

By: Representative Stringer

To: Appropriations

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1037

1 AN ACT TO AMEND SECTION 25-9-120, MISSISSIPPI CODE OF 1972,
2 TO DECREASE FROM \$100,000 TO \$15,000 THE AMOUNT OF FUNDS INVOLVED
3 IN EXPENDITURES FOR A PERSONAL OR PROFESSIONAL SERVICES CONTRACT
4 REQUIRING THE APPROVAL OF THE PERSONAL SERVICE CONTRACT REVIEW
5 BOARD; TO AMEND SECTION 25-9-107, MISSISSIPPI CODE OF 1972, IN
6 CONFORMITY TO THE PRECEDING SECTION; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 25-9-120, Mississippi Code of 1972, is
9 amended as follows:

10 25-9-120. (1) Contract personnel, whether classified as
11 contract workers or independent contractors shall not be deemed
12 state service or nonstate service employees of the State of
13 Mississippi, and shall not be eligible to participate in the
14 Public Employees' Retirement System, or the state employee health
15 plan, nor be allowed credit for personal and sick leave and other
16 leave benefits as employees of the State of Mississippi,
17 notwithstanding Sections 25-3-91 through 25-3-101; 25-9-101
18 through 25-9-151; 25-11-1 through 25-11-126; 25-11-128 through
19 25-11-131; 25-15-1 through 25-15-23 and for the purpose set forth
20 herein. Contract workers, i.e., contract personnel who do not
21 meet the criteria of independent contractors, shall be subject to
22 the provisions of Section 25-11-127.

23 (2) There is * * * created the Personal Service Contract
24 Review Board, which shall be composed of the State Personnel
25 Director, the Executive Director of the Department of Finance and
26 Administration, or his designee, the Commissioner of Corrections,
27 or his designee, the Executive Director of the Mississippi
28 Department of Wildlife and Fisheries, or his designee, and the
29 Executive Director of the Department of Environmental Quality, or

30 his designee. The State Personnel Director shall be chairman and
31 shall preside over the meetings of the board. The board shall
32 annually elect a vice chairman, who shall serve in the absence of
33 the chairman. No business shall be transacted, including adoption
34 of rules of procedure, without the presence of a quorum of the
35 board. Three (3) members shall be a quorum. No action shall be
36 valid unless approved by the chairman and two (2) other of those
37 members present and voting, entered upon the minutes of the board
38 and signed by the chairman. Necessary clerical and administrative
39 support for the board shall be provided by the State Personnel
40 Board. Minutes shall be kept of the proceedings of each meeting,
41 copies of which shall be filed on a monthly basis with the
42 Legislative Budget Office.

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

45 (a) Promulgate rules and regulations governing the
46 solicitation and selection of contractual services personnel
47 including personal and professional services contracts for any
48 form of consulting, policy analysis, public relations, marketing,
49 public affairs, legislative advocacy services or any other
50 contract that the board deems appropriate for oversight, with the
51 exception of any personal service contracts entered into for
52 computer or information technology-related services governed by
53 the Mississippi Department of Information Technology Services, any
54 personal service contracts entered into by the Mississippi
55 Department of Transportation, and any contract for attorney,
56 accountant, auditor, physician, dentist, other health care
57 professional, architect, engineer, veterinarian and utility rate
58 expert services. Any such rules and regulations shall provide for
59 maintaining continuous internal audit covering the activities of
60 such agency affecting its revenue and expenditures as required
61 under Section 7-7-3(6)(d), Mississippi Code of 1972;

62 (b) Approve all personal and professional services
63 contracts, except for contracts for the services of health care
64 professionals, involving the expenditures of funds in excess of
65 Fifteen Thousand Dollars (\$15,000.00). The board shall disapprove
66 any personal or professional services contract where the services
67 to be provided could reasonably be performed by an employee in an
68 authorized employment position.

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

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

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

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

92 (g) To authorize personal and professional service
93 contracts to be effective for more than one (1) year provided a
94 funding condition is included in any such multiple year contract,

95 except the State Board of Education, which shall have the
96 authority to enter into contractual agreements for student
97 assessment for a period up to ten (10) years. The State Board of
98 Education shall procure these services in accordance with the
99 Personal Service Contract Review Board procurement regulations;

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

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

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

112 **SECTION 2.** Section 25-9-107, Mississippi Code of 1972, is
113 amended as follows:

114 25-9-107. The following terms, when used in this chapter,
115 unless a different meaning is plainly required by the context,
116 shall have the following meanings:

117 (a) "Board" means the State Personnel Board created
118 under the provisions of this chapter.

119 (b) "State service" means all employees of state
120 departments, agencies and institutions as defined herein, except
121 those officers and employees excluded by this chapter.

122 (c) "Nonstate service" means the following officers and
123 employees excluded from the state service by this chapter. The
124 following are excluded from the state service:

125 (i) Members of the State Legislature, their staffs
126 and other employees of the legislative branch;

127 (ii) The Governor and staff members of the
128 immediate Office of the Governor;

129 (iii) Justices and judges of the judicial branch
130 or members of appeals boards on a per diem basis;

131 (iv) The Lieutenant Governor, staff members of the
132 immediate Office of the Lieutenant Governor and officers and
133 employees directly appointed by the Lieutenant Governor;

134 (v) Officers and officials elected by popular vote
135 and persons appointed to fill vacancies in elective offices;

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

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

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

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

146 (x) Contract personnel; however, any agency that
147 employs state service employees may enter into contracts for
148 personal and professional services only if the contracts are
149 approved in compliance with the rules and regulations promulgated
150 by the State Personal Service Contract Review Board under Section
151 25-9-120(3). Before paying any warrant for those contractual
152 services in excess of Fifteen Thousand Dollars (\$15,000.00), the
153 Auditor of Public Accounts, or the successor to those duties,
154 shall determine whether the contract involved was for personal or
155 professional services, and, if so, was approved by the * * *
156 Personal Service Contract Review Board;

157 (xi) Part-time employees; * * * however, part-time
158 employees shall only be hired into authorized employment positions
159 classified by the board, shall meet minimum qualifications as set

160 by the board, and shall be paid in accordance with the Variable
161 Compensation Plan as certified by the board;

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

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

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

188 (xv) The administrative head who is in charge of
189 any state department, agency, institution, board or commission,
190 wherein the statute specifically authorizes the Governor, board,
191 commission or other authority to appoint said administrative
192 head; * * * however, * * * the salary of such administrative head

193 shall be determined by the State Personnel Board in accordance
194 with the Variable Compensation Plan unless otherwise fixed by
195 statute;

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

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

207 (xviii) Repealed;

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

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

220 (xxi) Personnel employed by the Mississippi
221 Department of Wildlife, Fisheries and Parks as law enforcement
222 trainees (cadets); such personnel shall be paid in accordance with
223 the Colonel Guy Groff State Variable Compensation Plan.

224 (d) "Agency" means any state board, commission,
225 committee, council, department or unit thereof created by the

226 Constitution or statutes if such board, commission, committee,
227 council, department, unit or the head thereof, is authorized to
228 appoint subordinate staff by the Constitution or statute, except a
229 legislative or judicial board, commission, committee, council,
230 department or unit thereof.

231 **SECTION 3.** This act shall take effect and be in force from
232 and after July 1, 2007.