

By: Representative Turner

To: Accountability,
Efficiency, Transparency

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1501

1 AN ACT TO AMEND SECTION 25-9-120, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE VOTING MEMBERS OF THE PERSONAL SERVICE CONTRACT
3 REVIEW BOARD; TO PROVIDE THAT NO MEMBER SHALL BE AN EMPLOYEE OF
4 THE STATE; TO REVISE THE QUORUM REQUIRED FOR CONDUCTING BUSINESS
5 AND VOTING; TO REMOVE THE PROVISION THAT ALLOWS FOR CERTAIN
6 AGENCIES TO BE EXEMPTED FROM COMPETITIVE BIDDING; TO PROVIDE
7 GUIDELINES FOR APPROVAL OR NONAPPROVAL WHEN AN AGENCY CONTRACTS
8 WITH STATE PROGRAMS AND OTHER STATE AGENCIES; TO REVISE THE
9 TIMELINE FOR SUBMITTING CONTRACTS TO THE PERSONAL SERVICE CONTRACT
10 REVIEW BOARD FOR REVIEW; AND FOR RELATED PURPOSES.

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

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

14 25-9-120. (1) Contract personnel, whether classified as
15 contract workers or independent contractors shall not be deemed
16 state service or nonstate service employees of the State of
17 Mississippi, and shall not be eligible to participate in the
18 Public Employees' Retirement System, or the State and School
19 Employees' Health Insurance Plan, nor be allowed credit for
20 personal and sick leave and other leave benefits as employees of
21 the State of Mississippi, notwithstanding Sections 25-3-91 through
22 25-3-101; 25-9-101 through 25-9-151; 25-11-1 through 25-11-126;



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

27 (2) (a) There is hereby created the Personal Service
28 Contract Review Board, which shall be composed of the following
29 members:

30 * * *

31 (* * *i) * * * Three (3) individuals appointed by
32 the Governor with the advice and consent of the Senate; and

33 (* * *ii) Two (2) individuals appointed by the
34 Lieutenant Governor with the advice and consent of the
35 Senate * * *.

36 * * *

37 (b) The initial terms of each appointee shall be as
38 follows:

39 (i) One (1) member appointed by the Governor to
40 serve for a term ending June 30, 2017;

41 (ii) One (1) member appointed by the Governor to
42 serve for a term ending June 30, 2018;

43 (* * *iii) One (1) member appointed by the
44 Governor to serve for a term ending June 30, 2020;

45 (* * *iv) One (1) member appointed by the
46 Lieutenant Governor to serve for a term ending June 30, 2018; and



47 (* * *y) One (1) member appointed by the
48 Lieutenant Governor to serve for a term ending June 30, 2019.

49 After the expiration of the initial terms, all appointed
50 members' terms shall be for a period of four (4) years from the
51 expiration date of the previous term, and until such time as the
52 member's successor is duly appointed and qualified;

53 (c) When appointing members to the Personal Service
54 Contract Review Board, the Governor and Lieutenant Governor shall
55 take into consideration persons who possess at least five (5)
56 years of management experience in general business, health care,
57 or finance for an organization, corporation, or other public or
58 private entity. Any person, or any employee or owner of a
59 company, who receives any grants, procurements or contracts that
60 are subject to approval under this section shall not be appointed
61 to the Personal Service Contract Review Board. Any person, or any
62 employee or owner of a company, who is a principal of the source
63 providing the personal or professional service shall not be
64 appointed to the Personal Service Contract Review Board if the
65 principal owns or controls a greater than five percent (5%)
66 interest or has an ownership value of One Million Dollars
67 (\$1,000,000.00) in the source's business, whichever is smaller.
68 No member shall be an officer or employee of the State of
69 Mississippi while serving on the Personal Service Contract Review
70 Board;



71 (d) Members of the Personal Service Contract Review
72 Board shall be entitled to per diem as authorized by Section
73 25-3-69 and travel reimbursement as authorized by Section 25-3-41;

74 (e) The * * * members of the Personal Service Contract
75 Review Board shall * * * elect a chairman from among the
76 membership, and he or she shall preside over the meetings of the
77 board. The board shall annually elect a vice chairman, who shall
78 serve in the absence of the chairman. No business shall be
79 transacted, including adoption of rules of procedure, without the
80 presence of a quorum of the board. Three (3) members shall be a
81 quorum. No action shall be valid unless approved by * * * a
82 majority of * * * the members present and voting, entered upon the
83 minutes of the board and signed by the chairman. Necessary
84 clerical and administrative support for the board shall be
85 provided by the State Personnel Board. Minutes shall be kept of
86 the proceedings of each meeting, copies of which shall be filed on
87 a monthly basis with the Chairmen of the Accountability,
88 Efficiency and Transparency Committees of the Senate and House of
89 Representatives.

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

92 (a) Promulgate rules and regulations governing the
93 solicitation and selection of contractual services personnel
94 including personal and professional services contracts for any
95 form of consulting, policy analysis, public relations, marketing,



96 public affairs, legislative advocacy services or any other
97 contract that the board deems appropriate for oversight, with the
98 exception of any personal service contracts entered into for
99 computer or information technology-related services governed by
100 the Mississippi Department of Information Technology Services, any
101 personal service contracts entered into by the Mississippi
102 Department of Transportation, and any contract for attorney,
103 accountant, auditor, architect, engineer, and utility rate expert
104 services. Any such rules and regulations shall provide for
105 maintaining continuous internal audit covering the activities of
106 such agency affecting its revenue and expenditures as required
107 under Section 7-7-3(6)(d), Mississippi Code of 1972. Any rules
108 and regulation changes related to personal and professional
109 services contracts that may be proposed by the Personal Service
110 Contract Review Board shall be submitted to the Chairmen of the
111 Accountability, Efficiency and Transparency Committees of the
112 Senate and House of Representatives at least fifteen (15) days
113 prior to the board voting on the proposed changes, and such rules
114 and regulation changes, if adopted, shall be promulgated in
115 accordance with the Mississippi Administrative Procedures Act;

116 (b) Approve all personal and professional services
117 contracts involving the expenditures of funds in excess of
118 Seventy-five Thousand Dollars (\$75,000.00);

119 (c) Develop mandatory standards with respect to
120 contractual services personnel which require invitations for



121 public bid, requests for proposals, record keeping and financial
122 responsibility of contractors. The Personal Service Contract
123 Review Board shall, unless exempted under this paragraph (c) or
124 under paragraph (d) or (j) of this subsection (3), require the
125 agency involved to * * * submit the procurement to a competitive
126 procurement process, and may reserve the right to reject any or
127 all * * * resulting procurements;

128 * * *

129 (d) Prescribe certain circumstances whereby agency
130 heads may enter into contracts for personal and professional
131 services without receiving prior approval from the Personal
132 Service Contract Review Board. The Personal Service Contract
133 Review Board may establish a preapproved list of providers of
134 various personal and professional services for set prices with
135 which state agencies may contract without bidding or prior
136 approval from the board * * *.

137 (i) Agency requirements may be fulfilled by
138 procuring services performed incident to the state's own programs.
139 The agency head shall determine in writing whether the services
140 meet the agency's requirements and whether the price represents a
141 fair market value for the services. When the procurements are
142 made from other governmental entities, the private sector need not
143 be solicited; however, these contracts shall still be submitted
144 for approval to the Personal Service Contract Review Board.



145 (ii) Contracts between two (2) state agencies,
146 both under Personal Service Contract Review Board purview shall
147 not require Personal Service Contract Review Board approval.
148 However, the contracts shall still be entered into the statewide
149 payroll and human resource system.

150 (e) * * * Provide standards for the issuance of
151 requests for proposals, the evaluation of proposals received,
152 consideration of costs and quality of services proposed, contract
153 negotiations, the administrative monitoring of contract
154 performance by the agency and successful steps in terminating a
155 contract;

156 (f) * * * Present recommendations for governmental
157 privatization and to evaluate privatization proposals submitted by
158 any state agency;

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

167 (h) * * * Request the State Auditor to conduct a
168 performance audit on any personal or professional service
169 contract;



170 (i) Prepare an annual report to the Legislature
171 concerning the issuance of personal and professional services
172 contracts during the previous year, collecting any necessary
173 information from state agencies in making such report;

174 (j) Develop and implement the following standards and
175 procedures for the approval of any sole source contract for
176 personal and professional services regardless of the value of the
177 procurement:

178 (i) For the purposes of this paragraph (j), the
179 term "sole source" means only one (1) source is available that can
180 provide the required personal or professional service.

181 (ii) An agency that has been issued a binding,
182 valid court order mandating that a particular source or provider
183 must be used for the required service must include a copy of the
184 applicable court order in all future sole source contract reviews
185 for the particular personal or professional service referenced in
186 the court order.

187 (iii) Any agency alleging to have a sole source
188 for any personal or professional service shall have published on
189 the procurement portal website established by Sections 25-53-151
190 and 27-104-165, for at least fourteen (14) days, the terms of the
191 proposed contract for those services. In addition, the
192 publication shall include, but is not limited to, the following
193 information:



- 194 1. The personal or professional service
195 offered in the contract;
- 196 2. An explanation of why the personal or
197 professional service is the only one that can meet the needs of
198 the agency;
- 199 3. An explanation of why the source is the
200 only person or entity that can provide the required personal or
201 professional service;
- 202 4. An explanation of why the amount to be
203 expended for the personal or professional service is reasonable;
204 and
- 205 5. The efforts that the agency went through
206 to obtain the best possible price for the personal or professional
207 service.

208 (iv) If any person or entity objects and proposes
209 that the personal or professional service published under
210 subparagraph (iii) of this paragraph (j) is not a sole source
211 service and can be provided by another person or entity, then the
212 objecting person or entity shall notify the Personal Service
213 Contract Review Board and the agency that published the proposed
214 sole source contract with a detailed explanation of why the
215 personal or professional service is not a sole source service.

216 (v) 1. If the agency determines after review that
217 the personal or professional service in the proposed sole source
218 contract can be provided by another person or entity, then the



219 agency must withdraw the sole source contract publication from the
220 procurement portal website and submit the procurement of the
221 personal or professional service to an advertised competitive bid
222 or selection process.

223 2. If the agency determines after review that
224 there is only one (1) source for the required personal or
225 professional service, then the agency may appeal to the Personal
226 Service Contract Review Board. The agency has the burden of
227 proving that the personal or professional service is only provided
228 by one (1) source.

229 3. If the Personal Service Contract Review
230 Board has any reasonable doubt as to whether the personal or
231 professional service can only be provided by one (1) source, then
232 the agency must submit the procurement of the personal or
233 professional service to an advertised competitive bid or selection
234 process. No action taken by the Personal Service Contract Review
235 Board in this appeal process shall be valid unless approved by the
236 chairman and two (2) other members of the Personal Service
237 Contract Review Board present and voting.

238 (vi) The Personal Service Contract Review Board
239 shall prepare and submit a quarterly report to the House of
240 Representatives and Senate Committees on Accountability,
241 Efficiency and Transparency that details the sole source contracts
242 presented to the Personal Service Contract Review Board and the
243 reasons that the Personal Service Contract Review Board approved



244 or rejected each contract. Such quarterly reports shall also
245 include the documentation and memoranda required in subsection (5)
246 of this section. An agency that submitted a sole source contract
247 shall be prepared to explain the sole source contract to each
248 committee by December 15 of each year upon request by the
249 committee.

250 (4) Any contract submitted to the Personal Service Contract
251 Review Board for review and approval shall be presumed to be
252 approved if the Personal Service Contract Review Board does not
253 object to the contract * * * at the meeting in the month following
254 the month the agency submitted the contract. All submissions
255 shall be made thirty (30) or more days before the monthly meeting
256 of the Personal Service Contract Review Board or as prescribed by
257 the Personal Service Contract Review Board. If the Personal
258 Service Contract Review Board rejects any contract submitted for
259 review or approval, the Personal Service Contract Review Board
260 shall clearly set out the reasons for its action, including, but
261 not limited to, the policy that the agency has violated in its
262 submitted contract and any corrective actions that the agency may
263 take to amend the contract to comply with the rules and
264 regulations of the Personal Service Contract Review Board.

265 (5) All sole source contracts for personal and professional
266 services awarded by state agencies, whether approved by an agency
267 head or the Personal Service Contract Review Board, shall contain
268 in the procurement file a written determination for the approval,



269 using a request form furnished by the Personal Service Contract
270 Review Board. The written determination shall document the basis
271 for the determination, including any market analysis conducted in
272 order to ensure that the service required was practicably
273 available from only one (1) source. A memorandum shall accompany
274 the request form and address the following four (4) points:

275 (a) Explanation of why this service is the only service
276 that can meet the needs of the purchasing agency;

277 (b) Explanation of why this vendor is the only
278 practicably available source from which to obtain this service;

279 (c) Explanation of why the price is considered
280 reasonable; and

281 (d) Description of the efforts that were made to
282 conduct a noncompetitive negotiation to get the best possible
283 price for the taxpayers.

284 (6) The Personal Service Contract Review Board shall develop
285 and promulgate rules and regulations to define the allowable legal
286 relationship between contract employees and the contracting
287 departments, agencies and institutions of state government under
288 the jurisdiction of the State Personnel Board, in compliance with
289 the applicable rules and regulations of the federal Internal
290 Revenue Service (IRS) for federal employment tax purposes. Under
291 these regulations, the usual common law rules are applicable to
292 determine and require that such worker is an independent
293 contractor and not an employee, requiring evidence of lawful



294 behavioral control, lawful financial control and lawful
295 relationship of the parties. Any state department, agency or
296 institution shall only be authorized to contract for personnel
297 services in compliance with said regulations.

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

303 (8) Nothing in this section shall impair or limit the
304 authority of the Board of Trustees of the Public Employees'
305 Retirement System to enter into any personal or professional
306 services contracts directly related to their constitutional
307 obligation to manage the trust funds, including, but not limited
308 to, actuarial, custodial banks, cash management, investment
309 consultant, and investment management contracts.

310 **SECTION 2.** This act shall take effect and be in force from
311 and after July 1, 2016.

