

By: Representative Boyd

To: Accountability,  
Efficiency, Transparency;  
Appropriations

HOUSE BILL NO. 1191

1 AN ACT TO AMEND SECTION 27-104-7, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT ANY CONTRACT ENTERED INTO BY THE OFFICE OF THE  
3 ATTORNEY GENERAL FOR EXPERTS RETAINED FOR ACTUAL OR PROSPECTIVE  
4 LITIGATION SHALL BE EXEMPT FROM THE OVERSIGHT OF THE PUBLIC  
5 PROCUREMENT REVIEW BOARD; AND FOR RELATED PURPOSES.

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

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

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

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

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

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



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

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

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

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

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

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

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

(c) When appointing members to the Public Procurement Review Board, the Governor and Lieutenant Governor shall take into consideration persons who possess at least five (5) years of management experience in general business, health care or finance for an organization, corporation or other public or private 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



44 a company, who is a principal of the source providing a personal  
45 or professional service shall not be appointed to the Public  
46 Procurement Review Board if the principal owns or controls a  
47 greater than five percent (5%) interest or has an ownership value  
48 of One Million Dollars (\$1,000,000.00) in the source's business,  
49 whichever is smaller. No member shall be an officer or employee  
50 of the State of Mississippi while serving as a voting member on  
51 the Public Procurement Review Board.

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

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



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

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

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

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

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

86 (c) Adopt regulations governing any lease or rental  
87 agreement by any state agency or department, including any state  
88 agency financed entirely by federal funds, for space outside the  
89 buildings under the jurisdiction of the Department of Finance and  
90 Administration. These regulations shall require each agency  
91 requesting to lease such space to provide the following  
92 information that shall be published by the Department of Finance  
93 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



144 form of consulting, policy analysis, public relations, marketing,  
145 public affairs, legislative advocacy services or any other  
146 contract that the board deems appropriate for oversight, with the  
147 exception of any personal service contracts entered into by any  
148 agency that employs only nonstate service employees as defined in  
149 Section 25-9-107(c), any personal service contracts entered into  
150 for computer or information technology-related services governed  
151 by the Mississippi Department of Information Technology Services,  
152 any personal service contracts entered into by the individual  
153 state institutions of higher learning, any personal service  
154 contracts entered into by the Mississippi Department of  
155 Transportation, any personal service contracts entered into by the  
156 Department of Human Services through June 30, 2019, which the  
157 Executive Director of the Department of Human Services determines  
158 would be useful in establishing and operating the Department of  
159 Child Protection Services, any personal service contracts entered  
160 into by the Department of Child Protection Services through June  
161 30, 2019, any contracts for entertainers and/or performers at the  
162 Mississippi State Fairgrounds entered into by the Mississippi Fair  
163 Commission, any contracts entered into by the Department of  
164 Finance and Administration when procuring aircraft maintenance,  
165 parts, equipment and/or services, any contract entered into by the  
166 Office of the Attorney General for experts retained for actual or  
167 prospective litigation, and any contract for attorney, accountant,  
168 actuary auditor, architect, engineer, and utility rate expert



169 services. Any such rules and regulations shall provide for  
170 maintaining continuous internal audit covering the activities of  
171 such agency affecting its revenue and expenditures as required  
172 under Section 7-7-3(6)(d). Any rules and regulation changes  
173 related to personal and professional services contracts that the  
174 Public Procurement Review Board may propose shall be submitted to  
175 the Chairs of the Accountability, Efficiency and Transparency  
176 Committees of the Senate and House of Representatives and the  
177 Chairs of the Appropriation Committees of the Senate and House of  
178 Representatives at least fifteen (15) days before the board votes  
179 on the proposed changes, and those rules and regulation changes,  
180 if adopted, shall be promulgated in accordance with the  
181 Mississippi Administrative Procedures Act;

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

186 (h) Develop mandatory standards with respect to  
187 contractual services personnel that require invitations for public  
188 bid, requests for proposals, record keeping and financial  
189 responsibility of contractors. The Public Procurement Review  
190 Board shall, unless exempted under this paragraph (h) or under  
191 paragraph (i) or (o) of this subsection (2), require the agency  
192 involved to submit the procurement to a competitive procurement



process, and may reserve the right to reject any or all resulting procurements;

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

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

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

(j) Provide standards for the issuance of requests for proposals, the evaluation of proposals received, consideration of costs and quality of services proposed, contract negotiations, the



administrative monitoring of contract performance by the agency  
and successful steps in terminating a contract;

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

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

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

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

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



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

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

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

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

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

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



266 4. An explanation of why the amount to be  
267 expended for the personal or professional service is reasonable;  
268 and

269 5. The efforts that the agency went through  
270 to obtain the best possible price for the personal or professional  
271 service.

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

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

287 2. If the agency determines after review that  
288 there is only one (1) source for the required personal or  
289 professional service, then the agency may appeal to the Public  
290 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  
service to an advertised competitive bid or selection process. No  
action taken by the Public Procurement Review Board in this appeal  
process shall be valid unless approved by a majority of the  
members of the Public Procurement Review Board present and voting.

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

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

(3) All submissions shall be made sufficiently in advance of  
each monthly meeting of the Public Procurement Review Board as



316 prescribed by the Public Procurement Review Board. If the Public  
317 Procurement Review Board rejects any contract submitted for review  
318 or approval, the Public Procurement Review Board shall clearly set  
319 out the reasons for its action, including, but not limited to, the  
320 policy that the agency has violated in its submitted contract and  
321 any corrective actions that the agency may take to amend the  
322 contract to comply with the rules and regulations of the Public  
323 Procurement Review Board.

324 (4) All sole source contracts for personal and professional  
325 services awarded by state agencies, other than those exempted  
326 under Section 27-104-7(2)(f) and (8), whether approved by an  
327 agency head or the Public Procurement Review Board, shall contain  
328 in the procurement file a written determination for the approval,  
329 using a request form furnished by the Public Procurement Review  
330 Board. The written determination shall document the basis for the  
331 determination, including any market analysis conducted in order to  
332 ensure that the service required was practicably available from  
333 only one (1) source. A memorandum shall accompany the request  
334 form and address the following four (4) points:

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

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

339 (c) Explanation of why the price is considered  
340 reasonable; and



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

344 (5) In conjunction with the State Personnel Board, the  
345 Public Procurement Review Board shall develop and promulgate rules  
346 and regulations to define the allowable legal relationship between  
347 contract employees and the contracting departments, agencies and  
348 institutions of state government under the jurisdiction of the  
349 State Personnel Board, in compliance with the applicable rules and  
350 regulations of the federal Internal Revenue Service (IRS) for  
351 federal employment tax purposes. Under these regulations, the  
352 usual common law rules are applicable to determine and require  
353 that such worker is an independent contractor and not an employee,  
354 requiring evidence of lawful behavioral control, lawful financial  
355 control and lawful relationship of the parties. Any state  
356 department, agency or institution shall only be authorized to  
357 contract for personnel services in compliance with those  
358 regulations.

359 (6) No member of the Public Procurement Review Board shall  
360 use his or her official authority or influence to coerce, by  
361 threat of discharge from employment, or otherwise, the purchase of  
362 commodities, the contracting for personal or professional  
363 services, or the contracting for public construction under this  
364 chapter.



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

(8) Nothing in this section shall impair or limit the authority of the Board of Trustees of the Public Employees' Retirement System to enter into any personal or professional 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



390 personal or professional service contract. If the board responds  
391 to the department(s) within seven (7) calendar days, then the  
392 board has seven (7) calendar days from the date of its initial  
393 response to provide any additional recommendations. After the end  
394 of the second seven-day period, the department(s) may enter the  
395 proposed personal or professional service contract. The board is  
396 not authorized to disapprove any proposed personal or professional  
397 services contracts. This subsection shall stand repealed on July  
398 1, 2022.

399       **SECTION 2.** This act shall take effect and be in force from  
400 and after July 1, 2020.

