

By: Representative White

To: Public Health and Human
ServicesHOUSE BILL NO. 714
(As Sent to Governor)

1 AN ACT TO AMEND SECTIONS 25-53-1 AND 25-53-5, MISSISSIPPI
2 CODE OF 1972, TO EXTEND THE DATE OF THE REPEALERS ON THOSE
3 PROVISIONS OF LAW WHICH EXEMPT ACTIONS OF THE DEPARTMENT OF HUMAN
4 SERVICES AND THE DEPARTMENT OF CHILD PROTECTION SERVICES FROM THE
5 REGULATIONS OF THE MISSISSIPPI DEPARTMENT OF INFORMATION
6 TECHNOLOGY SERVICES (MDITS); TO AMEND SECTION 25-9-127,
7 MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE THROUGH WHICH ACTIONS
8 OF THE DEPARTMENT OF HUMAN SERVICES AND THE DEPARTMENT OF CHILD
9 PROTECTION SERVICES ARE EXEMPTED FROM STATE PERSONNEL BOARD
10 REGULATIONS; TO AMEND SECTION 27-104-7, MISSISSIPPI CODE OF 1972,
11 TO EXTEND THE DATE OF THE REPEALER ON THOSE PROVISIONS OF LAW
12 WHICH EXEMPT PERSONAL AND PROFESSIONAL SERVICE CONTRACTS ENTERED
13 INTO BY THE DEPARTMENT OF HUMAN SERVICES AND THE DEPARTMENT OF
14 CHILD PROTECTION SERVICES FROM THE REGULATIONS OF THE PUBLIC
15 PROCUREMENT REVIEW BOARD; AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** Section 25-53-1, Mississippi Code of 1972, is
18 amended as follows:

19 25-53-1. The Legislature recognizes that in order for the
20 State of Mississippi to receive the maximum use and benefit from
21 information technology and services now in operation or which will
22 in the future be placed in operation, there should be full
23 cooperation and cohesive planning and effort by and between the
24 several state agencies and that it is the responsibility of



the * * * Legislature to provide statutory authority therefor.
The Legislature, therefore, declares and determines that for these
and other related purposes there is hereby established an agency
of state government to be known as the Mississippi Department of
Information Technology Services (MDITS). The Legislature further
declares that the Mississippi Department of Information Technology
Services (MDITS) shall provide statewide services that facilitate
cost-effective information processing and telecommunication
solutions. State agencies shall work in full cooperation with the
board of MDITS to identify opportunities to minimize duplication,
reduce costs and improve the efficiency of providing common
technology services across agency boundaries. The provisions of
this chapter shall not apply to the Department of Human Services
for a period of three (3) years beginning July 1, * * * 2017. The
provisions of this chapter shall not apply to the Department of
Child Protection Services for a period of three (3) years
beginning July 1, * * * 2017.

Notwithstanding the exemption of the Department of Human
Services and the Department of Child Protection Services from the
provisions of this section, before the Department of Human
Services or the Department of Child Protection Services may take
an action that would otherwise be subject to the provisions of
this section, the department(s) shall give notice of the proposed
action to the MDITS for any recommendations by the MDITS. Upon
receipt of the notice, the MDITS shall post the notice on its



website and on the procurement portal website established by Sections 25-53-151 and 27-104-165. If the MDITS does not respond to the department(s) within seven (7) calendar days after receiving the notice, the department(s) may take the proposed action. If the MDITS responds to the department(s) within seven (7) calendar days, then the MDITS has seven (7) calendar days from the date of its initial response to provide any additional recommendations. After the end of the second seven-day period, the department(s) may take the proposed action. The MDITS is not authorized to disapprove any proposed actions that would otherwise be subject to the provisions of this section. This paragraph shall stand repealed on July 1, * * * 2020.

SECTION 2. Section 25-53-5, Mississippi Code of 1972, is amended as follows:

25-53-5. The authority shall have the following powers, duties, and responsibilities:

(a) (i) The authority shall provide for the development of plans for the efficient acquisition and utilization of computer equipment and services by all agencies of state government, and provide for their implementation. In so doing, the authority may use the MDITS' staff, at the discretion of the executive director of the authority, or the authority may contract for the services of qualified consulting firms in the field of information technology and utilize the service of such consultants as may be necessary for such purposes. Pursuant to Section



75 25-53-1, the provisions of this section shall not apply to the
76 Department of Human Services for a period of three (3) years
77 beginning on July 1, * * * 2017. Pursuant to Section 25-53-1, the
78 provisions of this section shall not apply to the Department of
79 Child Protection Services for a period of three (3) years
80 beginning July 1, * * * 2017.

81 (ii) Notwithstanding the exemption of the
82 Department of Human Services and the Department of Child
83 Protection Services from the provisions of this section, before
84 the Department of Human Services or the Department of Child
85 Protection Services may take an action that would otherwise be
86 subject to the provisions of this section, the department(s) shall
87 give notice of the proposed action to the MDITS for any
88 recommendations by the MDITS. Upon receipt of the notice, the
89 MDITS shall post the notice on its website and on the procurement
90 portal website established by Sections 25-53-151 and 27-104-165.
91 If the MDITS does not respond to the department(s) within seven
92 (7) calendar days after receiving the notice, the department(s)
93 may take the proposed action. If the MDITS responds to the
94 department(s) within seven (7) calendar days, then the MDITS has
95 seven (7) calendar days from the date of its initial response to
96 provide any additional recommendations. After the end of the
97 second seven-day period, the department(s) may take the proposed
98 action. The MDITS is not authorized to disapprove any proposed
99 actions that would otherwise be subject to the provisions of this



section. This subparagraph (ii) shall stand repealed on July 1, * * * 2020.

(b) The authority shall immediately institute procedures for carrying out the purposes of this chapter and supervise the efficient execution of the powers and duties of the office of executive director of the authority. In the execution of its functions under this chapter, the authority shall maintain as a paramount consideration the successful internal organization and operation of the several agencies so that efficiency existing therein shall not be adversely affected or impaired. In executing its functions in relation to the institutions of higher learning and junior colleges in the state, the authority shall take into consideration the special needs of such institutions in relation to the fields of teaching and scientific research.

(c) Title of whatever nature of all computer equipment now vested in any agency of the State of Mississippi is hereby vested in the authority, and no such equipment shall be disposed of in any manner except in accordance with the direction of the authority or under the provisions of such rules and regulations as may hereafter be adopted by the authority in relation thereto.

(d) The authority shall adopt rules, regulations, and procedures governing the acquisition of computer and telecommunications equipment and services which shall, to the fullest extent practicable, insure the maximum of competition between all manufacturers of supplies or equipment or services.



125 In the writing of specifications, in the making of contracts
126 relating to the acquisition of such equipment and services, and in
127 the performance of its other duties the authority shall provide
128 for the maximum compatibility of all information systems hereafter
129 installed or utilized by all state agencies and may require the
130 use of common computer languages where necessary to accomplish the
131 purposes of this chapter. The authority may establish by
132 regulation and charge reasonable fees on a nondiscriminatory basis
133 for the furnishing to bidders of copies of bid specifications and
134 other documents issued by the authority.

135 (e) The authority shall adopt rules and regulations
136 governing the sharing with, or the sale or lease of information
137 technology services to any nonstate agency or person. Such
138 regulations shall provide that any such sharing, sale or lease
139 shall be restricted in that same shall be accomplished only where
140 such services are not readily available otherwise within the
141 state, and then only at a charge to the user not less than the
142 prevailing rate of charge for similar services by private
143 enterprise within this state.

144 (f) The authority may, in its discretion, establish a
145 special technical advisory committee or committees to study and
146 make recommendations on technology matters within the competence
147 of the authority as the authority may see fit. Persons serving on
148 the Information Resource Council, its task forces, or any such
149 technical advisory committees shall be entitled to receive their



150 actual and necessary expenses actually incurred in the performance
151 of such duties, together with mileage as provided by law for state
152 employees, provided the same has been authorized by a resolution
153 duly adopted by the authority and entered on its minutes prior to
154 the performance of such duties.

155 (g) The authority may provide for the development and
156 require the adoption of standardized computer programs and may
157 provide for the dissemination of information to and the
158 establishment of training programs for the personnel of the
159 various information technology centers of state agencies and
160 personnel of the agencies utilizing the services thereof.

161 (h) The authority shall adopt reasonable rules and
162 regulations requiring the reporting to the authority through the
163 office of executive director of such information as may be
164 required for carrying out the purposes of this chapter and may
165 also establish such reasonable procedures to be followed in the
166 presentation of bills for payment under the terms of all contracts
167 for the acquisition of computer equipment and services now or
168 hereafter in force as may be required by the authority or by the
169 executive director in the execution of their powers and duties.

170 (i) The authority shall require such adequate
171 documentation of information technology procedures utilized by the
172 various state agencies and may require the establishment of such
173 organizational structures within state agencies relating to



information technology operations as may be necessary to effectuate the purposes of this chapter.

(j) The authority may adopt such further reasonable rules and regulations as may be necessary to fully implement the purposes of this chapter. All rules and regulations adopted by the authority shall be published and disseminated in readily accessible form to all affected state agencies, and to all current suppliers of computer equipment and services to the state, and to all prospective suppliers requesting the same. Such rules and regulations shall be kept current, be periodically revised, and copies thereof shall be available at all times for inspection by the public at reasonable hours in the offices of the authority. Whenever possible no rule, regulation or any proposed amendment to such rules and regulations shall be finally adopted or enforced until copies of the proposed rules and regulations have been furnished to all interested parties for their comment and suggestions.

(k) The authority shall establish rules and regulations which shall provide for the submission of all contracts proposed to be executed by the executive director for computer equipment or services to the authority for approval before final execution, and the authority may provide that such contracts involving the expenditure of less than such specified amount as may be established by the authority may be finally executed by the



198 executive director without first obtaining such approval by the
199 authority.

200 (l) The authority is authorized to purchase, lease, or
201 rent computer equipment or services and to operate that equipment
202 and use those services in providing services to one or more state
203 agencies when in its opinion such operation will provide maximum
204 efficiency and economy in the functions of any such agency or
205 agencies.

206 (m) Upon the request of the governing body of a
207 political subdivision or instrumentality, the authority shall
208 assist the political subdivision or instrumentality in its
209 development of plans for the efficient acquisition and utilization
210 of computer equipment and services. An appropriate fee shall be
211 charged the political subdivision by the authority for such
212 assistance.

213 (n) The authority shall adopt rules and regulations
214 governing the protest procedures to be followed by any actual or
215 prospective bidder, offerer or contractor who is aggrieved in
216 connection with the solicitation or award of a contract for the
217 acquisition of computer equipment or services. Such rules and
218 regulations shall prescribe the manner, time and procedure for
219 making protests and may provide that a protest not timely filed
220 shall be summarily denied. The authority may require the
221 protesting party, at the time of filing the protest, to post a
222 bond, payable to the state, in an amount that the authority



determines sufficient to cover any expense or loss incurred by the state, the authority or any state agency as a result of the protest if the protest subsequently is determined by a court of competent jurisdiction to have been filed without any substantial basis or reasonable expectation to believe that the protest was meritorious; however, in no event may the amount of the bond required exceed a reasonable estimate of the total project cost. The authority, in its discretion, also may prohibit any prospective bidder, offerer or contractor who is a party to any litigation involving any such contract with the state, the authority or any agency of the state to participate in any other such bid, offer or contract, or to be awarded any such contract, during the pendency of the litigation.

(o) The authority shall make a report in writing to the Legislature each year in the month of January. Such report shall contain a full and detailed account of the work of the authority for the preceding year as specified in Section 25-53-29(3).

All acquisitions of computer equipment and services involving the expenditure of funds in excess of the dollar amount established in Section 31-7-13(c), or rentals or leases in excess of the dollar amount established in Section 31-7-13(c) for the term of the contract, shall be based upon competitive and open specifications, and contracts therefor shall be entered into only after advertisements for bids are published in one or more daily newspapers having a general circulation in the state not less than



fourteen (14) days prior to receiving sealed bids therefor. The authority may reserve the right to reject any or all bids, and if all bids are rejected, the authority may negotiate a contract within the limitations of the specifications so long as the terms of any such negotiated contract are equal to or better than the comparable terms submitted by the lowest and best bidder, and so long as the total cost to the State of Mississippi does not exceed the lowest bid. If the authority accepts one (1) of such bids, it shall be that which is the lowest and best.

(p) When applicable, the authority may procure equipment, systems and related services in accordance with the law or regulations, or both, which govern the Bureau of Purchasing of the Office of General Services or which govern the Mississippi Department of Information Technology Services procurement of telecommunications equipment, software and services.

(q) The authority is authorized to purchase, lease, or rent information technology and services for the purpose of establishing pilot projects to investigate emerging technologies. These acquisitions shall be limited to new technologies and shall be limited to an amount set by annual appropriation of the Legislature. These acquisitions shall be exempt from the advertising and bidding requirement.

(r) All fees collected by the Mississippi Department of Information Technology Services shall be deposited into the



Mississippi Department of Information Technology Services
Revolving Fund unless otherwise specified by the Legislature.

(s) The authority shall work closely with the council to bring about effective coordination of policies, standards and procedures relating to procurement of remote sensing and geographic information systems (GIS) resources. In addition, the authority is responsible for development, operation and maintenance of a delivery system infrastructure for geographic information systems data. The authority shall provide a warehouse for Mississippi's geographic information systems data.

(t) The authority shall manage one or more State Data Centers to provide information technology services on a cost-sharing basis. In determining the appropriate services to be provided through the State Data Center, the authority should consider those services that:

(i) Result in savings to the state as a whole;
(ii) Improve and enhance the security and reliability of the state's information and business systems; and
(iii) Optimize the efficient use of the state's information technology assets, including, but not limited to, promoting partnerships with the state institutions of higher learning and community colleges to capitalize on advanced information technology resources.

(u) The authority shall increase federal participation in the cost of the State Data Center to the extent provided by law



297 and its shared technology infrastructure through providing such
298 shared services to agencies that receive federal funds. With
299 regard to state institutions of higher learning and community
300 colleges, the authority may provide shared services when mutually
301 agreeable, following a determination by both the authority and the
302 Board of Trustees of State Institutions of Higher Learning or the
303 Mississippi Community College Board, as the case may be, that the
304 sharing of services is mutually beneficial.

305 (v) The authority, in its discretion, may require new
306 or replacement agency business applications to be hosted at the
307 State Data Center. With regard to state institutions of higher
308 learning and community colleges, the authority and the Board of
309 Trustees of State Institutions of Higher Learning or the
310 Mississippi Community College Board, as the case may be, may agree
311 that institutions of higher learning or community colleges may
312 utilize business applications that are hosted at the State Data
313 Center, following a determination by both the authority and the
314 applicable board that the hosting of those applications is
315 mutually beneficial. In addition, the authority may establish
316 partnerships to capitalize on the advanced technology resources of
317 the Board of Trustees of State Institutions of Higher Learning or
318 the Mississippi Community College Board, following a determination
319 by both the authority and the applicable board that such a
320 partnership is mutually beneficial.



(w) The authority shall provide a periodic update regarding reform-based information technology initiatives to the Chairmen of the House and Senate Accountability, Efficiency and Transparency Committees.

From and after July 1, 2018, the expenses of this agency shall be defrayed by appropriation from the State General Fund. In addition, in order to receive the maximum use and benefit from information technology and services, expenses for the provision of statewide shared services that facilitate cost-effective information processing and telecommunication solutions shall be defrayed by pass-through funding and shall be deposited into the Mississippi Department of Information Technology Services Revolving Fund unless otherwise specified by the Legislature. These funds shall only be utilized to pay the actual costs incurred by the Mississippi Department of Information Technology Services for providing these shared services to state agencies. Furthermore, state agencies shall work in full cooperation with the Board of the Mississippi Department of Information Technology Services to identify computer equipment or services to minimize duplication, reduce costs, and improve the efficiency of providing common technology services across agency boundaries.

SECTION 3. Section 25-9-127, Mississippi Code of 1972, is amended as follows:

25-9-127. (1) No employee of any department, agency or institution who is included under this chapter or hereafter



346 included under its authority, and who is subject to the rules and
347 regulations prescribed by the state personnel system, may be
348 dismissed or otherwise adversely affected as to compensation or
349 employment status except for inefficiency or other good cause, and
350 after written notice and hearing within the department, agency or
351 institution as shall be specified in the rules and regulations of
352 the State Personnel Board complying with due process of law; and
353 any employee who has by written notice of dismissal or action
354 adversely affecting his compensation or employment status shall,
355 on hearing and on any appeal of any decision made in such action,
356 be required to furnish evidence that the reasons stated in the
357 notice of dismissal or action adversely affecting his compensation
358 or employment status are not true or are not sufficient grounds
359 for the action taken; provided, however, that this provision shall
360 not apply (a) to persons separated from any department, agency or
361 institution due to curtailment of funds or reduction in staff when
362 such separation is in accordance with rules and regulations of the
363 state personnel system; (b) during the probationary period of
364 state service of twelve (12) months; and (c) to an executive
365 officer of any state agency who serves at the will and pleasure of
366 the Governor, board, commission or other appointing authority.

367 (2) The operation of a state-owned motor vehicle without a
368 valid Mississippi driver's license by an employee of any
369 department, agency or institution that is included under this
370 chapter and that is subject to the rules and regulations of the



state personnel system shall constitute good cause for dismissal of such person from employment.

(3) Beginning July 1, 1999, every male between the ages of eighteen (18) and twenty-six (26) who is required to register under the federal Military Selective Service Act, 50 USCS App. 453, and who is an employee of the state shall not be promoted to any higher position of employment with the state until he submits to the person, commission, board or agency by which he is employed satisfactory documentation of his compliance with the draft registration requirements of the Military Selective Service Act. The documentation shall include a signed affirmation under penalty of perjury that the male employee has complied with the requirements of the Military Selective Service Act.

(4) For a period of two (2) years beginning July 1, 2014, the provisions of subsection (1) shall not apply to the personnel actions of the State Department of Education that are subject to the rules and regulations of the State Personnel Board, and all employees of the department shall be classified as nonstate service during that period. However, any employee hired after July 1, 2014, by the department shall meet the criteria of the State Personnel Board as it presently exists for employment. The State Superintendent of Public Education and the State Board of Education shall consult with the Office of the Attorney General before taking personnel actions authorized by this section to



review those actions for compliance with applicable state and federal law.

It is not the intention or effect of this section to include any school attendance officer in any exemption from coverage under the State Personnel Board policy or regulations, including, but not limited to, termination and conditions of employment.

(5) (a) For a period of two (2) years beginning July 1, 2015, the provisions of subsection (1) shall not apply to the personnel actions of the Department of Corrections, and all employees of the department shall be classified as nonstate service during that period. However, any employee hired after July 1, 2015, by the department shall meet the criteria of the State Personnel Board as it presently exists for employment.

(b) Additionally, for a period of one (1) year beginning July 1, 2016, the personnel actions of the Commissioner of the Department of Corrections shall be exempt from State Personnel Board rules, regulations and procedures in order to give the commissioner flexibility in making an orderly, effective and timely reorganization and realignment of the department.

(c) The Commissioner of Corrections shall consult with the Office of the Attorney General before personnel actions authorized by this section to review those actions for compliance with applicable state and federal law.

(6) Through July 1, * * * 2020, the provisions of subsection (1) of this section shall not apply to the personnel actions of



the Department of Human Services that are subject to the rules and regulations of the State Personnel Board, and all employees of the department shall be classified as nonstate service during that period. Any employee hired on or after July 1, * * * 2020, by the department shall meet the criteria of the State Personnel Board as it presently exists for employment. The Executive Director of Human Services shall consult with the Office of the Attorney General before taking personnel actions authorized by this section to review those actions for compliance with applicable state and federal law.

(7) Through July 1, * * * 2020, the provisions of subsection (1) of this section shall not apply to the personnel actions of the Department of Child Protection Services that are subject to the rules and regulations of the State Personnel Board, and all employees of the department shall be classified as nonstate service during that period. Any employee hired on or after July 1, * * * 2020, by the division shall meet the criteria of the State Personnel Board as it presently exists for employment. The Commissioner of Child Protection Services shall consult with the Office of the Attorney General before taking personnel actions authorized by this section to review those actions for compliance with applicable state and federal law.

(8) Any state agency whose personnel actions are exempted in this section from the rules, regulations and procedures of the State Personnel Board shall file with the Lieutenant Governor, the



Speaker of the House of Representatives, and the members of the Senate and House Accountability, Efficiency * * * and Transparency Committees an annual report no later than July 1, 2016, and each year thereafter while under the exemption. Such annual report shall contain the following information:

(a) The number of current employees who received an increase in salary during the past fiscal year and the amount of the increase;

(b) The number of employees who were dismissed from the agency or otherwise adversely affected as to compensation or employment status during the past fiscal year, including a description of such adverse effects; and

(c) The number of new employees hired during the past fiscal year and the starting salaries of each new employee.

SECTION 4. 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



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

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

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

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

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

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

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

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

487 (c) When appointing members to the Public Procurement
488 Review Board, the Governor and Lieutenant Governor shall take into
489 consideration persons who possess at least five (5) years of
490 management experience in general business, healthcare or finance
491 for an organization, corporation or other public or private
492 entity. Any person, or any employee or owner of a company, who



receives any grants, procurements or contracts that are subject to approval under this section shall not be appointed to the Public Procurement Review Board. Any person, or any employee or owner of a company, who is a principal of the source providing a personal or professional service shall not be appointed to the Public Procurement Review Board if the principal owns or controls a greater than five percent (5%) interest or has an ownership value of One Million Dollars (\$1,000,000.00) in the source's business, whichever is smaller. No member shall be an officer or employee of the State of Mississippi while serving as a voting member on the Public Procurement Review Board.

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

(e) The members of the Public Procurement Review Board shall elect a chair from among the membership, and he or she shall preside over the meetings of the board. The board shall annually elect a vice chair, who shall serve in the absence of the chair. No business shall be transacted, including adoption of rules of procedure, without the presence of a quorum of the board. Three (3) members shall be a quorum. No action shall be valid unless approved by 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 requesting to lease such space to provide the following information that shall be published by the Department of Finance and Administration on its website: the agency to lease the space; the terms of the lease; the approximate square feet to be leased;



the use for the space; a description of a suitable space; the general location desired for the leased space; the contact information for a person from the agency; the deadline date for the agency to have received a lease proposal; any other specific terms or conditions of the agency; and any other information deemed appropriate by the Division of Real Property Management of the Department of Finance and Administration or the Public Procurement Review Board. The information shall be provided sufficiently in advance of the time the space is needed to allow the Division of Real Property Management of the Department of Finance and Administration to review and preapprove the lease before the time for advertisement begins;

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

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



593 public affairs, legislative advocacy services or any other
594 contract that the board deems appropriate for oversight, with the
595 exception of any personal service contracts entered into by any
596 agency that employs only nonstate service employees as defined in
597 Section 25-9-107(c), any personal service contracts entered into
598 for computer or information technology-related services governed
599 by the Mississippi Department of Information Technology Services,
600 any personal service contracts entered into by the individual
601 state institutions of higher learning, any personal service
602 contracts entered into by the Mississippi Department of
603 Transportation, any personal service contracts entered into by the
604 Department of Human Services through June 30, * * * 2020, which
605 the Executive Director of the Department of Human Services
606 determines would be useful in establishing and operating the
607 Department of Child Protection Services, any personal service
608 contracts entered into by the Department of Child Protection
609 Services through June 30, * * * 2020, any contracts for
610 entertainers and/or performers at the Mississippi State
611 Fairgrounds entered into by the Mississippi Fair Commission, and
612 any contract for attorney, accountant, actuary auditor, architect,
613 engineer, and utility rate expert services. Any such rules and
614 regulations shall provide for maintaining continuous internal
615 audit covering the activities of such agency affecting its revenue
616 and expenditures as required under Section 7-7-3(6)(d). Any rules
617 and regulation changes related to personal and professional



618 services contracts that the Public Procurement Review Board may
619 propose shall be submitted to the Chairs of the Accountability,
620 Efficiency and Transparency Committees of the Senate and House of
621 Representatives and the Chairs of the Appropriation Committees of
622 the Senate and House of Representatives at least fifteen (15) days
623 before the board votes on the proposed changes, and those rules
624 and regulation changes, if adopted, shall be promulgated in
625 accordance with the Mississippi Administrative Procedures Act;

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

630 (h) Develop mandatory standards with respect to
631 contractual services personnel that require invitations for public
632 bid, requests for proposals, record keeping and financial
633 responsibility of contractors. The Public Procurement Review
634 Board shall, unless exempted under this paragraph (h) or under
635 paragraph (i) or (o) of this subsection (2), require the agency
636 involved to submit the procurement to a competitive procurement
637 process, and may reserve the right to reject any or all resulting
638 procurements;

639 (i) Prescribe certain circumstances by which agency
640 heads may enter into contracts for personal and professional
641 services without receiving prior approval from the Public
642 Procurement Review Board. The Public Procurement Review Board may



643 establish a preapproved list of providers of various personal and
644 professional services for set prices with which state agencies may
645 contract without bidding or prior approval from the board;

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

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

659 (j) Provide standards for the issuance of requests for
660 proposals, the evaluation of proposals received, consideration of
661 costs and quality of services proposed, contract negotiations, the
662 administrative monitoring of contract performance by the agency
663 and successful steps in terminating a contract;

664 (k) Present recommendations for governmental
665 privatization and to evaluate privatization proposals submitted by
666 any state agency;



667 (1) Authorize personal and professional service
668 contracts to be effective for more than one (1) year provided a
669 funding condition is included in any such multiple year contract,
670 except the State Board of Education, which shall have the
671 authority to enter into contractual agreements for student
672 assessment for a period up to ten (10) years. The State Board of
673 Education shall procure these services in accordance with the
674 Public Procurement Review Board procurement regulations;

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

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

681 (o) Develop and implement the following standards and
682 procedures for the approval of any sole source contract for
683 personal and professional services regardless of the value of the
684 procurement:

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

688 (ii) An agency that has been issued a binding,
689 valid court order mandating that a particular source or provider
690 must be used for the required service must include a copy of the
691 applicable court order in all future sole source contract reviews



692 for the particular personal or professional service referenced in
693 the court order.

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

702 1. The personal or professional service
703 offered in the contract;

704 2. An explanation of why the personal or
705 professional service is the only one that can meet the needs of
706 the agency;

707 3. An explanation of why the source is the
708 only person or entity that can provide the required personal or
709 professional service;

710 4. An explanation of why the amount to be
711 expended for the personal or professional service is reasonable;
712 and

713 5. The efforts that the agency went through
714 to obtain the best possible price for the personal or professional
715 service.



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

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

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

3. If the Public Procurement Review Board has any reasonable doubt as to whether the personal or professional service can only be provided by one (1) source, then the agency must submit the procurement of the personal or professional



741 service to an advertised competitive bid or selection process. No
742 action taken by the Public Procurement Review Board in this appeal
743 process shall be valid unless approved by a majority of the
744 members of the Public Procurement Review Board present and voting.

745 (vi) The Public Procurement Review Board shall
746 prepare and submit a quarterly report to the House of
747 Representatives and Senate Accountability, Efficiency and
748 Transparency Committees that details the sole source contracts
749 presented to the Public Procurement Review Board and the reasons
750 that the Public Procurement Review Board approved or rejected each
751 contract. These quarterly reports shall also include the
752 documentation and memoranda required in subsection (4) of this
753 section. An agency that submitted a sole source contract shall be
754 prepared to explain the sole source contract to each committee by
755 December 15 of each year upon request by the committee.

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

758 (3) All submissions shall be made sufficiently in advance of
759 each monthly meeting of the Public Procurement Review Board as
760 prescribed by the Public Procurement Review Board. If the Public
761 Procurement Review Board rejects any contract submitted for review
762 or approval, the Public Procurement Review Board shall clearly set
763 out the reasons for its action, including, but not limited to, the
764 policy that the agency has violated in its submitted contract and
765 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

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

(5) In conjunction with the State Personnel Board, the Public Procurement Review Board shall develop and promulgate rules and regulations to define the allowable legal relationship between



791 contract employees and the contracting departments, agencies and
792 institutions of state government under the jurisdiction of the
793 State Personnel Board, in compliance with the applicable rules and
794 regulations of the federal Internal Revenue Service (IRS) for
795 federal employment tax purposes. Under these regulations, the
796 usual common law rules are applicable to determine and require
797 that such worker is an independent contractor and not an employee,
798 requiring evidence of lawful behavioral control, lawful financial
799 control and lawful relationship of the parties. Any state
800 department, agency or institution shall only be authorized to
801 contract for personnel services in compliance with those
802 regulations.

803 (6) No member of the Public Procurement Review Board shall
804 use his or her official authority or influence to coerce, by
805 threat of discharge from employment, or otherwise, the purchase of
806 commodities, the contracting for personal or professional
807 services, or the contracting for public construction under this
808 chapter.

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

812 (8) Nothing in this section shall impair or limit the
813 authority of the Board of Trustees of the Public Employees'
814 Retirement System to enter into any personal or professional
815 services contracts directly related to their constitutional



obligation to manage the trust funds, including, but not limited to, actuarial, custodial banks, cash management, investment consultant and investment management contracts.

(9) Notwithstanding the exemption of personal and professional services contracts entered into by the Department of Human Services and personal and professional services contracts entered into by the Department of Child Protection Services from the provisions of this section under subsection (2)(f), before the Department of Human Services or the Department of Child Protection Services may enter into a personal or professional service contract, the department(s) shall give notice of the proposed personal or professional service contract to the Public Procurement Review Board for any recommendations by the board. Upon receipt of the notice, the board shall post the notice on its website and on the procurement portal website established by Sections 25-53-151 and 27-104-165. If the board does not respond to the department(s) within seven (7) calendar days after receiving the notice, the department(s) may enter the proposed personal or professional service contract. If the board responds to the department(s) within seven (7) calendar days, then the board has seven (7) calendar days from the date of its initial response to provide any additional recommendations. After the end of the second seven-day period, the department(s) may enter the proposed personal or professional service contract. The board is not authorized to disapprove any proposed personal or professional



841 services contracts. This subsection shall stand repealed on July
842 1, * * * 2020.

843 **SECTION 5.** This act shall take effect and be in force from
844 and after July 1, 2019.

