

By: Representatives Owen, Williamson

To: Accountability,  
Efficiency, Transparency

## HOUSE BILL NO. 88

1 AN ACT TO CODIFY NEW SECTION 5-8-27, MISSISSIPPI CODE OF  
2 1972, TO PROHIBIT STATE AGENCIES AND GOVERNING AUTHORITIES FROM  
3 EXPENDING PUBLIC FUNDS TO PAY CONTRACT LOBBYISTS; TO PROVIDE THAT  
4 A COMMUNITY OR JUNIOR COLLEGE MAY NOT EXPEND PUBLIC FUNDS TO PAY  
5 ANY PERSON TO PERFORM CONTRACT LOBBYING; TO AMEND SECTION 5-8-3,  
6 MISSISSIPPI CODE OF 1972, TO DEFINE ADDITIONAL TERMS USED UNDER  
7 THE LOBBYING LAW REFORM ACT OF 1994; TO AMEND SECTION 27-104-7,  
8 MISSISSIPPI CODE OF 1972, TO DELETE CONTRACTS FOR LEGISLATIVE  
9 ADVOCACY SERVICES FROM THE VARIOUS TYPES OF CONTRACTS SUBJECT TO  
10 OVERSIGHT BY THE PUBLIC PROCUREMENT REVIEW BOARD; TO BRING FORWARD  
11 SECTION 5-8-7, MISSISSIPPI CODE OF 1972, WHICH EXEMPTS CERTAIN  
12 PERSONS FROM THE LOBBYING LAWS, FOR THE PURPOSE OF POSSIBLE  
13 AMENDMENT; TO AMEND SECTION 5-8-13, MISSISSIPPI CODE OF 1972,  
14 WHICH PROHIBITS LOBBYISTS AND LOBBYISTS' CLIENTS FROM  
15 PARTICIPATING IN CERTAIN ACTS, TO CONFORM TO THE PROVISIONS OF  
16 THIS ACT; TO BRING FORWARD SECTION 37-101-15, MISSISSIPPI CODE OF  
17 1972, WHICH PROHIBITS EMPLOYEES OR AGENTS REPRESENTING THE  
18 SEPARATE STATE INSTITUTIONS OF HIGHER LEARNING FROM APPEARING  
19 BEFORE THE LEGISLATURE EXCEPT UPON ORDER OF THE BOARD OF TRUSTEES  
20 OF STATE INSTITUTIONS OF HIGHER LEARNING OR UPON THE REQUEST OF  
21 THE LEGISLATURE, FOR PURPOSES OF POSSIBLE AMENDMENT; AND FOR  
22 RELATED PURPOSES.

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

24 **SECTION 1.** The following shall be codified as Section  
25 5-8-27, Mississippi Code of 1972:

26 5-8-27. (1) A state agency or governing authority may not  
27 expend any public funds to pay any person to perform contract  
28 lobbying on behalf of the state agency or governing authority.



29 Any contract entered into between a state agency or governing  
30 authority and a person for contract lobbying services on behalf of  
31 the state agency or governing authority that requires the state  
32 agency or governing authority to expend public funds is void and  
33 unenforceable.

34 (2) A community or junior college may not expend any public  
35 funds to pay any person to perform contract lobbying on behalf of  
36 the community or junior college. Any contract entered into  
37 between a community or junior college and a person for contract  
38 lobbying services on behalf of the community or junior college  
39 that requires the community or junior college to expend public  
40 funds is void and unenforceable.

41 (3) A public employee of a state agency, governing authority  
42 or community or junior college who authorizes the expenditure of  
43 public funds to pay a person to engage in contract lobbying on  
44 behalf of the state agency, governing authority or community or  
45 junior college shall be subject to termination.

46 (4) The prohibitions of this section do not apply to any  
47 public employee of a state agency, governing authority or  
48 community or junior college who, as a part of the employee's  
49 employment, is authorized or directed by the employee's supervisor  
50 or governing board to engage in lobbying the Legislature, other  
51 state agencies or governing authorities. However, this subsection  
52 may not be construed as absolving any public employee of a state  
53 agency, governing authority or community or junior college from



54 complying with the reporting and disclosure requirements of this  
55 chapter.

56 **SECTION 2.** Section 5-8-3, Mississippi Code of 1972, is  
57 amended as follows:

58 5-8-3. The following words and phrases shall have the  
59 meanings ascribed herein unless the context clearly indicates  
60 otherwise:

61 (a) (i) "Anything of value" means:

62 1. A pecuniary item, including money, or a  
63 bank bill or note;

64 2. A promissory note, bill of exchange,  
65 order, draft, warrant, check or bond given for the payment of  
66 money;

67 3. A contract, agreement, promise or other  
68 obligation for an advance, conveyance, forgiveness of  
69 indebtedness, deposit, distribution, loan, payment, gift, pledge  
70 or transfer of money;

71 4. A stock, bond, note or other investment  
72 interest in an entity;

73 5. A receipt given for the payment of money  
74 or other property;

75 6. A right in action;

76 7. A gift, tangible good, chattel or an  
77 interest in a gift, tangible good or chattel;

78 8. A loan or forgiveness of indebtedness;



79                   9. A work of art, antique or collectible;  
80                   10. An automobile or other means of personal  
81 transportation;  
82                   11. Real property or an interest in real  
83 property, including title to realty, a fee simple or partial  
84 interest, present or future, contingent or vested within realty, a  
85 leasehold interest, or other beneficial interest in realty;  
86                   12. An honorarium or compensation for  
87 services;  
88                   13. A rebate or discount in the price of  
89 anything of value, unless the rebate or discount is made in the  
90 ordinary course of business to a member of the public without  
91 regard to that person's status as an executive, legislative or  
92 public official or public employee, or the sale or trade of  
93 something for reasonable compensation that would ordinarily not be  
94 available to a member of the public;  
95                   14. A promise or offer of employment;  
96                   15. Any other thing of value that is  
97 pecuniary or compensatory in value to a person, except as  
98 otherwise provided in subparagraph (ii) of this paragraph; or  
99                   16. A payment that directly benefits an  
100 executive, legislative or public official or public employee or a  
101 member of that person's immediate family.  
102                   (ii) "Anything of value" does not mean:



103                   1. Informational material such as books,  
104 reports, pamphlets, calendars or periodicals informing an  
105 executive, legislative or public official or public employee of  
106 her or his official duties;

107                   2. A certificate, plaque or other  
108 commemorative item which has little pecuniary value;

109                   3. Food and beverages for immediate  
110 consumption provided by a lobbyist up to a value of Ten Dollars  
111 (\$10.00) in the aggregate during any calendar year;

112                   4. Campaign contributions reported in  
113 accordance with Section 23-15-801 et seq., Mississippi Code of  
114 1972.

115                   (b) "Commission" means the Mississippi Ethics  
116 Commission, when used in the context of Section 5-8-19.

117                   (c) "Compensation" means:

118                   (i) An advance, conveyance, forgiveness of  
119 indebtedness, deposit, distribution, loan, payment, gift, pledge  
120 or transfer of money or anything of value, including reimbursement  
121 of travel, food or lodging costs; or

122                   (ii) A contract, agreement, promise or other  
123 obligation for an advance, conveyance, forgiveness of  
124 indebtedness, deposit, distribution, loan, payment, gift, pledge  
125 or transfer of money or anything of value, including reimbursement  
126 of travel, food or lodging costs, for services rendered or to be  
127 rendered.



(d) "Executive action" means the proposal, drafting, development, consideration, amendment, adoption, approval, promulgation, issuance, modification, rejection or postponement by a state or local governmental entity of a rule, regulation, order, decision, determination or other quasi-legislative action or proceeding.

(e) "Executive agency" means:

(i) An agency, board, commission, governing authority or other body in the executive branch of state or local government; or

(ii) An independent body of state or local government that is not a part of the legislative or judicial branch, but which shall include county boards of supervisors.

(f) "Executive official" means:

(i) A member or employee of a state agency, board, commission, governing authority or other body in the executive branch of state or local government; or

(ii) A public official or public employee, or any employee of such person, of state or local government who takes an executive action.

(g) "Expenditure" means:

(i) A purchase, payment, distribution, loan, forgiveness of a loan or payment of a loan by a third party, advance, deposit, transfer of funds, a promise to make a payment, or a gift of money or anything of value for any purpose;



(ii) A payment to a lobbyist for salary, fee, commission, compensation for expenses, or other purpose by a person employing, retaining or contracting for the services of the lobbyist separately or jointly with other persons;

(iii) A payment in support of or assistance to a lobbyist or the lobbyist's activities, including the direct payment of expenses incurred at the request or suggestion of the lobbyist;

(iv) A payment that directly benefits an executive, legislative or public official or a member of the official's immediate family;

(v) A payment, including compensation, payment or reimbursement for the services, time or expenses of an employee for or in connection with direct communication with an executive, legislative or public official made at the direction of the employee's employer;

(vi) A payment for or in connection with soliciting or urging other persons to enter into direct communication with an executive, legislative or public official; or

(vii) A payment or reimbursement for food, beverages, travel, lodging, entertainment or sporting activities.

(h) "Gift" means anything of value to the extent that consideration of equal or greater value is not received, including a rebate or discount in the price of anything of value unless the



178 rebate or discount is made in the ordinary course of business to a  
179 member of the public without regard to that person's status as an  
180 executive, legislative or public official.

181 (i) "Legislative action" means:

182 (i) Preparation, research, drafting, introduction,  
183 consideration, modification, amendment, approval, passage,  
184 enactment, tabling, postponement, defeat or rejection of a bill,  
185 resolution, amendment, motion, report, nomination, appointment or  
186 other matter by the Mississippi State Legislature or a member or  
187 employee of the Legislature acting or purporting to act in an  
188 official capacity;

189 (ii) Action by the Governor in approving or  
190 vetoing a bill or other action of the Legislature;

191 (iii) Action by the Legislature in:

192 1. Overriding or sustaining a veto by the  
193 Governor; or

194 2. Considering, confirming or rejecting an  
195 executive appointment of the Governor.

196 (j) "Legislative official" means:

197 (i) A member, member-elect or presiding officer of  
198 the Legislature;

199 (ii) A member of a commission or other entity  
200 established by and responsible to either or both houses of the  
201 Legislature;





(iii) A staff member, officer or employee to a member or member-elect of the Legislature, to a member of a commission or other entity established by and responsible to either or both houses of the Legislature, or to the Legislature or any house, committee or office thereof.

(k) "Lobbying" means:

(i) Influencing or attempting to influence legislative or executive action through oral or written communication; or

(ii) Solicitation of others to influence legislative or executive action; or

(iii) Paying or promising to pay anything of value directly or indirectly related to legislative or executive action.

(l) "Lobbyist" means:

(i) An individual who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, for the purpose of lobbying;

(ii) An individual who represents a legislative or public official or public employee, or who represents a person, organization, association or other group, for the purpose of lobbying;

(iii) A sole proprietor, owner, part owner or shareholder in a business who has a pecuniary interest in



legislative or executive action, who engages in lobbying activities; or

(iv) Any individual described in subparagraphs (i), (ii) or (iii) of this paragraph (1) who is employed by or has contracted with any agency, legislative or public official or public employee, or any other public entity for the purpose of providing any type of consulting or other similar service but also engages in any type of lobbying activities. Such individual shall not qualify for any exemption under Section 5-8-7.

(m) "Lobbyist's client" means the person in whose behalf the lobbyist influences or attempts to influence legislative or executive action.

(n) "Local" means all entities of government at the county, county-district, multicounty district, municipal or school district level.

(o) "Person" means an individual, proprietorship, firm, partnership, joint venture, joint-stock company, syndicate, business trust, estate, company, corporation, association, club, committee, organization or group of persons acting in concert.

(p) "Public employee" means an individual appointed to a position, including a position created by statute, whether compensated or not, in state or local government and includes any employee of the public employee. The term includes a member of the board of trustees, chancellor, vice chancellor or the equivalent thereof in the state university system or the state



community and junior college system, and a president of a state college or university.

(q) "Public official" means an individual elected to a state or local office, or an individual who is appointed to fill a vacancy in the office.

(r) "Value" means the retail cost or fair market worth of an item or items, whichever is greater.

(s) "State agency" means any state board, commission, department, authority, committee, council or agency created by the Mississippi Constitution of 1890 or statute. The term "state agency" includes the Board of Trustees of State Institutions of Higher Learning and the individual state institutions of higher learning.

(t) "Governing authority" means boards of supervisors, governing boards of all school districts, all boards of directors of public water supply districts, boards of directors of master public water supply districts, municipal public utility commissions, governing authorities of all municipalities, port authorities, Mississippi State Port Authority, commissioners and boards of trustees of any public hospitals, boards of trustees of public library systems, district attorneys, school attendance officers and any political subdivision of the state supported wholly or in part by public funds of the state or political subdivisions thereof, including commissions, boards and agencies



created or operated under the authority of any county or municipality of this state.

(u) "Community or junior college" means a community or junior college district and its local board of trustees established under Chapter 29, Title 37, Mississippi Code of 1972.

(v) "Public funds" means all funds appropriated by the Legislature and all other fees, local levies or other revenues generated by a state agency or community or junior college that are available for expenditure by the state agency or community or junior college.

(w) "Contract lobbying" means any lobbying performed by an independent contractor or a contract worker of a state agency or community or junior college.

**SECTION 3.** Section 27-104-7, Mississippi Code of 1972, is amended as follows:

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

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

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

(iii) The Executive Director of the Department of Finance and Administration, serving as an ex officio and nonvoting 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



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

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

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



Senate and House of Representatives and the chairs of the Appropriations Committees of the Senate and House of Representatives.

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

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

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

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

(c) Adopt regulations governing any lease or rental agreement by any state agency or department, including any state agency financed entirely by federal funds, for space outside the buildings under the jurisdiction of the Department of Finance and Administration. These regulations shall require each agency requesting to lease such space to provide the following information that shall be published by the Department of Finance and Administration on its website: the agency to lease the space;



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

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





400 (1) bid is received. Such rejection shall be placed in the  
401 minutes. For the purposes of this paragraph, the term "minority  
402 business" means a business which is owned by a person who is a  
403 citizen or lawful permanent resident of the United States and who  
404 is:

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

407 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,  
408 Central or South American, or other Spanish or Portuguese culture  
409 or origin regardless of race;

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

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

415 (v) Female;

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

422 (f) Promulgate rules and regulations governing the  
423 solicitation and selection of contractual services personnel  
424 including personal and professional services contracts for any



425 form of consulting, policy analysis, public relations, marketing,  
426 public affairs \* \* \* or any other contract that the board deems  
427 appropriate for oversight, with the exception of any personal  
428 service contracts entered into by any agency that employs only  
429 nonstate service employees as defined in Section 25-9-107(c), any  
430 personal service contracts entered into for computer or  
431 information technology-related services governed by the  
432 Mississippi Department of Information Technology Services, any  
433 personal service contracts entered into by the individual state  
434 institutions of higher learning, any personal service contracts  
435 entered into by the Mississippi Department of Transportation, any  
436 personal service contracts entered into by the Department of Human  
437 Services through June 30, 2019, which the Executive Director of  
438 the Department of Human Services determines would be useful in  
439 establishing and operating the Department of Child Protection  
440 Services, any personal service contracts entered into by the  
441 Department of Child Protection Services through June 30, 2019, any  
442 contracts for entertainers and/or performers at the Mississippi  
443 State Fairgrounds entered into by the Mississippi Fair Commission,  
444 any contracts entered into by the Department of Finance and  
445 Administration when procuring aircraft maintenance, parts,  
446 equipment and/or services, and any contract for attorney,  
447 accountant, actuary auditor, architect, engineer, and utility rate  
448 expert services. Any such rules and regulations shall provide for  
449 maintaining continuous internal audit covering the activities of



such agency affecting its revenue and expenditures as required under Section 7-7-3(6)(d). Any rules and regulation changes related to personal and professional services contracts that the Public Procurement Review Board may propose shall be submitted to the Chairs of the Accountability, Efficiency and Transparency Committees of the Senate and House of Representatives and the Chairs of the Appropriation Committees of the Senate and House of Representatives at least fifteen (15) days before the board votes on the proposed changes, and those rules and regulation changes, if adopted, shall be promulgated in accordance with the Mississippi Administrative Procedures Act;

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

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



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

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

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

494 (j) Provide standards for the issuance of requests for  
495 proposals, the evaluation of proposals received, consideration of  
496 costs and quality of services proposed, contract negotiations, the  
497 administrative monitoring of contract performance by the agency  
498 and successful steps in terminating a contract;



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

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

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

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

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

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



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

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

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

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

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

545                   4. An explanation of why the amount to be  
546 expended for the personal or professional service is reasonable;  
547 and



548                   5. The efforts that the agency went through  
549 to obtain the best possible price for the personal or professional  
550 service.

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

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

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



572                   3. If the Public Procurement Review Board has  
573 any reasonable doubt as to whether the personal or professional  
574 service can only be provided by one (1) source, then the agency  
575 must submit the procurement of the personal or professional  
576 service to an advertised competitive bid or selection process. No  
577 action taken by the Public Procurement Review Board in this appeal  
578 process shall be valid unless approved by a majority of the  
579 members of the Public Procurement Review Board present and voting.

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

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

593                   (3) All submissions shall be made sufficiently in advance of  
594 each monthly meeting of the Public Procurement Review Board as  
595 prescribed by the Public Procurement Review Board. If the Public  
596 Procurement Review Board rejects any contract submitted for review





597 or approval, the Public Procurement Review Board shall clearly set  
598 out the reasons for its action, including, but not limited to, the  
599 policy that the agency has violated in its submitted contract and  
600 any corrective actions that the agency may take to amend the  
601 contract to comply with the rules and regulations of the Public  
602 Procurement Review Board.

603 (4) All sole source contracts for personal and professional  
604 services awarded by state agencies, other than those exempted  
605 under Section 27-104-7(2)(f) and (8), whether approved by an  
606 agency head or the Public Procurement Review Board, shall contain  
607 in the procurement file a written determination for the approval,  
608 using a request form furnished by the Public Procurement Review  
609 Board. The written determination shall document the basis for the  
610 determination, including any market analysis conducted in order to  
611 ensure that the service required was practicably available from  
612 only one (1) source. A memorandum shall accompany the request  
613 form and address the following four (4) points:

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

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

618 (c) Explanation of why the price is considered  
619 reasonable; and



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

623           (5) In conjunction with the State Personnel Board, the  
624 Public Procurement Review Board shall develop and promulgate rules  
625 and regulations to define the allowable legal relationship between  
626 contract employees and the contracting departments, agencies and  
627 institutions of state government under the jurisdiction of the  
628 State Personnel Board, in compliance with the applicable rules and  
629 regulations of the federal Internal Revenue Service (IRS) for  
630 federal employment tax purposes. Under these regulations, the  
631 usual common law rules are applicable to determine and require  
632 that such worker is an independent contractor and not an employee,  
633 requiring evidence of lawful behavioral control, lawful financial  
634 control and lawful relationship of the parties. Any state  
635 department, agency or institution shall only be authorized to  
636 contract for personnel services in compliance with those  
637 regulations.

638           (6) No member of the Public Procurement Review Board shall  
639 use his or her official authority or influence to coerce, by  
640 threat of discharge from employment, or otherwise, the purchase of  
641 commodities, the contracting for personal or professional  
642 services, or the contracting for public construction under this  
643 chapter.



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

647 (8) Nothing in this section shall impair or limit the  
648 authority of the Board of Trustees of the Public Employees'  
649 Retirement System to enter into any personal or professional  
650 services contracts directly related to their constitutional  
651 obligation to manage the trust funds, including, but not limited  
652 to, actuarial, custodial banks, cash management, investment  
653 consultant and investment management contracts.

654 (9) Notwithstanding the exemption of personal and  
655 professional services contracts entered into by the Department of  
656 Human Services and personal and professional services contracts  
657 entered into by the Department of Child Protection Services from  
658 the provisions of this section under subsection (2)(f), before the  
659 Department of Human Services or the Department of Child Protection  
660 Services may enter into a personal or professional service  
661 contract, the department(s) shall give notice of the proposed  
662 personal or professional service contract to the Public  
663 Procurement Review Board for any recommendations by the board.  
664 Upon receipt of the notice, the board shall post the notice on its  
665 website and on the procurement portal website established by  
666 Sections 25-53-151 and 27-104-165. If the board does not respond  
667 to the department(s) within seven (7) calendar days after  
668 receiving the notice, the department(s) may enter the proposed



669 personal or professional service contract. If the board responds  
670 to the department(s) within seven (7) calendar days, then the  
671 board has seven (7) calendar days from the date of its initial  
672 response to provide any additional recommendations. After the end  
673 of the second seven-day period, the department(s) may enter the  
674 proposed personal or professional service contract. The board is  
675 not authorized to disapprove any proposed personal or professional  
676 services contracts. This subsection shall stand repealed on July  
677 1, 2022.

678       **SECTION 4.** Section 5-8-7, Mississippi Code of 1972, is  
679 brought forward as follows:

680       5-8-7. Notwithstanding any other provisions of this chapter,  
681 except as otherwise provided in Section 5-8-3(1)(iv), the  
682 following person shall not be included within the definition of  
683 "lobbyist" or "lobbyist's client" under this chapter, and  
684 accordingly the registration and reporting provisions, including  
685 the payment of related fees, of this chapter do not apply to:

686               (a) A legislative or public official acting in an  
687 official capacity.

688               (b) An individual who:

689                       (i) Represents or purports to represent only the  
690 individual;

691                       (ii) Receives no compensation or anything of value  
692 for lobbying; and



693                   (iii) Has no pecuniary interest in the legislative  
694 or executive action.

695                   (c) An individual lobbying in his or her own interest,  
696 his or her own business interest, who pays, or promises to pay,  
697 offers to pay or causes to be paid to public officials,  
698 legislative officials or public employees any thing or things of  
699 value aggregating in value to less than Two Hundred Dollars  
700 (\$200.00) in any calendar year.

701                   (d) An individual lobbying on behalf of his or her  
702 employer's business interest where such lobbying is not a primary  
703 or regular function of his employment position if such individual  
704 pays, promises to pay, offers to pay, or causes to be paid  
705 individually or on the employer's behalf to public officials,  
706 legislative officials, or public employees any thing or things of  
707 value aggregating in value to less than Two Hundred Dollars  
708 (\$200.00) in any calendar year.

709                   (e) An individual lobbying on behalf of an association  
710 of which he or she is a member, where such lobbying is not a  
711 primary or regular function of his or her position in the  
712 association, if such individual pays, promises to pay, offers to  
713 pay, or causes to be paid individually or on the association's  
714 behalf to public officials, legislative officials or public  
715 employees any thing or things of value aggregating in value to  
716 less than Two Hundred Dollars (\$200.00) in any calendar year.



717 (f) An individual who is a shareholder, owner or part  
718 owner of a business who lobbies on behalf of such business, where  
719 such individual is not an employee of the business, if such  
720 individual pays, promises to pay, offers to pay, or causes to be  
721 paid individually or on behalf of the business to public  
722 officials, legislative officials or public employees any thing or  
723 things of value aggregating in value to less than Two Hundred  
724 Dollars (\$200.00) in any calendar year.

725 (g) An individual who:

726 (i) Limits lobbying solely to formal testimony  
727 before a public meeting of a legislative body or an executive  
728 agency, or a committee, division or department thereof; and

729 (ii) Registers the appearance in the records of  
730 the public body, if such records are kept.

731 (h) An individual who is a licensed attorney  
732 representing a client by:

733 (i) Drafting bills, preparing arguments thereon,  
734 and advising the client or rendering opinions as to the  
735 construction and effect of proposed or pending legislation, where  
736 such services are usual and customary professional legal services  
737 which are not otherwise connected with legislative action; or

738 (ii) Providing information, on behalf of the  
739 client, to an executive or public official, a public employee, or  
740 an agency, board, commission, governing authority or other body of  
741 state or local government where such services are usual and



customary professional legal services including or related to a particular nonlegislative matter, case or controversy.

(i) News media and employees of the news media whose activity is limited solely to the publication or broadcast of news, editorial comments, or paid advertisements that attempt to influence legislative or executive action. For the purposes of this section, "news media" shall be construed to be bona fide radio and television stations, newspapers, journals or magazines, or bona fide news bureaus or associations which in turn furnish information solely to bona fide radio or television stations, newspapers, journals or magazines.

(j) An individual who engages in lobbying activities exclusively on behalf of a religious organization which qualifies as a tax-exempt organization under the Internal Revenue Code.

(k) An individual who is a nonattorney professional and who receives professional fees and expenses to represent clients on executive agency matters, except that if anything of value shall be paid or promised to be paid directly or indirectly on behalf of a client for the personal use or benefit of an executive or public official or public employee, then expenditures and actions of the individual are reportable under this chapter, and the individual must register as a lobbyist.

**SECTION 5.** Section 5-8-13, Mississippi Code of 1972, is amended as follows:



5-8-13. (1) A lobbyist shall not contract to receive or accept compensation dependent upon the success or failure of a legislative or executive action.

(2) A lobbyist or lobbyist's client shall not knowingly or willfully make or cause to be made a false statement or misrepresentation of facts to an executive, legislative or public official or public employee, or to the public in general with the intent to affect the outcome of a legislative or executive action.

(3) A lobbyist or lobbyist's client shall not cause a legislative or executive action for the purpose of obtaining employment to lobby in support of or in opposition to the legislative or executive action.

(4) An executive, legislative or public official or public employee shall not be a lobbyist \* \* \*.

(5) A lobbyist must disclose anything of value given in whole or in part to any executive, legislative or public official or public employee.

**SECTION 6.** Section 37-101-15, Mississippi Code of 1972, is brought forward as follows:

37-101-15. (a) The Board of Trustees of State Institutions of Higher Learning shall succeed to and continue to exercise control of all records, books, papers, equipment, and supplies, and all lands, buildings, and other real and personal property belonging to or assigned to the use and benefit of the board of trustees formerly supervising and controlling the institutions of





791 higher learning named in Section 37-101-1. The board shall have  
792 and exercise control of the use, distribution and disbursement of  
793 all funds, appropriations and taxes, now and hereafter in  
794 possession, levied and collected, received, or appropriated for  
795 the use, benefit, support, and maintenance or capital outlay  
796 expenditures of the institutions of higher learning, including the  
797 authorization of employees to sign vouchers for the disbursement  
798 of funds for the various institutions, except where otherwise  
799 specifically provided by law.

800 (b) The board shall have general supervision of the affairs  
801 of all the institutions of higher learning, including the  
802 departments and the schools thereof. The board shall have the  
803 power in its discretion to determine who shall be privileged to  
804 enter, to remain in, or to graduate therefrom. The board shall  
805 have general supervision of the conduct of libraries and  
806 laboratories, the care of dormitories, buildings, and grounds; the  
807 business methods and arrangement of accounts and records; the  
808 organization of the administrative plan of each institution; and  
809 all other matters incident to the proper functioning of the  
810 institutions. The board shall have the authority to establish  
811 minimum standards of achievement as a prerequisite for entrance  
812 into any of the institutions under its jurisdiction, which  
813 standards need not be uniform between the various institutions and  
814 which may be based upon such criteria as the board may establish.



815           (c) The board shall exercise all the powers and prerogatives  
816 conferred upon it under the laws establishing and providing for  
817 the operation of the several institutions herein specified. The  
818 board shall adopt such bylaws and regulations from time to time as  
819 it deems expedient for the proper supervision and control of the  
820 several institutions of higher learning, insofar as such bylaws  
821 and regulations are not repugnant to the Constitution and laws,  
822 and not inconsistent with the object for which these institutions  
823 were established. The board shall have power and authority to  
824 prescribe rules and regulations for policing the campuses and all  
825 buildings of the respective institutions, to authorize the arrest  
826 of all persons violating on any campus any criminal law of the  
827 state, and to have such law violators turned over to the civil  
828 authorities.

829           (d) For all institutions specified herein, the board shall  
830 provide a uniform system of recording and of accounting approved  
831 by the State Department of Audit. The board shall annually  
832 prepare, or cause to be prepared, a budget for each institution of  
833 higher learning for the succeeding year which must be prepared and  
834 in readiness for at least thirty (30) days before the convening of  
835 the regular session of the Legislature. All relationships and  
836 negotiations between the State Legislature and its various  
837 committees and the institutions named herein shall be carried on  
838 through the board of trustees. No official, employee or agent  
839 representing any of the separate institutions shall appear before



840 the Legislature or any committee thereof except upon the written  
841 order of the board or upon the request of the Legislature or a  
842 committee thereof.

843 (e) For all institutions specified herein, the board shall  
844 prepare an annual report to the Legislature setting forth the  
845 disbursements of all monies appropriated to the respective  
846 institutions. Each report to the Legislature shall show how the  
847 money appropriated to the several institutions has been expended,  
848 beginning and ending with the fiscal years of the institutions,  
849 showing the name of each teacher, officer, and employee, and the  
850 salary paid each, and an itemized statement of each and every item  
851 of receipts and expenditures. Each report must be balanced, and  
852 must begin with the former balance. If any property belonging to  
853 the state or the institution is used for profit, the reports shall  
854 show the expense incurred in managing the property and the amount  
855 received therefrom. The reports shall also show a summary of the  
856 gross receipts and gross disbursements for each year and shall  
857 show the money on hand at the beginning of the fiscal period of  
858 the institution next preceding each session of the Legislature and  
859 the necessary amount of expense to be incurred from said date to  
860 January 1 following. The board shall keep the annual expenditures  
861 of each institution herein mentioned within the income derived  
862 from legislative appropriations and other sources, but in case of  
863 emergency arising from acts of providence, epidemics, fire or  
864 storm with the written approval of the Governor and by written



865 consent of a majority of the senators and of the representatives  
866 it may exceed the income. The board shall require a surety bond  
867 in a surety company authorized to do business in this state of  
868 every employee who is the custodian of funds belonging to one or  
869 more of the institutions mentioned herein, which bond shall be in  
870 a sum to be fixed by the board in an amount that will properly  
871 safeguard the said funds, the premium for which shall be paid out  
872 of the funds appropriated for said institutions.

873 (f) The board shall have the power and authority to elect  
874 the heads of the various institutions of higher learning and to  
875 contract with all deans, professors, and other members of the  
876 teaching staff, and all administrative employees of said  
877 institutions for a term not exceeding four (4) years. The board  
878 shall have the power and authority to terminate any such contract  
879 at any time for malfeasance, inefficiency, or contumacious  
880 conduct, but never for political reasons. It shall be the policy  
881 of the board to permit the executive head of each institution to  
882 nominate for election by the board all subordinate employees of  
883 the institution over which he presides. It shall be the policy of  
884 the board to elect all officials for a definite tenure of service  
885 and to reelect during the period of satisfactory service. The  
886 board shall have the power to make any adjustments it thinks  
887 necessary between the various departments and schools of any  
888 institution or between the different institutions.



889 (g) The board shall keep complete minutes and records of all  
890 proceedings which shall be open for inspection by any citizen of  
891 the state.

892 (h) The board shall have the power to enter into an energy  
893 performance contract, energy services contract, on a  
894 shared-savings, lease or lease-purchase basis, for energy  
895 efficiency services and/or equipment as prescribed in Section  
896 31-7-14.

897 (i) The Board of Trustees of State Institutions of Higher  
898 Learning, for and on behalf of Jackson State University, is hereby  
899 authorized to convey by donation or otherwise easements across  
900 portions of certain real estate located in the City of Jackson,  
901 Hinds County, Mississippi, for right-of-way required for the Metro  
902 Parkway Project.

903 (j) In connection with any international contract between  
904 the board or one (1) of the state's institutions of higher  
905 learning and any party outside of the United States, the board or  
906 institution that is the party to the international contract is  
907 hereby authorized and empowered to include in the contract a  
908 provision for the resolution by arbitration of any controversy  
909 between the parties to the contract relating to such contract or  
910 the failure or refusal to perform any part of the contract. Such  
911 provision shall be valid, enforceable and irrevocable without  
912 regard to the justiciable character of the controversy. Provided,  
913 however, that in the event either party to such contract initiates



914 litigation against the other with respect to the contract, the  
915 arbitration provision shall be deemed waived unless asserted as a  
916 defense on or before the responding party is required to answer  
917 such litigation.

918       (k) The Board of Trustees of State Institutions of Higher  
919 Learning ("board"), on behalf of any institution under its  
920 jurisdiction, shall purchase and maintain business property  
921 insurance and business personal property insurance on all  
922 university-owned buildings and/or contents as required by federal  
923 law and regulations of the Federal Emergency Management Agency  
924 (FEMA) as is necessary for receiving public assistance or  
925 reimbursement for repair, reconstruction, replacement or other  
926 damage to those buildings and/or contents caused by the Hurricane  
927 Katrina Disaster of 2005 or subsequent disasters. The board is  
928 authorized to expend funds from any available source for the  
929 purpose of obtaining and maintaining that property insurance. The  
930 board is authorized to enter into agreements with the Department  
931 of Finance and Administration, local school districts,  
932 community/junior college districts, community hospitals and/or  
933 other state agencies to pool their liabilities to participate in a  
934 group business property and/or business personal property  
935 insurance program, subject to uniform rules and regulations as may  
936 be adopted by the Department of Finance and Administration.

937       (l) The Board of Trustees of State Institutions of Higher  
938 Learning, or its designee, may approve the payment or



939 reimbursement of reasonable travel expenses incurred by candidates  
940 for open positions at the board's executive office or at any of  
941 the state institutions of higher learning, when the job candidate  
942 has incurred expenses in traveling to a job interview at the  
943 request of the board, the Commissioner of Higher Education or a  
944 state institution of higher learning administrator.

945       (m)   (i)   The Board of Trustees of State Institutions of  
946 Higher Learning is authorized to administer and approve contracts  
947 for the construction and maintenance of buildings and other  
948 facilities of the state institutions of higher learning, including  
949 related contracts for architectural and engineering services,  
950 which are paid for with self-generated funds.

951       (ii)   Additionally, the board is authorized to oversee,  
952 administer and approve contracts for the construction and  
953 maintenance of buildings and other facilities of the state  
954 institutions of higher learning, including related contracts for  
955 architectural and engineering services, which are funded in whole  
956 or in part by general obligation bonds of the State of Mississippi  
957 at institutions designated annually by the board as being capable  
958 to procure and administer all such contracts. Prior to the  
959 disbursement of funds, an agreement for each project between the  
960 institution and the Department of Finance and Administration shall  
961 be executed. The approval and execution of the agreement shall  
962 not be withheld by either party unless the withholding party  
963 provides a written, detailed explanation of the basis for



964 withholding to the other party. The agreement shall stipulate the  
965 responsibilities of each party, applicable procurement  
966 regulations, documentation and reporting requirements, conditions  
967 prior to, and schedule of, disbursement of general obligation bond  
968 funds to the institution and provisions concerning handling any  
969 remaining general obligation bonds at the completion of the  
970 project. Such agreement shall not include provisions that  
971 constitute additional qualifications or criteria that act to  
972 invalidate the designation of an institution as capable of  
973 procuring and administering such project. Inclusion of any such  
974 provisions may be appealed to the Public Procurement Review Board.  
975 This subparagraph (ii) shall stand repealed from and after July 1,  
976 2022.

977       **SECTION 7.** This act shall take effect and be in force from  
978 and after July 1, 2021.

