

By: Representative Currie

To: Accountability,
Efficiency, Transparency

HOUSE BILL NO. 617

1 AN ACT TO PROHIBIT THE DEPARTMENT OF HUMAN SERVICES FROM
 2 EXPENDING ANY STATE OR FEDERAL FUNDS OR DIRECTING ANY STATE OR
 3 FEDERAL FUNDS TO A GRANTEE OR SUBGRANTEE THAT THE GRANTEE OR
 4 SUBGRANTEE WILL USE TO PERFORM SERVICES FOR OR ON BEHALF OF THE
 5 DEPARTMENT AND FOR WHICH THERE IS AN AGREEMENT WITH THE DEPARTMENT
 6 FOR A SCOPE OF WORK REGARDING THOSE SERVICES, WITHOUT
 7 COMPETITIVELY SELECTING THE GRANTEE OR SUBGRANTEE THROUGH A
 8 REQUEST FOR PROPOSALS PROCESS; TO PROVIDE THAT SUCH AN AGREEMENT
 9 BETWEEN THE DEPARTMENT AND A GRANTEE OR SUBGRANTEE WILL BE
 10 CONSIDERED AS A PROFESSIONAL SERVICES CONTRACT FOR THE PURPOSES OF
 11 THE PUBLIC PROCUREMENT REVIEW BOARD LAWS AND REGULATIONS; TO
 12 REQUIRE THE DEPARTMENT TO SUBMIT ALL SUCH AGREEMENTS TO THE BOARD
 13 AND FOLLOW ALL PROCEDURES REQUIRED BY THE BOARD FOR PROFESSIONAL
 14 SERVICES CONTRACTS; TO PROVIDE THAT BEFORE ISSUING A REQUEST FOR
 15 PROPOSALS FOR SELECTING A GRANTEE OR SUBGRANTEE, THE DEPARTMENT
 16 MUST PROVIDE WRITTEN NOTICE OF ITS INTENDED ACTION AND A DETAILED
 17 EXPLANATION OF THE PURPOSE FOR THE ACTION, TO THE CHAIRMEN OF THE
 18 HOUSE AND SENATE APPROPRIATIONS COMMITTEES AND THE CHAIRMEN OF THE
 19 HOUSE AND SENATE ACCOUNTABILITY, EFFICIENCY AND TRANSPARENCY
 20 COMMITTEES; TO AMEND SECTION 43-1-2, MISSISSIPPI CODE OF 1972, TO
 21 CONFORM TO THE PRECEDING PROVISIONS; TO BRING FORWARD SECTION
 22 27-104-7, MISSISSIPPI CODE OF 1972, WHICH CREATES THE PUBLIC
 23 PROCUREMENT REVIEW BOARD AND PRESCRIBES ITS POWERS AND DUTIES, FOR
 24 THE PURPOSES OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

26 **SECTION 1.** (1) The Department of Human Services shall not
 27 expend any state or federal funds or direct any state or federal
 28 funds to a grantee or subgrantee that the grantee or subgrantee
 29 will use to perform services for or on behalf of the department



30 and for which there is an agreement with the department for a
31 scope of work regarding those services, without competitively
32 selecting the grantee or subgrantee through a request for
33 proposals process.

34 (2) Such an agreement between the department and a grantee
35 or subgrantee shall be considered as a professional services
36 contract for the purposes of the Public Procurement Review Board
37 laws and regulations, and the department shall submit all such
38 agreements to the board and follow all procedures required by the
39 board for professional services contracts.

40 (3) Before issuing a request for proposals for selecting a
41 grantee or subgrantee as required by subsection (1) of this
42 section, the department shall provide written notice of its
43 intended action and a detailed explanation of the purpose for the
44 action, to the Chairmen of the House and Senate Appropriations
45 Committees and the Chairmen of the House and Senate
46 Accountability, Efficiency and Transparency Committees.

47 **SECTION 2.** Section 43-1-2, Mississippi Code of 1972, is
48 amended as follows:

49 43-1-2. (1) There is created the Mississippi Department of
50 Human Services, whose offices shall be located in Jackson,
51 Mississippi, and which shall be under the policy direction of the
52 Governor.

53 (2) The chief administrative officer of the department shall
54 be the Executive Director of Human Services. The Governor shall



55 appoint the Executive Director of Human Services with the advice
56 and consent of the Senate, and he shall serve at the will and
57 pleasure of the Governor, and until his successor is appointed and
58 qualified. The Executive Director of Human Services shall possess
59 the following qualifications:

60 (a) A bachelor's degree from an accredited institution
61 of higher learning and ten (10) years' experience in management,
62 public administration, finance or accounting; or

63 (b) A master's or doctoral degree from an accredited
64 institution of higher learning and five (5) years' experience in
65 management, public administration, finance or accounting.

66 Those qualifications shall be certified by the State
67 Personnel Board.

68 (3) There shall be a Joint Oversight Committee of the
69 Department of Human Services composed of the respective Chairmen
70 of the Senate Public Health and Welfare Committee, the Senate
71 Appropriations Committee, the House Public Health and Human
72 Services Committee and the House Appropriations Committee, three
73 (3) members of the Senate appointed by the Lieutenant Governor to
74 serve at the will and pleasure of the Lieutenant Governor, and
75 three (3) members of the House of Representatives appointed by the
76 Speaker of the House to serve at the will and pleasure of the
77 Speaker. The chairmanship of the committee shall alternate for
78 twelve-month periods between the Senate members and the House
79 members, on May 1 of each year, with the Chairman of the Senate



80 Public Health and Welfare Committee serving as chairman beginning
81 in even-numbered years, and the Chairman of the House Public
82 Health and Human Services Committee serving as chairman beginning
83 in odd-numbered years. The committee shall meet once each
84 quarter, or upon the call of the chairman at such times as he
85 deems necessary or advisable, and may make recommendations to the
86 Legislature pertaining to any matter within the jurisdiction of
87 the Mississippi Department of Human Services. The appointing
88 authorities may designate an alternate member from their
89 respective houses to serve when the regular designee is unable to
90 attend such meetings of the oversight committee. For attending
91 meetings of the oversight committee, such legislators shall
92 receive per diem and expenses which shall be paid from the
93 contingent expense funds of their respective houses in the same
94 amounts as provided for committee meetings when the Legislature is
95 not in session; however, no per diem and expenses for attending
96 meetings of the committee will be paid while the Legislature is in
97 session. No per diem and expenses will be paid except for
98 attending meetings of the oversight committee without prior
99 approval of the proper committee in their respective houses.

100 (4) The Department of Human Services shall provide the
101 services authorized by law to every individual determined to be
102 eligible therefor, and in carrying out the purposes of the
103 department, the executive director is authorized:



104 (a) To formulate the policy of the department regarding
105 human services within the jurisdiction of the department;

106 (b) To adopt, modify, repeal and promulgate, after due
107 notice and hearing, and where not otherwise prohibited by federal
108 or state law, to make exceptions to and grant exemptions and
109 variances from, and to enforce rules and regulations implementing
110 or effectuating the powers and duties of the department under any
111 and all statutes within the department's jurisdiction, all of
112 which shall be binding upon the county departments of human
113 services;

114 (c) To apply for, receive and expend any federal or
115 state funds or contributions, gifts, devises, bequests or funds
116 from any other source; and the expenditure of state and federal
117 funds shall be subject to the provisions of Section 1 of this act;

118 (d) Except as limited by Section 43-1-3, to enter into
119 and execute contracts, grants and cooperative agreements with any
120 federal or state agency or subdivision thereof, or any public or
121 private institution located inside or outside the State of
122 Mississippi, or any person, corporation or association in
123 connection with carrying out the programs of the department; and

124 (e) To discharge such other duties, responsibilities
125 and powers as are necessary to implement the programs of the
126 department.

127 (5) The executive director shall establish the
128 organizational structure of the Mississippi Department of Human



129 Services which shall include the creation of any units necessary
130 to implement the duties assigned to the department and consistent
131 with specific requirements of law, including, but not limited to:

132 (a) Office of Family Children's Services;

133 (b) Office of Youth Services;

134 (c) Office of Economic Assistance;

135 (d) Office of Child Support Enforcement; or

136 (e) Office of Field Operations to administer any state
137 or county level programs under the purview of the Mississippi
138 Department of Human Services, with the exception of programs which
139 fall under paragraphs (a) and (b) above.

140 (6) The Executive Director of Human Services shall appoint
141 heads of offices, bureaus and divisions, as defined in Section
142 7-17-11, who shall serve at the pleasure of the executive
143 director. The salary and compensation of such office, bureau and
144 division heads shall be subject to the rules and regulations
145 adopted and promulgated by the State Personnel Board as created
146 under Section 25-9-101 et seq. The executive director shall have
147 the authority to organize offices as deemed appropriate to carry
148 out the responsibilities of the department. The organization
149 charts of the department shall be presented annually with the
150 budget request of the Governor for review by the Legislature.

151 (7) This section shall stand repealed on July 1, 2023.

152 **SECTION 3.** Section 27-104-7, Mississippi Code of 1972, is
153 brought forward as follows:



154 27-104-7. (1) (a) There is created the Public Procurement
155 Review Board, which shall be reconstituted on January 1, 2018, and
156 shall be composed of the following members:

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

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

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

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

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

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

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

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

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

176 After the expiration of the initial terms, all appointed
177 members' terms shall be for a period of four (4) years from the



178 expiration date of the previous term, and until such time as the
179 member's successor is duly appointed and qualified.

180 (c) When appointing members to the Public Procurement
181 Review Board, the Governor and Lieutenant Governor shall take into
182 consideration persons who possess at least five (5) years of
183 management experience in general business, health care or finance
184 for an organization, corporation or other public or private
185 entity. Any person, or any employee or owner of a company, who
186 receives any grants, procurements or contracts that are subject to
187 approval under this section shall not be appointed to the Public
188 Procurement Review Board. Any person, or any employee or owner of
189 a company, who is a principal of the source providing a personal
190 or professional service shall not be appointed to the Public
191 Procurement Review Board if the principal owns or controls a
192 greater than five percent (5%) interest or has an ownership value
193 of One Million Dollars (\$1,000,000.00) in the source's business,
194 whichever is smaller. No member shall be an officer or employee
195 of the State of Mississippi while serving as a voting member on
196 the Public Procurement Review Board.

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

200 (e) The members of the Public Procurement Review Board
201 shall elect a chair from among the membership, and he or she shall
202 preside over the meetings of the board. The board shall annually



203 elect a vice chair, who shall serve in the absence of the chair.
204 No business shall be transacted, including adoption of rules of
205 procedure, without the presence of a quorum of the board. Three
206 (3) members shall be a quorum. No action shall be valid unless
207 approved by a majority of the members present and voting, entered
208 upon the minutes of the board and signed by the chair. Necessary
209 clerical and administrative support for the board shall be
210 provided by the Department of Finance and Administration. Minutes
211 shall be kept of the proceedings of each meeting, copies of which
212 shall be filed on a monthly basis with the chairs of the
213 Accountability, Efficiency and Transparency Committees of the
214 Senate and House of Representatives and the chairs of the
215 Appropriations Committees of the Senate and House of
216 Representatives.

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

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

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



227 The provisions of this paragraph (b) shall not apply to such
228 contracts involving buildings and other facilities of state
229 institutions of higher learning which are self-administered as
230 provided under this paragraph (b) or Section 37-101-15(m);

231 (c) Adopt regulations governing any lease or rental
232 agreement by any state agency or department, including any state
233 agency financed entirely by federal funds, for space outside the
234 buildings under the jurisdiction of the Department of Finance and
235 Administration. These regulations shall require each agency
236 requesting to lease such space to provide the following
237 information that shall be published by the Department of Finance
238 and Administration on its website: the agency to lease the space;
239 the terms of the lease; the approximate square feet to be leased;
240 the use for the space; a description of a suitable space; the
241 general location desired for the leased space; the contact
242 information for a person from the agency; the deadline date for
243 the agency to have received a lease proposal; any other specific
244 terms or conditions of the agency; and any other information
245 deemed appropriate by the Division of Real Property Management of
246 the Department of Finance and Administration or the Public
247 Procurement Review Board. The information shall be provided
248 sufficiently in advance of the time the space is needed to allow
249 the Division of Real Property Management of the Department of
250 Finance and Administration to review and preapprove the lease
251 before the time for advertisement begins;



252 (d) Adopt, in its discretion, regulations to set aside
253 at least five percent (5%) of anticipated annual expenditures for
254 the purchase of commodities from minority businesses; however, all
255 such set-aside purchases shall comply with all purchasing
256 regulations promulgated by the department and shall be subject to
257 all bid requirements. Set-aside purchases for which competitive
258 bids are required shall be made from the lowest and best minority
259 business bidder; however, if no minority bid is available or if
260 the minority bid is more than two percent (2%) higher than the
261 lowest bid, then bids shall be accepted and awarded to the lowest
262 and best bidder. However, the provisions in this paragraph shall
263 not be construed to prohibit the rejection of a bid when only one
264 (1) bid is received. Such rejection shall be placed in the
265 minutes. For the purposes of this paragraph, the term "minority
266 business" means a business which is owned by a person who is a
267 citizen or lawful permanent resident of the United States and who
268 is:

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

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

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



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

279 (v) Female;

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

286 (f) Promulgate rules and regulations governing the
287 solicitation and selection of contractual services personnel
288 including personal and professional services contracts for any
289 form of consulting, policy analysis, public relations, marketing,
290 public affairs, legislative advocacy services or any other
291 contract that the board deems appropriate for oversight, with the
292 exception of any personal service contracts entered into by any
293 agency that employs only nonstate service employees as defined in
294 Section 25-9-107(c), any personal service contracts entered into
295 for computer or information technology-related services governed
296 by the Mississippi Department of Information Technology Services,
297 any personal service contracts entered into by the individual
298 state institutions of higher learning, any personal service
299 contracts entered into by the Mississippi Department of
300 Transportation, any personal service contracts entered into by the
301 Department of Human Services through June 30, 2019, which the



302 Executive Director of the Department of Human Services determines
303 would be useful in establishing and operating the Department of
304 Child Protection Services, any personal service contracts entered
305 into by the Department of Child Protection Services through June
306 30, 2019, any contracts for entertainers and/or performers at the
307 Mississippi State Fairgrounds entered into by the Mississippi Fair
308 Commission, any contracts entered into by the Department of
309 Finance and Administration when procuring aircraft maintenance,
310 parts, equipment and/or services, and any contract for attorney,
311 accountant, actuary auditor, architect, engineer, and utility rate
312 expert services. Any such rules and regulations shall provide for
313 maintaining continuous internal audit covering the activities of
314 such agency affecting its revenue and expenditures as required
315 under Section 7-7-3(6)(d). Any rules and regulation changes
316 related to personal and professional services contracts that the
317 Public Procurement Review Board may propose shall be submitted to
318 the Chairs of the Accountability, Efficiency and Transparency
319 Committees of the Senate and House of Representatives and the
320 Chairs of the Appropriation Committees of the Senate and House of
321 Representatives at least fifteen (15) days before the board votes
322 on the proposed changes, and those rules and regulation changes,
323 if adopted, shall be promulgated in accordance with the
324 Mississippi Administrative Procedures Act;

325 (g) Approve all personal and professional services
326 contracts involving the expenditures of funds in excess of



327 Seventy-five Thousand Dollars (\$75,000.00), except as provided in
328 paragraph (f) of this subsection (2) and in subsection (8);

329 (h) Develop mandatory standards with respect to
330 contractual services personnel that require invitations for public
331 bid, requests for proposals, record keeping and financial
332 responsibility of contractors. The Public Procurement Review
333 Board shall, unless exempted under this paragraph (h) or under
334 paragraph (i) or (o) of this subsection (2), require the agency
335 involved to submit the procurement to a competitive procurement
336 process, and may reserve the right to reject any or all resulting
337 procurements;

338 (i) Prescribe certain circumstances by which agency
339 heads may enter into contracts for personal and professional
340 services without receiving prior approval from the Public
341 Procurement Review Board. The Public Procurement Review Board may
342 establish a preapproved list of providers of various personal and
343 professional services for set prices with which state agencies may
344 contract without bidding or prior approval from the board;

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



351 shall still be submitted for approval to the Public Procurement
352 Review Board.

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

358 (j) Provide standards for the issuance of requests for
359 proposals, the evaluation of proposals received, consideration of
360 costs and quality of services proposed, contract negotiations, the
361 administrative monitoring of contract performance by the agency
362 and successful steps in terminating a contract;

363 (k) Present recommendations for governmental
364 privatization and to evaluate privatization proposals submitted by
365 any state agency;

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

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



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

380 (o) Develop and implement the following standards and
381 procedures for the approval of any sole source contract for
382 personal and professional services regardless of the value of the
383 procurement:

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

387 (ii) An agency that has been issued a binding,
388 valid court order mandating that a particular source or provider
389 must be used for the required service must include a copy of the
390 applicable court order in all future sole source contract reviews
391 for the particular personal or professional service referenced in
392 the court order.

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



- 401 1. The personal or professional service
402 offered in the contract;
- 403 2. An explanation of why the personal or
404 professional service is the only one that can meet the needs of
405 the agency;
- 406 3. An explanation of why the source is the
407 only person or entity that can provide the required personal or
408 professional service;
- 409 4. An explanation of why the amount to be
410 expended for the personal or professional service is reasonable;
411 and
- 412 5. The efforts that the agency went through
413 to obtain the best possible price for the personal or professional
414 service.

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

423 (v) 1. If the agency determines after review that
424 the personal or professional service in the proposed sole source
425 contract can be provided by another person or entity, then the



426 agency must withdraw the sole source contract publication from the
427 procurement portal website and submit the procurement of the
428 personal or professional service to an advertised competitive bid
429 or selection process.

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

436 3. If the Public Procurement Review Board has
437 any reasonable doubt as to whether the personal or professional
438 service can only be provided by one (1) source, then the agency
439 must submit the procurement of the personal or professional
440 service to an advertised competitive bid or selection process. No
441 action taken by the Public Procurement Review Board in this appeal
442 process shall be valid unless approved by a majority of the
443 members of the Public Procurement Review Board present and voting.

444 (vi) The Public Procurement Review Board shall
445 prepare and submit a quarterly report to the House of
446 Representatives and Senate Accountability, Efficiency and
447 Transparency Committees that details the sole source contracts
448 presented to the Public Procurement Review Board and the reasons
449 that the Public Procurement Review Board approved or rejected each
450 contract. These quarterly reports shall also include the



451 documentation and memoranda required in subsection (4) of this
452 section. An agency that submitted a sole source contract shall be
453 prepared to explain the sole source contract to each committee by
454 December 15 of each year upon request by the committee.

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

457 (3) All submissions shall be made sufficiently in advance of
458 each monthly meeting of the Public Procurement Review Board as
459 prescribed by the Public Procurement Review Board. If the Public
460 Procurement Review Board rejects any contract submitted for review
461 or approval, the Public Procurement Review Board shall clearly set
462 out the reasons for its action, including, but not limited to, the
463 policy that the agency has violated in its submitted contract and
464 any corrective actions that the agency may take to amend the
465 contract to comply with the rules and regulations of the Public
466 Procurement Review Board.

467 (4) All sole source contracts for personal and professional
468 services awarded by state agencies, other than those exempted
469 under Section 27-104-7(2)(f) and (8), whether approved by an
470 agency head or the Public Procurement Review Board, shall contain
471 in the procurement file a written determination for the approval,
472 using a request form furnished by the Public Procurement Review
473 Board. The written determination shall document the basis for the
474 determination, including any market analysis conducted in order to
475 ensure that the service required was practicably available from



476 only one (1) source. A memorandum shall accompany the request
477 form and address the following four (4) points:

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

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

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

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

487 (5) In conjunction with the State Personnel Board, the
488 Public Procurement Review Board shall develop and promulgate rules
489 and regulations to define the allowable legal relationship between
490 contract employees and the contracting departments, agencies and
491 institutions of state government under the jurisdiction of the
492 State Personnel Board, in compliance with the applicable rules and
493 regulations of the federal Internal Revenue Service (IRS) for
494 federal employment tax purposes. Under these regulations, the
495 usual common law rules are applicable to determine and require
496 that such worker is an independent contractor and not an employee,
497 requiring evidence of lawful behavioral control, lawful financial
498 control and lawful relationship of the parties. Any state
499 department, agency or institution shall only be authorized to



500 contract for personnel services in compliance with those
501 regulations.

502 (6) No member of the Public Procurement Review Board shall
503 use his or her official authority or influence to coerce, by
504 threat of discharge from employment, or otherwise, the purchase of
505 commodities, the contracting for personal or professional
506 services, or the contracting for public construction under this
507 chapter.

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

511 (8) Nothing in this section shall impair or limit the
512 authority of the Board of Trustees of the Public Employees'
513 Retirement System to enter into any personal or professional
514 services contracts directly related to their constitutional
515 obligation to manage the trust funds, including, but not limited
516 to, actuarial, custodial banks, cash management, investment
517 consultant and investment management contracts.

518 (9) Notwithstanding the exemption of personal and
519 professional services contracts entered into by the Department of
520 Human Services and personal and professional services contracts
521 entered into by the Department of Child Protection Services from
522 the provisions of this section under subsection (2)(f), before the
523 Department of Human Services or the Department of Child Protection
524 Services may enter into a personal or professional service



525 contract, the department(s) shall give notice of the proposed
526 personal or professional service contract to the Public
527 Procurement Review Board for any recommendations by the board.
528 Upon receipt of the notice, the board shall post the notice on its
529 website and on the procurement portal website established by
530 Sections 25-53-151 and 27-104-165. If the board does not respond
531 to the department(s) within seven (7) calendar days after
532 receiving the notice, the department(s) may enter the proposed
533 personal or professional service contract. If the board responds
534 to the department(s) within seven (7) calendar days, then the
535 board has seven (7) calendar days from the date of its initial
536 response to provide any additional recommendations. After the end
537 of the second seven-day period, the department(s) may enter the
538 proposed personal or professional service contract. The board is
539 not authorized to disapprove any proposed personal or professional
540 services contracts. This subsection shall stand repealed on July
541 1, 2022.

542 **SECTION 4.** This act shall take effect and be in force from
543 and after July 1, 2020.

