

By: Representative Baria

To: Accountability,  
Efficiency, Transparency

HOUSE BILL NO. 785

1 AN ACT TO AMEND SECTION 27-104-7, MISSISSIPPI CODE OF 1972,  
2 TO REQUIRE THE PUBLIC PROCUREMENT REVIEW BOARD TO ESTABLISH  
3 STANDARDS FOR THE REVIEW AND APPROVAL OF ALL STATE AGENCY  
4 ADVERTISING PROCUREMENTS AND CONTRACTS; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 27-104-7, Mississippi Code of 1972, is  
7 amended as follows:

8 27-104-7. (1) (a) There is created the Public Procurement  
9 Review Board, which shall be reconstituted on January 1, 2018, and  
10 shall be composed of the following members:

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

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

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

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



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

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

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

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

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

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

34 (c) When appointing members to the Public Procurement  
35 Review Board, the Governor and Lieutenant Governor shall take into  
36 consideration persons who possess at least five (5) years of  
37 management experience in general business, healthcare or finance  
38 for an organization, corporation or other public or private  
39 entity. Any person, or any employee or owner of a company, who  
40 receives any grants, procurements or contracts that are subject to  
41 approval under this section shall not be appointed to the Public  
42 Procurement Review Board. Any person, or any employee or owner of  
43 a company, who is a principal of the source providing a personal  
44 or professional service shall not be appointed to the Public



45 Procurement Review Board if the principal owns or controls a  
46 greater than five percent (5%) interest or has an ownership value  
47 of One Million Dollars (\$1,000,000.00) in the source's business,  
48 whichever is smaller. No member shall be an officer or employee  
49 of the State of Mississippi while serving as a voting member on  
50 the Public Procurement Review Board.

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

54 (e) The members of the Public Procurement Review Board  
55 shall elect a chair from among the membership, and he or she shall  
56 preside over the meetings of the board. The board shall annually  
57 elect a vice chair, who shall serve in the absence of the chair.  
58 No business shall be transacted, including adoption of rules of  
59 procedure, without the presence of a quorum of the board. Three  
60 (3) members shall be a quorum. No action shall be valid unless  
61 approved by a majority of the members present and voting, entered  
62 upon the minutes of the board and signed by the chair. Necessary  
63 clerical and administrative support for the board shall be  
64 provided by the Department of Finance and Administration. Minutes  
65 shall be kept of the proceedings of each meeting, copies of which  
66 shall be filed on a monthly basis with the chairs of the  
67 Accountability, Efficiency and Transparency Committees of the  
68 Senate and House of Representatives and the chairs of the



69 Appropriations Committees of the Senate and House of  
70 Representatives.

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

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

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

81 (c) Adopt regulations governing any lease or rental  
82 agreement by any state agency or department, including any state  
83 agency financed entirely by federal funds, for space outside the  
84 buildings under the jurisdiction of the Department of Finance and  
85 Administration. These regulations shall require each agency  
86 requesting to lease such space to provide the following  
87 information that shall be published by the Department of Finance  
88 and Administration on its website: the agency to lease the space;  
89 the terms of the lease; the approximate square feet to be leased;  
90 the use for the space; a description of a suitable space; the  
91 general location desired for the leased space; the contact  
92 information for a person from the agency; the deadline date for  
93 the agency to have received a lease proposal; any other specific



94 terms or conditions of the agency; and any other information  
95 deemed appropriate by the Division of Real Property Management of  
96 the Department of Finance and Administration or the Public  
97 Procurement Review Board. The information shall be provided  
98 sufficiently in advance of the time the space is needed to allow  
99 the Division of Real Property Management of the Department of  
100 Finance and Administration to review and preapprove the lease  
101 before the time for advertisement begins;

102 (d) Adopt, in its discretion, regulations to set aside  
103 at least five percent (5%) of anticipated annual expenditures for  
104 the purchase of commodities from minority businesses; however, all  
105 such set-aside purchases shall comply with all purchasing  
106 regulations promulgated by the department and shall be subject to  
107 all bid requirements. Set-aside purchases for which competitive  
108 bids are required shall be made from the lowest and best minority  
109 business bidder; however, if no minority bid is available or if  
110 the minority bid is more than two percent (2%) higher than the  
111 lowest bid, then bids shall be accepted and awarded to the lowest  
112 and best bidder. However, the provisions in this paragraph shall  
113 not be construed to prohibit the rejection of a bid when only one  
114 (1) bid is received. Such rejection shall be placed in the  
115 minutes. For the purposes of this paragraph, the term "minority  
116 business" means a business which is owned by a person who is a  
117 citizen or lawful permanent resident of the United States and who  
118 is:



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

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

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

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

129 (v) Female;

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

136 (f) Promulgate rules and regulations governing the  
137 solicitation and selection of contractual services personnel  
138 including personal and professional services contracts for any  
139 form of consulting, policy analysis, public relations, marketing,  
140 public affairs, legislative advocacy services or any other  
141 contract that the board deems appropriate for oversight, with the  
142 exception of any personal service contracts entered into by any  
143 agency that employs only nonstate service employees as defined in



144 Section 25-9-107(c), any personal service contracts entered into  
145 for computer or information technology-related services governed  
146 by the Mississippi Department of Information Technology Services,  
147 any personal service contracts entered into by the individual  
148 state institutions of higher learning, any personal service  
149 contracts entered into by the Mississippi Department of  
150 Transportation, any personal service contracts entered into by the  
151 Department of Human Services through June 30, 2019, which the  
152 Executive Director of the Department of Human Services determines  
153 would be useful in establishing and operating the Department of  
154 Child Protection Services, any personal service contracts entered  
155 into by the Department of Child Protection Services through June  
156 30, 2019, any contracts for entertainers and/or performers at the  
157 Mississippi State Fairgrounds entered into by the Mississippi Fair  
158 Commission, and any contract for attorney, accountant, actuary  
159 auditor, architect, engineer, and utility rate expert services.  
160 Any such rules and regulations shall provide for maintaining  
161 continuous internal audit covering the activities of such agency  
162 affecting its revenue and expenditures as required under Section  
163 7-7-3(6) (d). Any rules and regulation changes related to personal  
164 and professional services contracts that the Public Procurement  
165 Review Board may propose shall be submitted to the Chairs of the  
166 Accountability, Efficiency and Transparency Committees of the  
167 Senate and House of Representatives and the Chairs of the  
168 Appropriation Committees of the Senate and House of



169 Representatives at least fifteen (15) days before the board votes  
170 on the proposed changes, and those rules and regulation changes,  
171 if adopted, shall be promulgated in accordance with the  
172 Mississippi Administrative Procedures Act;

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

177 (h) Develop mandatory standards with respect to  
178 contractual services personnel that require invitations for public  
179 bid, requests for proposals, record keeping and financial  
180 responsibility of contractors. The Public Procurement Review  
181 Board shall, unless exempted under this paragraph (h) or under  
182 paragraph (i) or (o) of this subsection (2), require the agency  
183 involved to submit the procurement to a competitive procurement  
184 process, and may reserve the right to reject any or all resulting  
185 procurements;

186 (i) Prescribe certain circumstances by which agency  
187 heads may enter into contracts for personal and professional  
188 services without receiving prior approval from the Public  
189 Procurement Review Board. The Public Procurement Review Board may  
190 establish a preapproved list of providers of various personal and  
191 professional services for set prices with which state agencies may  
192 contract without bidding or prior approval from the board;





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

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

206 (j) Provide standards for the issuance of requests for  
207 proposals, the evaluation of proposals received, consideration of  
208 costs and quality of services proposed, contract negotiations, the  
209 administrative monitoring of contract performance by the agency  
210 and successful steps in terminating a contract;

211 (k) Present recommendations for governmental  
212 privatization and to evaluate privatization proposals submitted by  
213 any state agency;

214 (l) Authorize personal and professional service  
215 contracts to be effective for more than one (1) year provided a  
216 funding condition is included in any such multiple year contract,  
217 except the State Board of Education, which shall have the



218 authority to enter into contractual agreements for student  
219 assessment for a period up to ten (10) years. The State Board of  
220 Education shall procure these services in accordance with the  
221 Public Procurement Review Board procurement regulations;

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

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

228 (o) Develop and implement the following standards and  
229 procedures for the approval of any sole source contract for  
230 personal and professional services regardless of the value of the  
231 procurement:

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

235 (ii) An agency that has been issued a binding,  
236 valid court order mandating that a particular source or provider  
237 must be used for the required service must include a copy of the  
238 applicable court order in all future sole source contract reviews  
239 for the particular personal or professional service referenced in  
240 the court order.

241 (iii) Any agency alleging to have a sole source  
242 for any personal or professional service, other than those



243 exempted under paragraph (f) of this subsection (2) and subsection  
244 (8), shall publish on the procurement portal website established  
245 by Sections 25-53-151 and 27-104-165, for at least fourteen (14)  
246 days, the terms of the proposed contract for those services. In  
247 addition, the publication shall include, but is not limited to,  
248 the following information:

249                   1. The personal or professional service  
250 offered in the contract;

251                   2. An explanation of why the personal or  
252 professional service is the only one that can meet the needs of  
253 the agency;

254                   3. An explanation of why the source is the  
255 only person or entity that can provide the required personal or  
256 professional service;

257                   4. An explanation of why the amount to be  
258 expended for the personal or professional service is reasonable;  
259 and

260                   5. The efforts that the agency went through  
261 to obtain the best possible price for the personal or professional  
262 service.

263                   (iv) If any person or entity objects and proposes  
264 that the personal or professional service published under  
265 subparagraph (iii) of this paragraph (o) is not a sole source  
266 service and can be provided by another person or entity, then the  
267 objecting person or entity shall notify the Public Procurement



268 Review Board and the agency that published the proposed sole  
269 source contract with a detailed explanation of why the personal or  
270 professional service is not a sole source service.

271 (v) 1. If the agency determines after review that  
272 the personal or professional service in the proposed sole source  
273 contract can be provided by another person or entity, then the  
274 agency must withdraw the sole source contract publication from the  
275 procurement portal website and submit the procurement of the  
276 personal or professional service to an advertised competitive bid  
277 or selection process.

278 2. If the agency determines after review that  
279 there is only one (1) source for the required personal or  
280 professional service, then the agency may appeal to the Public  
281 Procurement Review Board. The agency has the burden of proving  
282 that the personal or professional service is only provided by one  
283 (1) source.

284 3. If the Public Procurement Review Board has  
285 any reasonable doubt as to whether the personal or professional  
286 service can only be provided by one (1) source, then the agency  
287 must submit the procurement of the personal or professional  
288 service to an advertised competitive bid or selection process. No  
289 action taken by the Public Procurement Review Board in this appeal  
290 process shall be valid unless approved by a majority of the  
291 members of the Public Procurement Review Board present and voting.



292 (vi) The Public Procurement Review Board shall  
293 prepare and submit a quarterly report to the House of  
294 Representatives and Senate Accountability, Efficiency and  
295 Transparency Committees that details the sole source contracts  
296 presented to the Public Procurement Review Board and the reasons  
297 that the Public Procurement Review Board approved or rejected each  
298 contract. These quarterly reports shall also include the  
299 documentation and memoranda required in subsection (4) of this  
300 section. An agency that submitted a sole source contract shall be  
301 prepared to explain the sole source contract to each committee by  
302 December 15 of each year upon request by the committee.

303 (p) Assess any fines and administrative penalties  
304 provided for in Sections 31-7-401 through 31-7-423 \* \* \*;

305 (q) (i) Promulgate rules and regulations for the  
306 procurement of advertising by state agencies.

307 (ii) For the purposes of this paragraph, the term  
308 "advertising":

309 1. Includes state agency purchases of  
310 promotional space or time with appropriated funds from newspapers,  
311 radio, television, billboards, pamphlets, brochures, flyers,  
312 professional publications, magazines, yellow pages and telephone  
313 directories, Internet, or other similar media, in order to promote  
314 a program or other activity of the agency; and

315 2. Does not include classified advertisements  
316 purchased in newspapers or other media announcing employment



317 opportunities or the placement of legal notices in newspapers of  
318 general circulation.

319 (iii) Regulations promulgated under the authority  
320 of this paragraph shall be applicable to all advertising purchases  
321 made by state agencies without regard to the value of the  
322 purchase. The Public Procurement Review Board shall review all  
323 proposed state agency advertising contracts before they become  
324 effective to ensure compliance with the Public Procurement Review  
325 Board's regulations and this paragraph.

326 (3) All submissions shall be made sufficiently in advance of  
327 each monthly meeting of the Public Procurement Review Board as  
328 prescribed by the Public Procurement Review Board. If the Public  
329 Procurement Review Board rejects any contract submitted for review  
330 or approval, the Public Procurement Review Board shall clearly set  
331 out the reasons for its action, including, but not limited to, the  
332 policy that the agency has violated in its submitted contract and  
333 any corrective actions that the agency may take to amend the  
334 contract to comply with the rules and regulations of the Public  
335 Procurement Review Board.

336 (4) All sole source contracts for personal and professional  
337 services awarded by state agencies, other than those exempted  
338 under Section 27-104-7(2)(f) and (8), whether approved by an  
339 agency head or the Public Procurement Review Board, shall contain  
340 in the procurement file a written determination for the approval,  
341 using a request form furnished by the Public Procurement Review



342 Board. The written determination shall document the basis for the  
343 determination, including any market analysis conducted in order to  
344 ensure that the service required was practicably available from  
345 only one (1) source. A memorandum shall accompany the request  
346 form and address the following four (4) points:

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

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

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

353 (d) Description of the efforts that were made to  
354 conduct a noncompetitive negotiation to get the best possible  
355 price for the taxpayers.

356 (5) In conjunction with the State Personnel Board, the  
357 Public Procurement Review Board shall develop and promulgate rules  
358 and regulations to define the allowable legal relationship between  
359 contract employees and the contracting departments, agencies and  
360 institutions of state government under the jurisdiction of the  
361 State Personnel Board, in compliance with the applicable rules and  
362 regulations of the federal Internal Revenue Service (IRS) for  
363 federal employment tax purposes. Under these regulations, the  
364 usual common law rules are applicable to determine and require  
365 that such worker is an independent contractor and not an employee,  
366 requiring evidence of lawful behavioral control, lawful financial



367 control and lawful relationship of the parties. Any state  
368 department, agency or institution shall only be authorized to  
369 contract for personnel services in compliance with those  
370 regulations.

371 (6) No member of the Public Procurement Review Board shall  
372 use his or her official authority or influence to coerce, by  
373 threat of discharge from employment, or otherwise, the purchase of  
374 commodities, the contracting for personal or professional  
375 services, or the contracting for public construction under this  
376 chapter.

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

380 (8) Nothing in this section shall impair or limit the  
381 authority of the Board of Trustees of the Public Employees'  
382 Retirement System to enter into any personal or professional  
383 services contracts directly related to their constitutional  
384 obligation to manage the trust funds, including, but not limited  
385 to, actuarial, custodial banks, cash management, investment  
386 consultant and investment management contracts.

387 (9) Notwithstanding the exemption of personal and  
388 professional services contracts entered into by the Department of  
389 Human Services and personal and professional services contracts  
390 entered into by the Department of Child Protection Services from  
391 the provisions of this section under subsection (2)(f), before the





392 Department of Human Services or the Department of Child Protection  
393 Services may enter into a personal or professional service  
394 contract, the department(s) shall give notice of the proposed  
395 personal or professional service contract to the Public  
396 Procurement Review Board for any recommendations by the board.  
397 Upon receipt of the notice, the board shall post the notice on its  
398 website and on the procurement portal website established by  
399 Sections 25-53-151 and 27-104-165. If the board does not respond  
400 to the department(s) within seven (7) calendar days after  
401 receiving the notice, the department(s) may enter the proposed  
402 personal or professional service contract. If the board responds  
403 to the department(s) within seven (7) calendar days, then the  
404 board has seven (7) calendar days from the date of its initial  
405 response to provide any additional recommendations. After the end  
406 of the second seven-day period, the department(s) may enter the  
407 proposed personal or professional service contract. The board is  
408 not authorized to disapprove any proposed personal or professional  
409 services contracts. This subsection shall stand repealed on July  
410 1, 2019.

411         **SECTION 2.** This act shall take effect and be in force from  
412 and after July 1, 2018.

