

By: Representative Horne

To: Accountability,
Efficiency, Transparency

HOUSE BILL NO. 338

1 AN ACT TO CODIFY NEW SECTION 5-8-27, MISSISSIPPI CODE OF
2 1972, TO PROHIBIT STATE AGENCIES AND COMMUNITY AND JUNIOR COLLEGES
3 FROM EXPENDING PUBLIC FUNDS TO PAY CONTRACT LOBBYISTS; TO AMEND
4 SECTION 5-8-3, MISSISSIPPI CODE OF 1972, TO DEFINE ADDITIONAL
5 TERMS USED UNDER THE LOBBYING LAW REFORM ACT OF 1994; TO AMEND
6 SECTION 27-104-7, MISSISSIPPI CODE OF 1972, TO DELETE CONTRACTS
7 FOR LEGISLATIVE ADVOCACY SERVICES FROM THE VARIOUS TYPES OF
8 CONTRACTS SUBJECT TO OVERSIGHT BY THE PUBLIC PROCUREMENT REVIEW
9 BOARD; TO BRING FORWARD SECTION 5-8-7, MISSISSIPPI CODE OF 1972,
10 WHICH EXEMPTS CERTAIN PERSONS FROM THE LOBBYING LAWS, FOR THE
11 PURPOSE OF POSSIBLE AMENDMENT; TO BRING FORWARD SECTION 5-8-13,
12 MISSISSIPPI CODE OF 1972, WHICH PROHIBITS LOBBYISTS AND LOBBYISTS'
13 CLIENTS FROM PARTICIPATING IN CERTAIN ACTS, FOR PURPOSES OF
14 POSSIBLE AMENDMENT; TO BRING FORWARD SECTION 37-101-15,
15 MISSISSIPPI CODE OF 1972, WHICH PROHIBITS EMPLOYEES OR AGENTS
16 REPRESENTING THE SEPARATE STATE INSTITUTIONS OF HIGHER LEARNING
17 FROM APPEARING BEFORE THE LEGISLATURE EXCEPT UPON ORDER OF THE
18 BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING OR UPON
19 THE REQUEST OF THE LEGISLATURE, FOR PURPOSES OF POSSIBLE
20 AMENDMENT; AND FOR RELATED PURPOSES.

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

22 **SECTION 1.** The following shall be codified as Section
23 5-8-27, Mississippi Code of 1972:

24 5-8-27. (1) A state agency may not expend any public funds
25 to pay any person to perform contract lobbying on behalf of the
26 state agency. Any contract entered into between a state agency
27 and a person for contract lobbying services on behalf of the state



agency that requires the state agency to expend public funds is void and unenforceable.

(2) A community or junior college may not expend any public funds to pay any person to perform contract lobbying on behalf of the community or junior college. Any contract entered into between a community or junior college and a person for contract lobbying services on behalf of the community or junior college that requires the community or junior college to expend public funds is void and unenforceable.

(3) A public employee of a state agency or community or junior college who authorizes the expenditure of public funds to pay a person to engage in contract lobbying on behalf of the state agency or community or junior college shall be subject to termination.

(4) The prohibitions of this section do not apply to any public employee of a state agency or community or junior college who, as a part of the employee's employment, is authorized or directed by the employee's supervisor or governing board to engage in lobbying the Legislature, other state agencies or local entities of government. However, this subsection may not be construed as absolving any public employee of a state agency or community or junior college from complying with the reporting and disclosure requirements of this chapter.

SECTION 2. Section 5-8-3, Mississippi Code of 1972, is amended as follows:



53 5-8-3. The following words and phrases shall have the
54 meanings ascribed herein unless the context clearly indicates
55 otherwise:

56 (a) (i) "Anything of value" means:

57 1. A pecuniary item, including money, or a
58 bank bill or note;

59 2. A promissory note, bill of exchange,
60 order, draft, warrant, check or bond given for the payment of
61 money;

62 3. A contract, agreement, promise or other
63 obligation for an advance, conveyance, forgiveness of
64 indebtedness, deposit, distribution, loan, payment, gift, pledge
65 or transfer of money;

66 4. A stock, bond, note or other investment
67 interest in an entity;

68 5. A receipt given for the payment of money
69 or other property;

70 6. A right in action;

71 7. A gift, tangible good, chattel or an
72 interest in a gift, tangible good or chattel;

73 8. A loan or forgiveness of indebtedness;

74 9. A work of art, antique or collectible;

75 10. An automobile or other means of personal
76 transportation;



77 11. Real property or an interest in real
78 property, including title to realty, a fee simple or partial
79 interest, present or future, contingent or vested within realty, a
80 leasehold interest, or other beneficial interest in realty;

81 12. An honorarium or compensation for
82 services;

83 13. A rebate or discount in the price of
84 anything of value, unless the rebate or discount is made in the
85 ordinary course of business to a member of the public without
86 regard to that person's status as an executive, legislative or
87 public official or public employee, or the sale or trade of
88 something for reasonable compensation that would ordinarily not be
89 available to a member of the public;

90 14. A promise or offer of employment;

91 15. Any other thing of value that is
92 pecuniary or compensatory in value to a person, except as
93 otherwise provided in subparagraph (ii) of this paragraph; or

94 16. A payment that directly benefits an
95 executive, legislative or public official or public employee or a
96 member of that person's immediate family.

97 (ii) "Anything of value" does not mean:

98 1. Informational material such as books,
99 reports, pamphlets, calendars or periodicals informing an
100 executive, legislative or public official or public employee of
101 her or his official duties;



2. A certificate, plaque or other commemorative item which has little pecuniary value;

3. Food and beverages for immediate consumption provided by a lobbyist up to a value of Ten Dollars (\$10.00) in the aggregate during any calendar year;

4. Campaign contributions reported in accordance with Section 23-15-801 et seq., Mississippi Code of 1972.

(b) "Commission" means the Mississippi Ethics Commission, when used in the context of Section 5-8-19.

(c) "Compensation" means:

(i) An advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge or transfer of money or anything of value, including reimbursement of travel, food or lodging costs; or

(ii) A contract, agreement, promise or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge or transfer of money or anything of value, including reimbursement of travel, food or lodging costs, for services rendered or to be rendered.

(d) "Executive action" means the proposal, drafting, development, consideration, amendment, adoption, approval, promulgation, issuance, modification, rejection or postponement by a state or local governmental entity of a rule, regulation, order,



127 decision, determination or other quasi-legislative action or
128 proceeding.

129 (e) "Executive agency" means:

130 (i) An agency, board, commission, governing
131 authority or other body in the executive branch of state or local
132 government; or

133 (ii) An independent body of state or local
134 government that is not a part of the legislative or judicial
135 branch, but which shall include county boards of supervisors.

136 (f) "Executive official" means:

137 (i) A member or employee of a state agency, board,
138 commission, governing authority or other body in the executive
139 branch of state or local government; or

140 (ii) A public official or public employee, or any
141 employee of such person, of state or local government who takes an
142 executive action.

143 (g) "Expenditure" means:

144 (i) A purchase, payment, distribution, loan,
145 forgiveness of a loan or payment of a loan by a third party,
146 advance, deposit, transfer of funds, a promise to make a payment,
147 or a gift of money or anything of value for any purpose;

148 (ii) A payment to a lobbyist for salary, fee,
149 commission, compensation for expenses, or other purpose by a
150 person employing, retaining or contracting for the services of the
151 lobbyist separately or jointly with other persons;



(iii) A payment in support of or assistance to a lobbyist or the lobbyist's activities, including the direct payment of expenses incurred at the request or suggestion of the lobbyist;

(iv) A payment that directly benefits an executive, legislative or public official or a member of the official's immediate family;

(v) A payment, including compensation, payment or reimbursement for the services, time or expenses of an employee for or in connection with direct communication with an executive, legislative or public official made at the direction of the employee's employer;

(vi) A payment for or in connection with soliciting or urging other persons to enter into direct communication with an executive, legislative or public official; or

(vii) A payment or reimbursement for food, beverages, travel, lodging, entertainment or sporting activities.

(h) "Gift" means anything of value to the extent that consideration of equal or greater value is not received, including a rebate or discount in the price of anything of value unless the rebate or discount is made in the ordinary course of business to a member of the public without regard to that person's status as an executive, legislative or public official.

(i) "Legislative action" means:



(i) Preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat or rejection of a bill, resolution, amendment, motion, report, nomination, appointment or other matter by the Mississippi State Legislature or a member or employee of the Legislature acting or purporting to act in an official capacity;

(ii) Action by the Governor in approving or vetoing a bill or other action of the Legislature;

(iii) Action by the Legislature in:

1. Overriding or sustaining a veto by the Governor; or

2. Considering, confirming or rejecting an executive appointment of the Governor.

(j) "Legislative official" means:

(i) A member, member-elect or presiding officer of the Legislature;

(ii) A member of a commission or other entity established by and responsible to either or both houses of the Legislature;

(iii) A staff member, officer or employee to a member or member-elect of the Legislature, to a member of a commission or other entity established by and responsible to either or both houses of the Legislature, or to the Legislature or any house, committee or office thereof.



202 (k) "Lobbying" means:

203 (i) Influencing or attempting to influence

204 legislative or executive action through oral or written

205 communication; or

206 (ii) Solicitation of others to influence

207 legislative or executive action; or

208 (iii) Paying or promising to pay anything of value

209 directly or indirectly related to legislative or executive action.

210 (l) "Lobbyist" means:

211 (i) An individual who is employed and receives

212 payments, or who contracts for economic consideration, including

213 reimbursement for reasonable travel and living expenses, for the

214 purpose of lobbying;

215 (ii) An individual who represents a legislative or

216 public official or public employee, or who represents a person,

217 organization, association or other group, for the purpose of

218 lobbying;

219 (iii) A sole proprietor, owner, part owner or

220 shareholder in a business who has a pecuniary interest in

221 legislative or executive action, who engages in lobbying

222 activities; or

223 (iv) Any individual described in subparagraphs

224 (i), (ii) or (iii) of this paragraph (l) who is employed by or has

225 contracted with any agency, legislative or public official or

226 public employee, or any other public entity for the purpose of



227 providing any type of consulting or other similar service but also
228 engages in any type of lobbying activities. Such individual shall
229 not qualify for any exemption under Section 5-8-7.

230 (m) "Lobbyist's client" means the person in whose
231 behalf the lobbyist influences or attempts to influence
232 legislative or executive action.

233 (n) "Local" means all entities of government at the
234 county, county-district, multicounty district, municipal or school
235 district level.

236 (o) "Person" means an individual, proprietorship, firm,
237 partnership, joint venture, joint-stock company, syndicate,
238 business trust, estate, company, corporation, association, club,
239 committee, organization or group of persons acting in concert.

240 (p) "Public employee" means an individual appointed to
241 a position, including a position created by statute, whether
242 compensated or not, in state or local government and includes any
243 employee of the public employee. The term includes a member of
244 the board of trustees, chancellor, vice chancellor or the
245 equivalent thereof in the state university system or the state
246 community and junior college system, and a president of a state
247 college or university.

248 (q) "Public official" means an individual elected to a
249 state or local office, or an individual who is appointed to fill a
250 vacancy in the office.



(r) "Value" means the retail cost or fair market worth of an item or items, whichever is greater.

(s) "State agency" means any state board, commission, department, authority, committee, council or agency created by the Mississippi Constitution of 1890 or statute. The term "state agency" includes the Board of Trustees of State Institutions of Higher Learning and the individual state institutions of higher learning.

(t) "Community or junior college" means a community or junior college district and its local board of trustees established under Chapter 29, Title 37, Mississippi Code of 1972.

(u) "Public funds" means all funds appropriated by the Legislature and all other fees, local levies or other revenues generated by a state agency or community or junior college that are available for expenditure by the state agency or community or junior college.

(v) "Contract lobbying" means any lobbying performed by an independent contractor or a contract worker of a state agency or community or junior college.

SECTION 3. Section 27-104-7, Mississippi Code of 1972, is amended as follows:

27-104-7. (1) (a) There is created the Public Procurement Review Board, which shall be reconstituted on January 1, 2018, and shall be composed of the following members:



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

(ii) Two (2) individuals appointed by the Lieutenant Governor with the advice and consent of the Senate; and

(iii) The Executive Director of the Department of Finance and Administration, serving as an ex officio and nonvoting member.

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

(i) One (1) member appointed by the Governor to serve for a term ending on June 30, 2019;

(ii) One (1) member appointed by the Governor to serve for a term ending on June 30, 2020;

(iii) One (1) member appointed by the Governor to serve for a term ending on June 30, 2021;

(iv) One (1) member appointed by the Lieutenant Governor to serve for a term ending on June 30, 2019; and

(v) One (1) member appointed by the Lieutenant Governor to serve for a term ending on June 30, 2020.

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

(c) When appointing members to the Public Procurement Review Board, the Governor and Lieutenant Governor shall take into



300 consideration persons who possess at least five (5) years of
301 management experience in general business, healthcare or finance
302 for an organization, corporation or other public or private
303 entity. Any person, or any employee or owner of a company, who
304 receives any grants, procurements or contracts that are subject to
305 approval under this section shall not be appointed to the Public
306 Procurement Review Board. Any person, or any employee or owner of
307 a company, who is a principal of the source providing a personal
308 or professional service shall not be appointed to the Public
309 Procurement Review Board if the principal owns or controls a
310 greater than five percent (5%) interest or has an ownership value
311 of One Million Dollars (\$1,000,000.00) in the source's business,
312 whichever is smaller. No member shall be an officer or employee
313 of the State of Mississippi while serving as a voting member on
314 the Public Procurement Review Board.

315 (d) Members of the Public Procurement Review Board
316 shall be entitled to per diem as authorized by Section 25-3-69 and
317 travel reimbursement as authorized by Section 25-3-41.

318 (e) The members of the Public Procurement Review Board
319 shall elect a chair from among the membership, and he or she shall
320 preside over the meetings of the board. The board shall annually
321 elect a vice chair, who shall serve in the absence of the chair.
322 No business shall be transacted, including adoption of rules of
323 procedure, without the presence of a quorum of the board. Three
324 (3) members shall be a quorum. No action shall be valid unless



approved by a majority of the members present and voting, entered upon the minutes of the board and signed by the chair. Necessary clerical and administrative support for the board shall be provided by the Department of Finance and Administration. Minutes shall be kept of the proceedings of each meeting, copies of which shall be filed on a monthly basis with the chairs of the Accountability, Efficiency and Transparency Committees of the Senate and House of Representatives and the chairs of the Appropriations Committees of the Senate and House of Representatives.

(2) The Public Procurement Review Board shall have the following powers and responsibilities:

(a) Approve all purchasing regulations governing the purchase or lease by any agency, as defined in Section 31-7-1, of commodities and equipment, except computer equipment acquired pursuant to Sections 25-53-1 through 25-53-29;

(b) Adopt regulations governing the approval of contracts let for the construction and maintenance of state buildings and other state facilities as well as related contracts for architectural and engineering services;

(c) Adopt regulations governing any lease or rental agreement by any state agency or department, including any state agency financed entirely by federal funds, for space outside the buildings under the jurisdiction of the Department of Finance and Administration. These regulations shall require each agency



350 requesting to lease such space to provide the following
351 information that shall be published by the Department of Finance
352 and Administration on its website: the agency to lease the space;
353 the terms of the lease; the approximate square feet to be leased;
354 the use for the space; a description of a suitable space; the
355 general location desired for the leased space; the contact
356 information for a person from the agency; the deadline date for
357 the agency to have received a lease proposal; any other specific
358 terms or conditions of the agency; and any other information
359 deemed appropriate by the Division of Real Property Management of
360 the Department of Finance and Administration or the Public
361 Procurement Review Board. The information shall be provided
362 sufficiently in advance of the time the space is needed to allow
363 the Division of Real Property Management of the Department of
364 Finance and Administration to review and preapprove the lease
365 before the time for advertisement begins;

366 (d) Adopt, in its discretion, regulations to set aside
367 at least five percent (5%) of anticipated annual expenditures for
368 the purchase of commodities from minority businesses; however, all
369 such set-aside purchases shall comply with all purchasing
370 regulations promulgated by the department and shall be subject to
371 all bid requirements. Set-aside purchases for which competitive
372 bids are required shall be made from the lowest and best minority
373 business bidder; however, if no minority bid is available or if
374 the minority bid is more than two percent (2%) higher than the



lowest bid, then bids shall be accepted and awarded to the lowest and best bidder. However, the provisions in this paragraph shall not be construed to prohibit the rejection of a bid when only one (1) bid is received. Such rejection shall be placed in the minutes. For the purposes of this paragraph, the term "minority business" means a business which is owned by a person who is a citizen or lawful permanent resident of the United States and who is:

(i) Black: having origins in any of the black racial groups of Africa;

(ii) Hispanic: of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin regardless of race;

(iii) Asian-American: having origins in any of the original people of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;

(iv) American Indian or Alaskan Native: having origins in any of the original people of North America; or

(v) Female;

(e) In consultation with and approval by the Chairs of the Senate and House Public Property Committees, approve leases, for a term not to exceed eighteen (18) months, entered into by state agencies for the purpose of providing parking arrangements for state employees who work in the Woolfolk Building, the Carroll Gartin Justice Building or the Walter Sillers Office Building;



400 (f) Promulgate rules and regulations governing the
401 solicitation and selection of contractual services personnel
402 including personal and professional services contracts for any
403 form of consulting, policy analysis, public relations, marketing,
404 public affairs * * * or any other contract that the board deems
405 appropriate for oversight, with the exception of any personal
406 service contracts entered into by any agency that employs only
407 nonstate service employees as defined in Section 25-9-107(c), any
408 personal service contracts entered into for computer or
409 information technology-related services governed by the
410 Mississippi Department of Information Technology Services, any
411 personal service contracts entered into by the individual state
412 institutions of higher learning, any personal service contracts
413 entered into by the Mississippi Department of Transportation, any
414 personal service contracts entered into by the Department of Human
415 Services through June 30, 2019, which the Executive Director of
416 the Department of Human Services determines would be useful in
417 establishing and operating the Department of Child Protection
418 Services, any personal service contracts entered into by the
419 Department of Child Protection Services through June 30, 2019, any
420 contracts for entertainers and/or performers at the Mississippi
421 State Fairgrounds entered into by the Mississippi Fair Commission,
422 and any contract for attorney, accountant, actuary auditor,
423 architect, engineer, and utility rate expert services. Any such
424 rules and regulations shall provide for maintaining continuous



425 internal audit covering the activities of such agency affecting
426 its revenue and expenditures as required under Section
427 7-7-3(6)(d). Any rules and regulation changes related to personal
428 and professional services contracts that the Public Procurement
429 Review Board may propose shall be submitted to the Chairs of the
430 Accountability, Efficiency and Transparency Committees of the
431 Senate and House of Representatives and the Chairs of the
432 Appropriation Committees of the Senate and House of
433 Representatives at least fifteen (15) days before the board votes
434 on the proposed changes, and those rules and regulation changes,
435 if adopted, shall be promulgated in accordance with the
436 Mississippi Administrative Procedures Act;

437 (g) Approve all personal and professional services
438 contracts involving the expenditures of funds in excess of
439 Seventy-five Thousand Dollars (\$75,000.00), except as provided in
440 paragraph (f) of this subsection (2) and in subsection (8);

441 (h) Develop mandatory standards with respect to
442 contractual services personnel that require invitations for public
443 bid, requests for proposals, record keeping and financial
444 responsibility of contractors. The Public Procurement Review
445 Board shall, unless exempted under this paragraph (h) or under
446 paragraph (i) or (o) of this subsection (2), require the agency
447 involved to submit the procurement to a competitive procurement
448 process, and may reserve the right to reject any or all resulting
449 procurements;



(i) Prescribe certain circumstances by which agency heads may enter into contracts for personal and professional services without receiving prior approval from the Public Procurement Review Board. The Public Procurement Review Board may establish a preapproved 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;

(i) Agency requirements may be fulfilled by procuring services performed incident to the state's own programs. The agency head shall determine in writing whether the price represents a fair market value for the services. When the procurements are made from other governmental entities, the private sector need not be solicited; however, these contracts shall still be submitted for approval to the Public Procurement Review Board.

(ii) Contracts between two (2) state agencies, both under Public Procurement Review Board purview, shall not require Public Procurement Review Board approval. However, the contracts shall still be entered into the enterprise resource planning system.

(j) 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;



475 (k) Present recommendations for governmental
476 privatization and to evaluate privatization proposals submitted by
477 any state agency;

478 (l) Authorize personal and professional service
479 contracts to be effective for more than one (1) year provided a
480 funding condition is included in any such multiple year contract,
481 except the State Board of Education, which shall have the
482 authority to enter into contractual agreements for student
483 assessment for a period up to ten (10) years. The State Board of
484 Education shall procure these services in accordance with the
485 Public Procurement Review Board procurement regulations;

486 (m) Request the State Auditor to conduct a performance
487 audit on any personal or professional service contract;

488 (n) Prepare an annual report to the Legislature
489 concerning the issuance of personal and professional services
490 contracts during the previous year, collecting any necessary
491 information from state agencies in making such report;

492 (o) Develop and implement the following standards and
493 procedures for the approval of any sole source contract for
494 personal and professional services regardless of the value of the
495 procurement:

496 (i) For the purposes of this paragraph (o), the
497 term "sole source" means only one (1) source is available that can
498 provide the required personal or professional service.



499 (ii) An agency that has been issued a binding,
500 valid court order mandating that a particular source or provider
501 must be used for the required service must include a copy of the
502 applicable court order in all future sole source contract reviews
503 for the particular personal or professional service referenced in
504 the court order.

505 (iii) Any agency alleging to have a sole source
506 for any personal or professional service, other than those
507 exempted under paragraph (f) of this subsection (2) and subsection
508 (8), shall publish on the procurement portal website established
509 by Sections 25-53-151 and 27-104-165, for at least fourteen (14)
510 days, the terms of the proposed contract for those services. In
511 addition, the publication shall include, but is not limited to,
512 the following information:

513 1. The personal or professional service
514 offered in the contract;

515 2. An explanation of why the personal or
516 professional service is the only one that can meet the needs of
517 the agency;

518 3. An explanation of why the source is the
519 only person or entity that can provide the required personal or
520 professional service;

521 4. An explanation of why the amount to be
522 expended for the personal or professional service is reasonable;
523 and



524 5. The efforts that the agency went through
525 to obtain the best possible price for the personal or professional
526 service.

527 (iv) If any person or entity objects and proposes
528 that the personal or professional service published under
529 subparagraph (iii) of this paragraph (o) is not a sole source
530 service and can be provided by another person or entity, then the
531 objecting person or entity shall notify the Public Procurement
532 Review Board and the agency that published the proposed sole
533 source contract with a detailed explanation of why the personal or
534 professional service is not a sole source service.

535 (v) 1. If the agency determines after review that
536 the personal or professional service in the proposed sole source
537 contract can be provided by another person or entity, then the
538 agency must withdraw the sole source contract publication from the
539 procurement portal website and submit the procurement of the
540 personal or professional service to an advertised competitive bid
541 or selection process.

542 2. If the agency determines after review that
543 there is only one (1) source for the required personal or
544 professional service, then the agency may appeal to the Public
545 Procurement Review Board. The agency has the burden of proving
546 that the personal or professional service is only provided by one
547 (1) source.



548 3. If the Public Procurement Review Board has
549 any reasonable doubt as to whether the personal or professional
550 service can only be provided by one (1) source, then the agency
551 must submit the procurement of the personal or professional
552 service to an advertised competitive bid or selection process. No
553 action taken by the Public Procurement Review Board in this appeal
554 process shall be valid unless approved by a majority of the
555 members of the Public Procurement Review Board present and voting.

556 (vi) The Public Procurement Review Board shall
557 prepare and submit a quarterly report to the House of
558 Representatives and Senate Accountability, Efficiency and
559 Transparency Committees that details the sole source contracts
560 presented to the Public Procurement Review Board and the reasons
561 that the Public Procurement Review Board approved or rejected each
562 contract. These quarterly reports shall also include the
563 documentation and memoranda required in subsection (4) of this
564 section. An agency that submitted a sole source contract shall be
565 prepared to explain the sole source contract to each committee by
566 December 15 of each year upon request by the committee.

567 (p) Assess any fines and administrative penalties
568 provided for in Sections 31-7-401 through 31-7-423.

569 (3) All submissions shall be made sufficiently in advance of
570 each monthly meeting of the Public Procurement Review Board as
571 prescribed by the Public Procurement Review Board. If the Public
572 Procurement Review Board rejects any contract submitted for review



or approval, the Public Procurement Review Board shall clearly set out the reasons for its action, including, but not limited to, the policy that the agency has violated in its submitted contract and any corrective actions that the agency may take to amend the contract to comply with the rules and regulations of the Public Procurement Review Board.

(4) All sole source contracts for personal and professional services awarded by state agencies, other than those exempted under Section 27-104-7(2)(f) and (8), whether approved by an agency head or the Public Procurement Review Board, shall contain in the procurement file a written determination for the approval, using a request form furnished by the Public Procurement Review Board. The written determination shall document the basis for the determination, including any market analysis conducted in order to ensure that the service required was practicably available from only one (1) source. A memorandum shall accompany the request form and address the following four (4) points:

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

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

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



596 (d) Description of the efforts that were made to
597 conduct a noncompetitive negotiation to get the best possible
598 price for the taxpayers.

599 (5) In conjunction with the State Personnel Board, the
600 Public Procurement Review Board shall develop and promulgate rules
601 and regulations to define the allowable legal relationship between
602 contract employees and the contracting departments, agencies and
603 institutions of state government under the jurisdiction of the
604 State Personnel Board, in compliance with the applicable rules and
605 regulations of the federal Internal Revenue Service (IRS) for
606 federal employment tax purposes. Under these regulations, the
607 usual common law rules are applicable to determine and require
608 that such worker is an independent contractor and not an employee,
609 requiring evidence of lawful behavioral control, lawful financial
610 control and lawful relationship of the parties. Any state
611 department, agency or institution shall only be authorized to
612 contract for personnel services in compliance with those
613 regulations.

614 (6) No member of the Public Procurement Review Board shall
615 use his or her official authority or influence to coerce, by
616 threat of discharge from employment, or otherwise, the purchase of
617 commodities, the contracting for personal or professional
618 services, or the contracting for public construction under this
619 chapter.



620 (7) Notwithstanding any other laws or rules to the contrary,
621 the provisions of subsection (2) of this section shall not be
622 applicable to the Mississippi State Port Authority at Gulfport.

623 (8) Nothing in this section shall impair or limit the
624 authority of the Board of Trustees of the Public Employees'
625 Retirement System to enter into any personal or professional
626 services contracts directly related to their constitutional
627 obligation to manage the trust funds, including, but not limited
628 to, actuarial, custodial banks, cash management, investment
629 consultant and investment management contracts.

630 (9) Notwithstanding the exemption of personal and
631 professional services contracts entered into by the Department of
632 Human Services and personal and professional services contracts
633 entered into by the Department of Child Protection Services from
634 the provisions of this section under subsection (2)(f), before the
635 Department of Human Services or the Department of Child Protection
636 Services may enter into a personal or professional service
637 contract, the department(s) shall give notice of the proposed
638 personal or professional service contract to the Public
639 Procurement Review Board for any recommendations by the board.
640 Upon receipt of the notice, the board shall post the notice on its
641 website and on the procurement portal website established by
642 Sections 25-53-151 and 27-104-165. If the board does not respond
643 to the department(s) within seven (7) calendar days after
644 receiving the notice, the department(s) may enter the proposed



645 personal or professional service contract. If the board responds
646 to the department(s) within seven (7) calendar days, then the
647 board has seven (7) calendar days from the date of its initial
648 response to provide any additional recommendations. After the end
649 of the second seven-day period, the department(s) may enter the
650 proposed personal or professional service contract. The board is
651 not authorized to disapprove any proposed personal or professional
652 services contracts. This subsection shall stand repealed on July
653 1, 2019.

654 **SECTION 4.** Section 5-8-7, Mississippi Code of 1972, is
655 brought forward as follows:

656 5-8-7. Notwithstanding any other provisions of this chapter,
657 except as otherwise provided in Section 5-8-3(1)(iv), the
658 following person shall not be included within the definition of
659 "lobbyist" or "lobbyist's client" under this chapter, and
660 accordingly the registration and reporting provisions, including
661 the payment of related fees, of this chapter do not apply to:

662 (a) A legislative or public official acting in an
663 official capacity.

664 (b) An individual who:

665 (i) Represents or purports to represent only the
666 individual;

667 (ii) Receives no compensation or anything of value
668 for lobbying; and



669 (iii) Has no pecuniary interest in the legislative
670 or executive action.

671 (c) An individual lobbying in his or her own interest,
672 his or her own business interest, who pays, or promises to pay,
673 offers to pay or causes to be paid to public officials,
674 legislative officials or public employees any thing or things of
675 value aggregating in value to less than Two Hundred Dollars
676 (\$200.00) in any calendar year.

677 (d) An individual lobbying on behalf of his or her
678 employer's business interest where such lobbying is not a primary
679 or regular function of his employment position if such individual
680 pays, promises to pay, offers to pay, or causes to be paid
681 individually or on the employer's behalf to public officials,
682 legislative officials, or public employees any thing or things of
683 value aggregating in value to less than Two Hundred Dollars
684 (\$200.00) in any calendar year.

685 (e) An individual lobbying on behalf of an association
686 of which he or she is a member, where such lobbying is not a
687 primary or regular function of his or her position in the
688 association, if such individual pays, promises to pay, offers to
689 pay, or causes to be paid individually or on the association's
690 behalf to public officials, legislative officials or public
691 employees any thing or things of value aggregating in value to
692 less than Two Hundred Dollars (\$200.00) in any calendar year.



693 (f) An individual who is a shareholder, owner or part
694 owner of a business who lobbies on behalf of such business, where
695 such individual is not an employee of the business, if such
696 individual pays, promises to pay, offers to pay, or causes to be
697 paid individually or on behalf of the business to public
698 officials, legislative officials or public employees any thing or
699 things of value aggregating in value to less than Two Hundred
700 Dollars (\$200.00) in any calendar year.

701 (g) An individual who:

702 (i) Limits lobbying solely to formal testimony
703 before a public meeting of a legislative body or an executive
704 agency, or a committee, division or department thereof; and

705 (ii) Registers the appearance in the records of
706 the public body, if such records are kept.

707 (h) An individual who is a licensed attorney
708 representing a client by:

709 (i) Drafting bills, preparing arguments thereon,
710 and advising the client or rendering opinions as to the
711 construction and effect of proposed or pending legislation, where
712 such services are usual and customary professional legal services
713 which are not otherwise connected with legislative action; or

714 (ii) Providing information, on behalf of the
715 client, to an executive or public official, a public employee, or
716 an agency, board, commission, governing authority or other body of
717 state or local government where such services are usual and



718 customary professional legal services including or related to a
719 particular nonlegislative matter, case or controversy.

720 (i) News media and employees of the news media whose
721 activity is limited solely to the publication or broadcast of
722 news, editorial comments, or paid advertisements that attempt to
723 influence legislative or executive action. For the purposes of
724 this section, "news media" shall be construed to be bona fide
725 radio and television stations, newspapers, journals or magazines,
726 or bona fide news bureaus or associations which in turn furnish
727 information solely to bona fide radio or television stations,
728 newspapers, journals or magazines.

729 (j) An individual who engages in lobbying activities
730 exclusively on behalf of a religious organization which qualifies
731 as a tax-exempt organization under the Internal Revenue Code.

732 (k) An individual who is a nonattorney professional and
733 who receives professional fees and expenses to represent clients
734 on executive agency matters, except that if anything of value
735 shall be paid or promised to be paid directly or indirectly on
736 behalf of a client for the personal use or benefit of an executive
737 or public official or public employee, then expenditures and
738 actions of the individual are reportable under this chapter, and
739 the individual must register as a lobbyist.

740 **SECTION 5.** Section 5-8-13, Mississippi Code of 1972, is
741 brought forward as follows:



5-8-13. (1) A lobbyist shall not contract to receive or accept compensation dependent upon the success or failure of a legislative or executive action.

(2) A lobbyist or lobbyist's client shall not knowingly or willfully make or cause to be made a false statement or misrepresentation of facts to an executive, legislative or public official or public employee, or to the public in general with the intent to affect the outcome of a legislative or executive action.

(3) A lobbyist or lobbyist's client shall not cause a legislative or executive action for the purpose of obtaining employment to lobby in support of or in opposition to the legislative or executive action.

(4) An executive, legislative or public official or public employee shall not be a lobbyist, except that he may act as a lobbyist when acting in his official capacity.

(5) A lobbyist must disclose anything of value given in whole or in part to any executive, legislative or public official or public employee.

SECTION 6. Section 37-101-15, Mississippi Code of 1972, is brought forward as follows:

37-101-15. (a) The Board of Trustees of State Institutions of Higher Learning shall succeed to and continue to exercise control of all records, books, papers, equipment, and supplies, and all lands, buildings, and other real and personal property belonging to or assigned to the use and benefit of the board of



trustees formerly supervising and controlling the institutions of higher learning named in Section 37-101-1. The board shall have and exercise control of the use, distribution and disbursement of all funds, appropriations and taxes, now and hereafter in possession, levied and collected, received, or appropriated for the use, benefit, support, and maintenance or capital outlay expenditures of the institutions of higher learning, including the authorization of employees to sign vouchers for the disbursement of funds for the various institutions, except where otherwise specifically provided by law.

(b) The board shall have general supervision of the affairs of all the institutions of higher learning, including the departments and the schools thereof. The board shall have the power in its discretion to determine who shall be privileged to enter, to remain in, or to graduate therefrom. The board shall have general supervision of the conduct of libraries and laboratories, the care of dormitories, buildings, and grounds; the business methods and arrangement of accounts and records; the organization of the administrative plan of each institution; and all other matters incident to the proper functioning of the institutions. The board shall have the authority to establish minimum standards of achievement as a prerequisite for entrance into any of the institutions under its jurisdiction, which standards need not be uniform between the various institutions and which may be based upon such criteria as the board may establish.



792 (c) The board shall exercise all the powers and prerogatives
793 conferred upon it under the laws establishing and providing for
794 the operation of the several institutions herein specified. The
795 board shall adopt such bylaws and regulations from time to time as
796 it deems expedient for the proper supervision and control of the
797 several institutions of higher learning, insofar as such bylaws
798 and regulations are not repugnant to the Constitution and laws,
799 and not inconsistent with the object for which these institutions
800 were established. The board shall have power and authority to
801 prescribe rules and regulations for policing the campuses and all
802 buildings of the respective institutions, to authorize the arrest
803 of all persons violating on any campus any criminal law of the
804 state, and to have such law violators turned over to the civil
805 authorities.

806 (d) For all institutions specified herein, the board shall
807 provide a uniform system of recording and of accounting approved
808 by the State Department of Audit. The board shall annually
809 prepare, or cause to be prepared, a budget for each institution of
810 higher learning for the succeeding year which must be prepared and
811 in readiness for at least thirty (30) days before the convening of
812 the regular session of the Legislature. All relationships and
813 negotiations between the State Legislature and its various
814 committees and the institutions named herein shall be carried on
815 through the board of trustees. No official, employee or agent
816 representing any of the separate institutions shall appear before



817 the Legislature or any committee thereof except upon the written
818 order of the board or upon the request of the Legislature or a
819 committee thereof.

820 (e) For all institutions specified herein, the board shall
821 prepare an annual report to the Legislature setting forth the
822 disbursements of all monies appropriated to the respective
823 institutions. Each report to the Legislature shall show how the
824 money appropriated to the several institutions has been expended,
825 beginning and ending with the fiscal years of the institutions,
826 showing the name of each teacher, officer, and employee, and the
827 salary paid each, and an itemized statement of each and every item
828 of receipts and expenditures. Each report must be balanced, and
829 must begin with the former balance. If any property belonging to
830 the state or the institution is used for profit, the reports shall
831 show the expense incurred in managing the property and the amount
832 received therefrom. The reports shall also show a summary of the
833 gross receipts and gross disbursements for each year and shall
834 show the money on hand at the beginning of the fiscal period of
835 the institution next preceding each session of the Legislature and
836 the necessary amount of expense to be incurred from said date to
837 January 1 following. The board shall keep the annual expenditures
838 of each institution herein mentioned within the income derived
839 from legislative appropriations and other sources, but in case of
840 emergency arising from acts of providence, epidemics, fire or
841 storm with the written approval of the Governor and by written



consent of a majority of the senators and of the representatives it may exceed the income. The board shall require a surety bond in a surety company authorized to do business in this state, of every employee who is the custodian of funds belonging to one or more of the institutions mentioned herein, which bond shall be in a sum to be fixed by the board in an amount that will properly safeguard the said funds, the premium for which shall be paid out of the funds appropriated for said institutions.

(f) The board shall have the power and authority to elect the heads of the various institutions of higher learning and to contract with all deans, professors, and other members of the teaching staff, and all administrative employees of said institutions for a term of not exceeding four (4) years. The board shall have the power and authority to terminate any such contract at any time for malfeasance, inefficiency, or contumacious conduct, but never for political reasons. It shall be the policy of the board to permit the executive head of each institution to nominate for election by the board all subordinate employees of the institution over which he presides. It shall be the policy of the board to elect all officials for a definite tenure of service and to reelect during the period of satisfactory service. The board shall have the power to make any adjustments it thinks necessary between the various departments and schools of any institution or between the different institutions.



(g) The board shall keep complete minutes and records of all proceedings which shall be open for inspection by any citizen of the state.

(h) The board shall have the power to enter into an energy performance contract, energy services contract, a shared-savings, lease or lease-purchase basis, for energy efficiency services and/or equipment as prescribed in Section 31-7-14.

(i) The Board of Trustees of State Institutions of Higher Learning, for and on behalf of Jackson State University, is hereby authorized to convey by donation or otherwise easements across portions of certain real estate located in the City of Jackson, Hinds County, Mississippi, for right-of-way required for the Metro Parkway Project.

(j) In connection with any international contract between the board or one (1) of the state's institutions of higher learning and any party outside of the United States, the board or institution that is the party to the international contract is hereby authorized and empowered to include in the contract a provision for the resolution by arbitration of any controversy between the parties to the contract relating to such contract or the failure or refusal to perform any part of the contract. Such provision shall be valid, enforceable and irrevocable without regard to the justiciable character of the controversy. Provided, however, that in the event either party to such contract initiates litigation against the other with respect to the contract, the



arbitration provision shall be deemed waived unless asserted as a defense on or before the responding party is required to answer such litigation.

(k) The Board of Trustees of State Institutions of Higher Learning ("board"), on behalf of any institution under its jurisdiction, shall purchase and maintain business property insurance and business personal property insurance on all university-owned buildings and/or contents as required by federal law and regulations of the Federal Emergency Management Agency (FEMA) as is necessary for receiving public assistance or reimbursement for repair, reconstruction, replacement or other damage to those buildings and/or contents caused by the Hurricane Katrina Disaster of 2005 or subsequent disasters. The board is authorized to expend funds from any available source for the purpose of obtaining and maintaining that property insurance. The board is authorized to enter into agreements with the Department of Finance and Administration, local school districts, community/junior college districts, community hospitals and/or other state agencies to pool their liabilities to participate in a group business property and/or business personal property insurance program, subject to uniform rules and regulations as may be adopted by the Department of Finance and Administration.

(l) The Board of Trustees of State Institutions of Higher Learning, or its designee, may approve the payment or reimbursement of reasonable travel expenses incurred by candidates



916 for open positions at the board's executive office or at any of
917 the state institutions of higher learning, when the job candidate
918 has incurred expenses in traveling to a job interview at the
919 request of the board, the Commissioner of Higher Education or a
920 state institution of higher learning administrator.

921 **SECTION 7.** This act shall take effect and be in force from
922 and after July 1, 2018.

