a written job classification shall be approved by the board for each such position, and positions so excluded shall be paid in conformity with the Variable Compensation Plan;

(xvii) Employees whose employment is solely in connection with an agency’s contract to produce, store or transport goods, and whose compensation is derived therefrom;

(xviii) Repealed;

(xix) The associate director, deputy directors and bureau directors within the Department of Agriculture and Commerce;

(xx) Personnel employed by the Mississippi Industries for the Blind; provided, that any agency may enter into contracts for the personal services of MIB employees without the prior approval of the State Personnel Board or the State Personal Service Contract Review Board; however, any agency contracting for the personal services of an MIB employee shall provide the MIB employee with not less than the entry level compensation and benefits that the agency would provide to a full-time employee of the agency who performs the same services.

(d) "Agency" means any state board, commission, committee, council, department or unit thereof created by the Constitution or statutes if such board, commission, committee, council, department, unit or the head thereof, is authorized to appoint subordinate staff by the Constitution or statute, except a legislative or judicial board, commission, committee, council, department or unit thereof.

SECTION 5. Section 25-9-120, Mississippi Code of 1972, is amended as follows:

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

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

(3) The Personal Service Contract Review Board shall have the following powers and responsibilities:
(a) Promulgate rules and regulations governing the solicitation and selection of contractual services personnel including personal and professional services contracts for any form of consulting, policy analysis, public relations, marketing, public affairs, legislative advocacy services or any other contract that the board deems appropriate for oversight, with the exception of any personal service contracts entered into for computer or information technology-related services governed by the Mississippi Department of Information Technology Services, any personal service contracts entered into by the Mississippi Department of Transportation, and any contract for attorney, accountant, auditor, physician, dentist, architect, engineer, veterinarian and utility rate expert services. Any such rules and regulations shall provide for maintaining continuous internal audit covering the activities of such agency affecting its revenue and expenditures as required under Section 7-7-3(6)(d), Mississippi Code of 1972.

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

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

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

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

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

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

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

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

(j) Receive subcontracting or joint venture plans
outlining how entities plan to utilize minority-owned professional
services businesses in providing professional services to the
state, as required by Section 1 of this act.

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

SECTION 6. Section 43-27-201, Mississippi Code of 1972, is amended as follows:

43-27-201. (1) The purpose of this section is to outline and structure a long-range proposal in addition to certain immediate objectives for improvements in the juvenile correctional facilities of the Division of Youth Services of the Mississippi Department of Human Services in order to provide modern and efficient correctional and rehabilitation facilities for juvenile offenders in Mississippi, who are committing an increasing percentage of serious and violent crimes.

(2) The Department of Finance and Administration, acting through the Bureau of Building, Grounds and Real Property Management, using funds from bonds issued under this chapter, monies appropriated by the Legislature for such purposes, federal matching or other federal funds, federal grants or other available funds from whatever source, shall provide for, by construction, lease, lease-purchase or otherwise, and equip the following juvenile correctional facilities under the jurisdiction and responsibility of the Division of Youth Services of the Department of Human Services:

(a) Construct an additional one-hundred-fifty-bed, stand-alone, medium security juvenile correctional facility for habitual violent male offenders, which complies with American Correctional Association Accreditation standards and applicable building and fire safety codes. The medium security, male juvenile facility location shall be on property owned by the Division of Youth Services, or its successor, or at a site selected by the Bureau of Building, Lands and Real Property Management on land which is hereafter donated to the state specifically for the location of such facility.
(b) Construct an additional one-hundred-bed minimum security juvenile correctional facility for female offenders, and an additional stand-alone, fifteen-bed maximum security juvenile correctional facility for female offenders, which complies with American Correctional Association Accreditation standards and applicable building and fire safety codes. The minimum security and maximum security female juvenile facilities location shall be on property owned by the Division of Youth Services, or its successor, or at a site selected by the Bureau of Building, Grounds and Real Property Management on land which is hereafter donated to the state specifically for the location of such facility.

(3) Upon the selection of a proposed site for a correctional facility for juveniles authorized under subsection (2), the Bureau of Building, Grounds and Real Property Management of the Department of Finance and Administration shall notify the board of supervisors of the county in which such facility is proposed to be located and shall publish a notice as hereinafter set forth in a newspaper having general circulation in such county. Such notice shall include a description of the tract of land in the county whereon the facility is proposed to be located, the nature and size of the facility and the date on which the determination of the Bureau of Building, Grounds and Real Property Management shall be final as to the location of such facility, which date shall not be less than forty-five (45) days following the first publication of such notice. Such notice shall include a brief summary of the provisions of this section pertaining to the petition for an election on the question of the location of the juvenile housing facility in such county. Such notice shall be published not less than one (1) time each week for at least three (3) consecutive weeks in at least one (1) newspaper published in such county.
If no petition requesting an election is filed before the date of final determination stated in such notice, then the bureau shall give final approval to the location of such facility.

If at any time before the aforesaid date a petition signed by twenty percent (20%), or fifteen hundred (1500), whichever is less, of the qualified electors of the county involved shall be filed with the board of supervisors requesting that an election be called on the question of locating such facility, then the board of supervisors shall adopt a resolution calling an election to be held within such county upon the question of the location of such facility. Such election shall be held, as far as practicable, in the same manner as other elections are held in counties. At such election, all qualified electors of the county may vote, and the ballots used at such election shall have printed thereon a brief statement of the facility to be constructed and the words "For the construction of the facility in (here insert county name) County" and "Against the construction of the facility in (here insert county name) County." The voter shall vote by placing a cross (x) or check mark (✓) opposite his choice on the proposition. When the results of the election on the question of the construction of the facility shall have been canvassed by the election commissioners of the county and certified by them to the board of supervisors, it shall be the duty of the board of supervisors to determine and adjudicate whether or not a majority of the qualified electors who voted thereon in such election voted in favor of the construction of the facilities in such county. Unless a majority of the qualified electors who voted in such election shall have voted in favor of the construction of the facilities in such county, then such facility shall not be constructed in such county.

(4) The Division of Youth Services shall establish, maintain and operate an Adolescent Offender Program (AOP), which may include non-Medicaid assistance eligible juveniles. The division

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may establish at least twelve (12) AOP sites at various locations throughout the state based upon the needs of the population, as determined by the division. AOP professional services, salaries, facility offices, meeting rooms and related supplies and equipment may be provided through contract with local mental health or other nonprofit community organizations. Professional services contracts entered into under the authority of this subsection shall be subject to the provisions of Section 1 of this act.

(5) The Division of Youth Services shall operate and maintain the Forestry Camp Number 43 at the Columbia Training School, originally authorized and constructed in 1973, to consist of a twenty-bed dormitory, four (4) offices, a classroom, kitchen, dining room, day room and apartment. The purpose of this camp shall be to train juvenile detention residents for community college and other forestry training programs.

(6) The Division of Youth Services shall establish a ten-bed transitional living facility for the temporary holding of training school adolescents who have reached their majority, have completed the GED requirement, and are willing to be rehabilitated until they are placed in jobs, job training or postsecondary programs. Such transitional living facility may be operated pursuant to contract with a nonprofit community support organization.

SECTION 7. Section 65-1-141, Mississippi Code of 1972, is amended as follows:

65-1-141. (1) (a) The Mississippi Transportation Commission shall annually have the Mississippi Department of Transportation prepare a three-year plan for the maintenance, construction, reconstruction and relocation of the state highway system. The plan shall include:

(i) For each interstate, primary, secondary and other highway or road system under the jurisdiction of the Transportation Commission, a list and detailed description of those highways, or segments thereof, on the highway system which
are determined to have the highest priority for maintenance and which can be maintained within the three-year period from funds available or estimated to be made available for such purpose;

(ii) For each interstate, primary, secondary and other highway or road system under the jurisdiction of the Transportation Commission, a list and detailed description of those highways, or segments thereof, on the highway system which are determined to have the highest priority for construction, reconstruction or relocation and for which contracts can be let for construction, reconstruction or relocation within the three-year period from funds available or estimated to be available for such purpose;

(iii) The reasons for the priority assigned to highways, or segments thereof, pursuant to the criteria established in the following subsection (1)(b), and the annual cost and total estimated cost of completion for each such project; and

(iv) A synopsis of any analyses or studies considered by the commission to develop the criteria in determining priorities.

(b) The Transportation Commission shall determine the criteria on which the Department of Transportation shall assign priority for maintenance, construction, reconstruction and relocation of highways, or segments thereof, on each highway or road system under its jurisdiction, taking into consideration all of the following criteria:

(i) Public necessity and public safety;

(ii) Present and future economic benefit and commercial value;

(iii) Present and future traffic census; and

(iv) Route continuity.

Additionally, the Transportation Commission shall take into consideration conditions potentially hazardous to the public
safety at points on highways having substantial truck traffic entering and leaving the highway. In setting priorities for construction, the department shall take into consideration the construction of turning lanes at such points on highways to facilitate the safe movement of traffic.

(c) To develop the criteria to be used in determining priorities, the Transportation Commission may conduct public hearings; shall conduct analyses or studies of highway needs, utilizing Department of Transportation personnel; and shall consider highway needs analyses or studies submitted to them by the University Research Center, which is directed to develop such highway needs analyses or studies with respect to the criteria set forth in subsection (1)(b)(ii) above and to timely submit or present such analyses or studies to the Transportation Commission.

(2) All funds appropriated and made available to the Department of Transportation from any source within the state for maintenance, construction, reconstruction and relocation of the state highway system shall be expended on order of the Transportation Commission according to the priorities herein set forth and without regard to the provisions of Sections 65-3-29 through 65-3-33. The commission shall spread upon its minutes, from time to time, the priority of roads for application of such funds, the specific reasons for each priority so assigned, and the source and amount of funds applied to each project.

(a) All interstate funds apportioned to the Transportation Commission under the Federal Aid Highway Act of 1956 shall be allocated on the basis of need to complete the interstate system of highways to provide for the maximum commercial benefit to the state.

(b) All primary road construction money shall be used in the priorities established pursuant to subsection (1)(b) hereof.
(c) The Department of Transportation shall match all available federal money for highways.

(d) Federal aid primary system as constituted. Priority of use of these funds shall be determined by roads meeting most of the criteria receiving priority established pursuant to subsection (1)(b) hereof.

(e) Secondary road construction money shall be used with priorities established by roads meeting most of the following criteria receiving priority:

   (i) Roads in the order of the relative use and importance of such highways, as may be determined by the present and future traffic censuses thereof, taking into consideration their present and future use, convenience, public necessity and public safety, the connecting of Mississippi towns, cities and population centers and the economic contribution to the state should a specific highway be improved, the recorded maintenance expense and their continuity as highways through the state.

   (ii) Roads which carry the most traffic.

   (iii) Roads which connect the federal aid primary or interstate system in a uniform manner.

   (iv) Roads which serve the most commercial value.

   (v) Roads which are arterial in nature.

   (vi) Roads which connect the major rural communities with similar communities in adjoining counties.

(f) The Department of Transportation shall when funds are available match all available federal money for highways.

(3) Projects eligible for reimbursement under the provisions of P.L. 97-424 shall be exempt from the requirements of subsection (1)(a) of this section, but the Transportation Commission shall expend funds available to it for such projects in the priorities established pursuant to subsection (1)(b) hereof.

(4) All highway construction, reconstruction and relocation shall be by contract, let on competitive bid in the manner.
provided by statute. On any one (1) reconstruction project the total cost of which does not exceed Two Hundred Thousand Dollars ($200,000.00), reconstruction may be accomplished by Department of Transportation labor, equipment or materials. Nothing herein shall be construed to affect maintenance and repair work done or to be done on existing roads. When new programs require the utilization of professional services, the Department of Transportation may contract with, engage, or retain available, competent firms actively offering such professional services as a primary source of livelihood. "Professional services" is defined as services normally performed on a fee basis or contract by engineers, architects, business management, administrative and consulting firms. Professional services contracts entered into under the authority of this subsection shall be subject to the provisions of Section 1 of this act.

SECTION 8. This act shall take effect and be in force from and after July 1, 2002.