

By: Representative Lamar

To: Public Property

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1531

1 AN ACT TO AMEND SECTION 31-11-3, MISSISSIPPI CODE OF 1972, TO
2 EXEMPT ARCHITECTURAL AND ENGINEERING CONTRACTS RELATING TO STATE
3 INSTITUTION OF HIGHER LEARNING CONSTRUCTION AND RENOVATION
4 PROJECTS FROM OVERSIGHT BY THE DEPARTMENT OF FINANCE AND
5 ADMINISTRATION WHENEVER THE BOARD OF TRUSTEES OF STATE
6 INSTITUTIONS OF HIGHER LEARNING ELECTS TO SELF-ADMINISTER A
7 PROJECT; TO AMEND SECTION 27-104-7, MISSISSIPPI CODE OF 1972, TO
8 EXEMPT CONTRACTS RELATING TO CONSTRUCTION PROJECTS THAT THE BOARD
9 OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING ELECTS TO
10 SELF-ADMINISTER FROM THE PURVIEW OF THE PUBLIC PROCUREMENT REVIEW
11 BOARD; TO AMEND SECTION 37-101-99, MISSISSIPPI CODE OF 1972, IN
12 CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR RELATED
13 PURPOSES.

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

15 **SECTION 1.** Section 31-11-3, Mississippi Code of 1972, is
16 amended as follows:

17 31-11-3. (1) The Department of Finance and Administration,
18 for the purposes of carrying out the provisions of this chapter,
19 in addition to all other rights and powers granted by law, shall
20 have full power and authority to employ and compensate architects
21 or other employees necessary for the purpose of making
22 inspections, preparing plans and specifications, supervising the
23 erection of any buildings, and making any repairs or additions as



24 may be determined by the Department of Finance and Administration
25 to be necessary, pursuant to the rules and regulations of the
26 State Personnel Board. The department shall have entire control
27 and supervision of, and determine what, if any, buildings,
28 additions, repairs, demolitions or improvements are to be made
29 under the provisions of this chapter, subject to the regulations
30 adopted by the Public Procurement Review Board.

31 (2) The department shall have full power to erect buildings,
32 make repairs, additions or improvements, demolitions, to grant or
33 acquire easements or rights-of-way, and to buy materials, supplies
34 and equipment for any of the institutions or departments of the
35 state subject to the regulations adopted by the Public Procurement
36 Review Board. In addition to other powers conferred, the
37 department shall have full power and authority, as directed by the
38 Legislature, or when funds have been appropriated for its use for
39 these purposes, to:

40 (a) Build a state office building;

41 (b) Build suitable plants or buildings for the use and
42 housing of any state schools or institutions, including the
43 building of plants or buildings for new state schools or
44 institutions, as provided for by the Legislature;

45 (c) Provide state aid for the construction of school
46 buildings;

47 (d) Promote and develop the training of returned
48 veterans of the United States in all sorts of educational and



49 vocational learning to be supplied by the proper educational
50 institution of the State of Mississippi, and in so doing allocate
51 monies appropriated to it for these purposes to the Governor for
52 use by him in setting up, maintaining and operating an office and
53 employing a state director of on-the-job training for veterans and
54 the personnel necessary in carrying out Public Law No. 346 of the
55 United States;

56 (e) Build and equip a hospital and administration
57 building at the Mississippi State Penitentiary;

58 (f) Build and equip additional buildings and wards at
59 the Boswell Retardation Center;

60 (g) Construct a sewage disposal and treatment plant at
61 the Mississippi State Hospital, and in so doing acquire additional
62 land as may be necessary, and to exercise the right of eminent
63 domain in the acquisition of this land;

64 (h) Build and equip the Mississippi central market and
65 purchase or acquire by eminent domain, if necessary, any lands
66 needed for this purpose;

67 (i) Build and equip suitable facilities for a training
68 and employing center for the blind;

69 (j) Build and equip a gymnasium at Columbia Training
70 School;

71 (k) Approve or disapprove the expenditure of any money
72 appropriated by the Legislature when authorized by the bill making
73 the appropriation;



74 (l) Expend monies appropriated to it in paying the
75 state's part of the cost of any street paving;

76 (m) Sell and convey state lands when authorized by the
77 Legislature, cause said lands to be properly surveyed and platted,
78 execute all deeds or other legal instruments, and do any and all
79 other things required to effectively carry out the purpose and
80 intent of the Legislature. Any transaction which involves state
81 lands under the provisions of this paragraph shall be done in a
82 manner consistent with the provisions of Section 29-1-1;

83 (n) Collect and receive from educational institutions
84 of the State of Mississippi monies required to be paid by these
85 institutions to the state in carrying out any veterans'
86 educational programs;

87 (o) Purchase lands for building sites, or as additions
88 to building sites, for the erection of buildings and other
89 facilities which the department is authorized to erect, and
90 demolish and dispose of old buildings, when necessary for the
91 proper construction of new buildings. Any transaction which
92 involves state lands under the provisions of this paragraph shall
93 be done in a manner consistent with the provisions of Section
94 29-1-1;

95 (p) Obtain business property insurance with a
96 deductible of not less than One Hundred Thousand Dollars
97 (\$100,000.00) on state-owned buildings under the management and
98 control of the department; and



99 (q) In consultation with and approval by the Chairmen
100 of the Public Property Committees of the Senate and the House of
101 Representatives, enter into contracts for the purpose of providing
102 parking spaces for state employees who work in the Woolfolk
103 Building, the Carroll Gartin Justice Building or the Walter
104 Sillers Office Building.

105 (3) The department shall survey state-owned and
106 state-utilized buildings to establish an estimate of the costs of
107 architectural alterations, pursuant to the Americans With
108 Disabilities Act of 1990, 42 USCS, Section 12111 et seq. The
109 department shall establish priorities for making the identified
110 architectural alterations and shall make known to the Legislative
111 Budget Office and to the Legislature the required cost to
112 effectuate such alterations. To meet the requirements of this
113 section, the department shall use standards of accessibility that
114 are at least as stringent as any applicable federal requirements
115 and may consider:

116 (a) Federal minimum guidelines and requirements issued
117 by the United States Architectural and Transportation Barriers
118 Compliance Board and standards issued by other federal agencies;

119 (b) The criteria contained in the American Standard
120 Specifications for Making Buildings Accessible and Usable by the
121 Physically Handicapped and any amendments thereto as approved by
122 the American Standards Association, Incorporated (ANSI Standards);

123 (c) Design manuals;



- 124 (d) Applicable federal guidelines;
- 125 (e) Current literature in the field;
- 126 (f) Applicable safety standards; and
- 127 (g) Any applicable environmental impact statements.

128 (4) The department shall observe the provisions of Section
129 31-5-23, in letting contracts and shall use Mississippi products,
130 including paint, varnish and lacquer which contain as vehicles
131 tung oil and either ester gum or modified resin (with rosin as the
132 principal base of constituents), and turpentine shall be used as a
133 solvent or thinner, where these products are available at a cost
134 not to exceed the cost of products grown, produced, prepared, made
135 or manufactured outside of the State of Mississippi.

136 (5) The department shall have authority to accept grants,
137 loans or donations from the United States government or from any
138 other sources for the purpose of matching funds in carrying out
139 the provisions of this chapter.

140 (6) The department shall build a wheelchair ramp at the War
141 Memorial Building which complies with all applicable federal laws,
142 regulations and specifications regarding wheelchair ramps.

143 (7) The department shall review and preapprove all
144 architectural or engineering service contracts entered into by any
145 state agency, institution, commission, board or authority,
146 regardless of the source of funding used to defray the costs of
147 the construction or renovation project, for which services are to
148 be obtained to ensure compliance with purchasing regulations and



149 to confirm that the contracts are procured by a competitive
150 qualification-based selection process except where such
151 appointment is for an emergency project or for a continuation of a
152 previous appointment for a directly related project. The
153 provisions of this subsection (7) shall not apply to:

154 (a) Any architectural or engineering contract fully
155 paid for by self-generated funds of any of the state institutions
156 of higher learning;

157 (b) Any architectural or engineering contract that the
158 Board of Trustees of State Institutions of Higher Learning
159 self-administers as provided under Section 27-104-7 (2) (b);

160 (c) * * * Community college projects that are fully
161 funded from local funds or other nonstate sources which are
162 outside the Department of Finance and Administration's
163 appropriations or as directed by the Legislature;

164 (d) * * * Any construction or design projects of the
165 State Military Department that are fully or partially funded from
166 federal funds or other nonstate sources; and

167 (e) * * * Any project of the State Department of
168 Transportation.

169 (8) (a) The department shall have the authority to obtain
170 annually from the state institutions of higher learning, the state
171 community colleges and junior colleges, the Department of Mental
172 Health, the Department of Corrections and the Department of
173 Wildlife, Fisheries and Parks information on all renovation and



174 repair expenditures for buildings under their operation and
175 control, including duties, responsibilities and costs of any
176 architect or engineer hired by any such institutions, and shall
177 annually report the same to the Legislative Budget Office, the
178 Chairman of the House Public Property Committee and the Chairman
179 of the Senate Public Property Committee before September 1.

180 (b) All state agencies, departments and institutions
181 are required to cooperate with the Department of Finance and
182 Administration in carrying out the provisions of this subsection.

183 (c) Expenditures shall not include those amounts
184 expended for janitorial, landscaping or administrative support,
185 but shall include expenditures from both state and nonstate
186 sources.

187 (d) Expenditures shall not include amounts expended by
188 the department on behalf of state agencies, departments and
189 institutions through the Department of Finance and Administration
190 administered contracts, but shall include amounts transferred to
191 the Department of Finance and Administration for support of such
192 contracts.

193 (9) As an alternative to other methods of awarding contracts
194 as prescribed by law, the department may elect to use the method
195 of contracting for construction projects set out in Sections
196 31-7-13.1 and 31-7-13.2; however, the dual-phase design-build
197 method of construction contracting authorized under Section
198 31-7-13.1 may be used only when the Legislature has specifically



199 required or authorized the use of this method in the legislation
200 authorizing a project.

201 (10) The department shall have the authority, for the
202 purposes of carrying out the provisions of this chapter, and in
203 addition to all other rights and powers granted by law, to create
204 and maintain a list of suspended and debarred contractors and
205 subcontractors. Consistent with this authority, the department
206 may adopt regulations governing the suspension or debarment of
207 contractors and subcontractors, which regulations shall be subject
208 to the approval of the Public Procurement Review Board. A
209 suspended or debarred contractor or subcontractor shall be
210 disqualified from consideration for contracts with the department
211 during the suspension or debarment period in accordance with the
212 department's regulations.

213 (11) This section shall not apply to the Mississippi State
214 Port Authority.

215 **SECTION 2.** Section 27-104-7, Mississippi Code of 1972, is
216 amended as follows:

217 27-104-7. (1) (a) There is created the Public Procurement
218 Review Board, which shall be reconstituted on January 1, 2018, and
219 shall be composed of the following members:

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

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



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

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

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

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

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

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

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

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

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



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

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

263 (e) The members of the Public Procurement Review Board
264 shall elect a chair from among the membership, and he or she shall
265 preside over the meetings of the board. The board shall annually
266 elect a vice chair, who shall serve in the absence of the chair.
267 No business shall be transacted, including adoption of rules of
268 procedure, without the presence of a quorum of the board. Three
269 (3) members shall be a quorum. No action shall be valid unless
270 approved by a majority of the members present and voting, entered
271 upon the minutes of the board and signed by the chair. Necessary
272 clerical and administrative support for the board shall be
273 provided by the Department of Finance and Administration. Minutes



274 shall be kept of the proceedings of each meeting, copies of which
275 shall be filed on a monthly basis with the chairs of the
276 Accountability, Efficiency and Transparency Committees of the
277 Senate and House of Representatives and the chairs of the
278 Appropriations Committees of the Senate and House of
279 Representatives.

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

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

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

290 The provisions of this paragraph shall not apply to such
291 contracts involving buildings and other facilities of state
292 institutions of higher learning which are paid for with
293 self-generated funds, nor to those contracts for the construction
294 and maintenance of buildings and other facilities of the state
295 institutions of higher learning, including related contracts for
296 architectural and engineering, which are funded in whole or in
297 part by general obligation bonds of the State of Mississippi at



298 institutions designated by the Board of Trustees of State

299 Institutions of Higher Learning provided that:

300 (i) The Board is authorized to administer and
301 approve contracts for construction and maintenance projects
302 contingent upon the execution of an agreement for each project
303 between such institution and the Department of Finance and
304 Administration;

305 (ii) The approval and execution of such agreement
306 shall not be unreasonably withheld by either party; and

307 (iii) Such agreement shall stipulate the
308 responsibilities of each party, applicable procurement
309 regulations, documentation and reporting requirements, conditions
310 prior to, and schedule of, disbursement of general obligation bond
311 funds to the institution as well as provisions concerning handling
312 of any remaining general obligation bonds at the completion of
313 such project.

314 (c) Adopt regulations governing any lease or rental
315 agreement by any state agency or department, including any state
316 agency financed entirely by federal funds, for space outside the
317 buildings under the jurisdiction of the Department of Finance and
318 Administration. These regulations shall require each agency
319 requesting to lease such space to provide the following
320 information that shall be published by the Department of Finance
321 and Administration on its website: the agency to lease the space;
322 the terms of the lease; the approximate square feet to be leased;



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

335 (d) Adopt, in its discretion, regulations to set aside
336 at least five percent (5%) of anticipated annual expenditures for
337 the purchase of commodities from minority businesses; however, all
338 such set-aside purchases shall comply with all purchasing
339 regulations promulgated by the department and shall be subject to
340 all bid requirements. Set-aside purchases for which competitive
341 bids are required shall be made from the lowest and best minority
342 business bidder; however, if no minority bid is available or if
343 the minority bid is more than two percent (2%) higher than the
344 lowest bid, then bids shall be accepted and awarded to the lowest
345 and best bidder. However, the provisions in this paragraph shall
346 not be construed to prohibit the rejection of a bid when only one
347 (1) bid is received. Such rejection shall be placed in the



348 minutes. For the purposes of this paragraph, the term "minority
349 business" means a business which is owned by a person who is a
350 citizen or lawful permanent resident of the United States and who
351 is:

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

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

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

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

362 (v) Female;

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

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



373 public affairs, legislative advocacy services or any other
374 contract that the board deems appropriate for oversight, with the
375 exception of any personal service contracts entered into by any
376 agency that employs only nonstate service employees as defined in
377 Section 25-9-107(c), any personal service contracts entered into
378 for computer or information technology-related services governed
379 by the Mississippi Department of Information Technology Services,
380 any personal service contracts entered into by the individual
381 state institutions of higher learning, any personal service
382 contracts entered into by the Mississippi Department of
383 Transportation, any personal service contracts entered into by the
384 Department of Human Services through June 30, 2019, which the
385 Executive Director of the Department of Human Services determines
386 would be useful in establishing and operating the Department of
387 Child Protection Services, any personal service contracts entered
388 into by the Department of Child Protection Services through June
389 30, 2019, any contracts for entertainers and/or performers at the
390 Mississippi State Fairgrounds entered into by the Mississippi Fair
391 Commission, and any contract for attorney, accountant, actuary
392 auditor, architect, engineer, and utility rate expert services.
393 Any such rules and regulations shall provide for maintaining
394 continuous internal audit covering the activities of such agency
395 affecting its revenue and expenditures as required under Section
396 7-7-3(6) (d). Any rules and regulation changes related to personal
397 and professional services contracts that the Public Procurement



398 Review Board may propose shall be submitted to the Chairs of the
399 Accountability, Efficiency and Transparency Committees of the
400 Senate and House of Representatives and the Chairs of the
401 Appropriation Committees of the Senate and House of
402 Representatives at least fifteen (15) days before the board votes
403 on the proposed changes, and those rules and regulation changes,
404 if adopted, shall be promulgated in accordance with the
405 Mississippi Administrative Procedures Act;

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

410 (h) Develop mandatory standards with respect to
411 contractual services personnel that require invitations for public
412 bid, requests for proposals, record keeping and financial
413 responsibility of contractors. The Public Procurement Review
414 Board shall, unless exempted under this paragraph (h) or under
415 paragraph (i) or (o) of this subsection (2), require the agency
416 involved to submit the procurement to a competitive procurement
417 process, and may reserve the right to reject any or all resulting
418 procurements;

419 (i) Prescribe certain circumstances by which agency
420 heads may enter into contracts for personal and professional
421 services without receiving prior approval from the Public
422 Procurement Review Board. The Public Procurement Review Board may



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

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

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

439 (j) Provide standards for the issuance of requests for
440 proposals, the evaluation of proposals received, consideration of
441 costs and quality of services proposed, contract negotiations, the
442 administrative monitoring of contract performance by the agency
443 and successful steps in terminating a contract;

444 (k) Present recommendations for governmental
445 privatization and to evaluate privatization proposals submitted by
446 any state agency;



447 (1) Authorize personal and professional service
448 contracts to be effective for more than one (1) year provided a
449 funding condition is included in any such multiple year contract,
450 except the State Board of Education, which shall have the
451 authority to enter into contractual agreements for student
452 assessment for a period up to ten (10) years. The State Board of
453 Education shall procure these services in accordance with the
454 Public Procurement Review Board procurement regulations;

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

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

461 (o) Develop and implement the following standards and
462 procedures for the approval of any sole source contract for
463 personal and professional services regardless of the value of the
464 procurement:

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

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



472 for the particular personal or professional service referenced in
473 the court order.

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

482 1. The personal or professional service
483 offered in the contract;

484 2. An explanation of why the personal or
485 professional service is the only one that can meet the needs of
486 the agency;

487 3. An explanation of why the source is the
488 only person or entity that can provide the required personal or
489 professional service;

490 4. An explanation of why the amount to be
491 expended for the personal or professional service is reasonable;
492 and

493 5. The efforts that the agency went through
494 to obtain the best possible price for the personal or professional
495 service.



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

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

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

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



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

525 (vi) The Public Procurement Review Board shall
526 prepare and submit a quarterly report to the House of
527 Representatives and Senate Accountability, Efficiency and
528 Transparency Committees that details the sole source contracts
529 presented to the Public Procurement Review Board and the reasons
530 that the Public Procurement Review Board approved or rejected each
531 contract. These quarterly reports shall also include the
532 documentation and memoranda required in subsection (4) of this
533 section. An agency that submitted a sole source contract shall be
534 prepared to explain the sole source contract to each committee by
535 December 15 of each year upon request by the committee.

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

538 (3) All submissions shall be made sufficiently in advance of
539 each monthly meeting of the Public Procurement Review Board as
540 prescribed by the Public Procurement Review Board. If the Public
541 Procurement Review Board rejects any contract submitted for review
542 or approval, the Public Procurement Review Board shall clearly set
543 out the reasons for its action, including, but not limited to, the
544 policy that the agency has violated in its submitted contract and
545 any corrective actions that the agency may take to amend the



546 contract to comply with the rules and regulations of the Public
547 Procurement Review Board.

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

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

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

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

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

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



571 contract employees and the contracting departments, agencies and
572 institutions of state government under the jurisdiction of the
573 State Personnel Board, in compliance with the applicable rules and
574 regulations of the federal Internal Revenue Service (IRS) for
575 federal employment tax purposes. Under these regulations, the
576 usual common law rules are applicable to determine and require
577 that such worker is an independent contractor and not an employee,
578 requiring evidence of lawful behavioral control, lawful financial
579 control and lawful relationship of the parties. Any state
580 department, agency or institution shall only be authorized to
581 contract for personnel services in compliance with those
582 regulations.

583 (6) No member of the Public Procurement Review Board shall
584 use his or her official authority or influence to coerce, by
585 threat of discharge from employment, or otherwise, the purchase of
586 commodities, the contracting for personal or professional
587 services, or the contracting for public construction under this
588 chapter.

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

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



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

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



621 services contracts. This subsection shall stand repealed on July
622 1, 2019.

623 **SECTION 3.** Section 37-101-99, Mississippi Code of 1972, is
624 amended as follows:

625 37-101-99. The * * * Department of Finance and
626 Administration, acting through the Bureau of Building, Grounds and
627 Real Property Management, is hereby authorized to supervise the
628 contracting for, and the erection of, all buildings erected as a
629 result of the provisions of Sections 37-101-91 through 37-101-103
630 which the Board of Trustees of State Institutions of Higher
631 Learning does not self-administer or allow a state institution of
632 higher learning to administer.

633 **SECTION 4.** This act shall take effect and be in force from
634 and after July 1, 2019.

