

By: Representative Turner

To: Accountability,
Efficiency, Transparency

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1204

1 AN ACT TO AMEND SECTION 25-61-5, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE MISSISSIPPI PUBLIC RECORDS ACT TO AUTHORIZE PUBLIC
3 BODIES TO CONTINUE TO EXECUTE A CONTRACT IF A COURT HAS NOT RULED
4 ON A PROTECTIVE ORDER WITHIN NINETY DAYS OF FILING; TO PROVIDE
5 THAT THE CONTRACT MAY STILL BE PROTESTED AFTER EXECUTION; TO BRING
6 FORWARD SECTION 25-61-9, MISSISSIPPI CODE OF 1972, FOR THE PURPOSE
7 OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 25-61-5, Mississippi Code of 1972, is
10 amended as follows:

11 25-61-5. (1) (a) Except as otherwise provided by Sections
12 25-61-9 and 25-61-11, all public records are hereby declared to be
13 public property, and any person shall have the right to inspect,
14 copy or mechanically reproduce or obtain a reproduction of any
15 public record of a public body in accordance with reasonable
16 written procedures adopted by the public body concerning the cost,
17 time, place and method of access, and public notice of the
18 procedures shall be given by the public body, or, if a public body
19 has not adopted written procedures, the right to inspect, copy or
20 mechanically reproduce or obtain a reproduction of a public record



21 of the public body shall be provided within one (1) working day
22 after a written request for a public record is made. No public
23 body shall adopt procedures which will authorize the public body
24 to produce or deny production of a public record later than seven
25 (7) working days from the date of the receipt of the request for
26 the production of the record.

27 (b) If a public body is unable to produce a public
28 record by the seventh working day after the request is made, the
29 public body must provide a written explanation to the person
30 making the request stating that the record requested will be
31 produced and specifying with particularity why the records cannot
32 be produced within the seven-day period. Unless there is mutual
33 agreement of the parties, or the information requested is part of
34 ongoing negotiations related to a request for competitive sealed
35 proposals, in no event shall the date for the public body's
36 production of the requested records be any later than fourteen
37 (14) working days from the receipt by the public body of the
38 original request. Production of competitive sealed proposals in
39 accordance with requests made pursuant to this section shall be no
40 later than seven (7) working days after the notice of intent to
41 award is issued to the winning proposer. Persons making a request
42 for production of competitive sealed proposals after the notice of
43 intent to award is issued by the public body shall have a
44 reasonable amount of time, but in no event less than seven (7)
45 working days after the production of the competitive sealed



46 proposals, to protest the procurement or intended award prior to
47 contract execution. However, in any instance where a person has
48 filed for a protective order for a competitive sealed proposal and
49 the court has not ruled on the protective order within ninety (90)
50 days of filing, then the public body may proceed with awarding the
51 contract without production of competitive sealed proposals and
52 the contract may be protested after execution.

53 (2) If any public record contains material which is not
54 exempted under this chapter, the public agency shall redact the
55 exempted material and make the nonexempted material available for
56 examination. Such public agency shall be entitled to charge a
57 reasonable fee for the redaction of any exempted material, not to
58 exceed the agency's actual cost.

59 (3) Denial by a public body of a request for access to or
60 copies of public records under this chapter shall be in writing
61 and shall contain a statement of the specific exemption relied
62 upon by the public body for the denial. Each public body shall
63 maintain a file of all denials of requests for public records.
64 Public bodies shall be required to preserve such denials on file
65 for not less than three (3) years from the date such denials are
66 made. This file shall be made available for inspection or
67 copying, or both, during regular office hours to any person upon
68 written request.

69 (4) This section shall stand repealed on July 1, 2021.



70 **SECTION 2.** Section 25-61-9, Mississippi Code of 1972, is
71 brought forward as follows:

72 25-61-9. (1) Records furnished to public bodies by third
73 parties which contain trade secrets or confidential commercial or
74 financial information shall not be subject to inspection,
75 examination, copying or reproduction under this chapter until
76 notice to third parties has been given, but the records shall be
77 released no later than twenty-one (21) days from the date the
78 third parties are given notice by the public body unless the third
79 parties have filed in chancery court a petition seeking a
80 protective order on or before the expiration of the twenty-one-day
81 time period. Any party seeking the protective order shall give
82 notice to the party requesting the information in accordance with
83 the Mississippi Rules of Civil Procedure.

84 (2) If any public record which is held to be exempt from
85 disclosure pursuant to this chapter contains material which is not
86 exempt pursuant to this chapter, the public body shall separate
87 the exempt material and make the nonexempt material available for
88 examination or copying, or both, as provided for in this chapter.

89 (3) Trade secrets and confidential commercial and financial
90 information of a proprietary nature developed by a college,
91 university or public hospital under contract with a firm,
92 business, partnership, association, corporation, individual or
93 other like entity shall not be subject to inspection, examination,
94 copying or reproduction under this chapter.



95 (4) Misappropriation of a trade secret shall be governed by
96 the provisions of the Mississippi Uniform Trade Secrets Act,
97 Sections 75-26-1 through 75-26-19.

98 (5) A waste minimization plan and any updates developed by
99 generators and facility operators under the Mississippi
100 Comprehensive Multimedia Waste Minimization Act of 1990 shall be
101 retained at the facility and shall not be subject to inspection,
102 examination, copying or reproduction under this chapter.

103 (6) Data processing software obtained by an agency under a
104 licensing agreement that prohibits its disclosure and which
105 software is a trade secret, as defined in Section 75-26-3, and
106 data processing software produced by a public body which is
107 sensitive must not be subject to inspection, copying or
108 reproduction under this chapter.

109 As used in this subsection, "sensitive" means only those
110 portions of data processing software, including the specifications
111 and documentation, used to:

112 (a) Collect, process, store, and retrieve information
113 which is exempt under this chapter.

114 (b) Control and direct access authorizations and
115 security measures for automated systems.

116 (c) Collect, process, store, and retrieve information,
117 disclosure of which would require a significant intrusion into the
118 business of the public body.



119 (7) For all procurement contracts awarded by state agencies,
120 the provisions of the contract which contain the commodities
121 purchased or the personal or professional services provided, the
122 unit prices contained within the procurement contracts, the
123 overall price to be paid, and the term of the contract shall not
124 be deemed to be a trade secret or confidential commercial or
125 financial information under this section, and shall be available
126 for examination, copying or reproduction as provided for in this
127 chapter. Any party seeking a protective order for a procurement
128 contract awarded by state agencies shall give notice to and
129 provide the reasons for the protective order to the party
130 requesting the information in accordance with the Mississippi
131 Rules of Civil Procedure. The notice and reasons for the
132 protective order must be posted on the Mississippi procurement
133 portal for a minimum of seven (7) days before filing the petition
134 seeking the protective order in chancery court. Any party seeking
135 a protective order in violation of this subsection may be barred
136 by a state agency from submitting bids, proposals or
137 qualifications for procurement for a period not to exceed five (5)
138 years.

139 **SECTION 3.** This act shall take effect and be in force from
140 and after July 1, 2019.

