

By: Representatives Horne, Williamson

To: Accountability,
Efficiency, Transparency;
Appropriations

HOUSE BILL NO. 787

1 AN ACT TO CODIFY NEW SECTION 5-8-27, MISSISSIPPI CODE OF
2 1972, TO PROHIBIT STATE AGENCIES AND COMMUNITY AND JUNIOR COLLEGES
3 FROM EXPENDING PUBLIC FUNDS TO PAY CONTRACT LOBBYISTS; TO AMEND
4 SECTION 5-8-3, MISSISSIPPI CODE OF 1972, TO DEFINE ADDITIONAL
5 TERMS USED UNDER THE LOBBYING LAW REFORM ACT OF 1994; TO AMEND
6 SECTION 27-104-7, MISSISSIPPI CODE OF 1972, TO DELETE CONTRACTS
7 FOR LEGISLATIVE ADVOCACY SERVICES FROM THE VARIOUS TYPES OF
8 CONTRACTS SUBJECT TO OVERSIGHT BY THE PUBLIC PROCUREMENT REVIEW
9 BOARD; TO BRING FORWARD SECTION 5-8-7, MISSISSIPPI CODE OF 1972,
10 WHICH EXEMPTS CERTAIN PERSONS FROM THE LOBBYING LAWS, FOR THE
11 PURPOSE OF POSSIBLE AMENDMENT; TO BRING FORWARD SECTION 5-8-13,
12 MISSISSIPPI CODE OF 1972, WHICH PROHIBITS LOBBYISTS AND LOBBYISTS'
13 CLIENTS FROM PARTICIPATING IN CERTAIN ACTS, FOR PURPOSES OF
14 POSSIBLE AMENDMENT; TO BRING FORWARD SECTION 37-101-15,
15 MISSISSIPPI CODE OF 1972, WHICH PROHIBITS EMPLOYEES OR AGENTS
16 REPRESENTING THE SEPARATE STATE INSTITUTIONS OF HIGHER LEARNING
17 FROM APPEARING BEFORE THE LEGISLATURE EXCEPT UPON ORDER OF THE
18 BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING OR UPON
19 THE REQUEST OF THE LEGISLATURE, FOR PURPOSES OF POSSIBLE
20 AMENDMENT; AND FOR RELATED PURPOSES.

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

22 **SECTION 1.** The following shall be codified as Section
23 5-8-27, Mississippi Code of 1972:

24 5-8-27. (1) A state agency may not expend any public funds
25 to pay any person to perform contract lobbying on behalf of the
26 state agency. Any contract entered into between a state agency
27 and a person for contract lobbying services on behalf of the state



28 agency that requires the state agency to expend public funds is
29 void and unenforceable.

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

37 (3) A public employee of a state agency or community or
38 junior college who authorizes the expenditure of public funds to
39 pay a person to engage in contract lobbying on behalf of the state
40 agency or community or junior college shall be subject to
41 termination.

42 (4) The prohibitions of this section do not apply to any
43 public employee of a state agency or community or junior college
44 who, as a part of the employee's employment, is authorized or
45 directed by the employee's supervisor or governing board to engage
46 in lobbying the Legislature, other state agencies or local
47 entities of government. However, this subsection may not be
48 construed as absolving any public employee of a state agency or
49 community or junior college from complying with the reporting and
50 disclosure requirements of this chapter.

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



53 5-8-3. The following words and phrases shall have the
54 meanings ascribed herein unless the context clearly indicates
55 otherwise:

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

57 1. A pecuniary item, including money, or a
58 bank bill or note;

59 2. A promissory note, bill of exchange,
60 order, draft, warrant, check or bond given for the payment of
61 money;

62 3. A contract, agreement, promise or other
63 obligation for an advance, conveyance, forgiveness of
64 indebtedness, deposit, distribution, loan, payment, gift, pledge
65 or transfer of money;

66 4. A stock, bond, note or other investment
67 interest in an entity;

68 5. A receipt given for the payment of money
69 or other property;

70 6. A right in action;

71 7. A gift, tangible good, chattel or an
72 interest in a gift, tangible good or chattel;

73 8. A loan or forgiveness of indebtedness;

74 9. A work of art, antique or collectible;

75 10. An automobile or other means of personal
76 transportation;



77 11. Real property or an interest in real
78 property, including title to realty, a fee simple or partial
79 interest, present or future, contingent or vested within realty, a
80 leasehold interest, or other beneficial interest in realty;

81 12. An honorarium or compensation for
82 services;

83 13. A rebate or discount in the price of
84 anything of value, unless the rebate or discount is made in the
85 ordinary course of business to a member of the public without
86 regard to that person's status as an executive, legislative or
87 public official or public employee, or the sale or trade of
88 something for reasonable compensation that would ordinarily not be
89 available to a member of the public;

90 14. A promise or offer of employment;

91 15. Any other thing of value that is
92 pecuniary or compensatory in value to a person, except as
93 otherwise provided in subparagraph (ii) of this paragraph; or

94 16. A payment that directly benefits an
95 executive, legislative or public official or public employee or a
96 member of that person's immediate family.

97 (ii) "Anything of value" does not mean:

98 1. Informational material such as books,
99 reports, pamphlets, calendars or periodicals informing an
100 executive, legislative or public official or public employee of
101 her or his official duties;



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

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

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

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

(c) "Compensation" means:

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

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



127 decision, determination or other quasi-legislative action or
128 proceeding.

129 (e) "Executive agency" means:

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

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

136 (f) "Executive official" means:

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

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

143 (g) "Expenditure" means:

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

148 (ii) A payment to a lobbyist for salary, fee,
149 commission, compensation for expenses, or other purpose by a
150 person employing, retaining or contracting for the services of the
151 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 rebate or discount is made in the ordinary course of business to a member of the public without regard to that person's status as an executive, legislative or public official.

(i) "Legislative action" means:



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

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

(iii) Action by the Legislature in:

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

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

(j) "Legislative official" means:

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

(ii) A member of a commission or other entity established by and responsible to either or both houses of the 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.



202 (k) "Lobbying" means:

203 (i) Influencing or attempting to influence

204 legislative or executive action through oral or written

205 communication; or

206 (ii) Solicitation of others to influence

207 legislative or executive action; or

208 (iii) Paying or promising to pay anything of value

209 directly or indirectly related to legislative or executive action.

210 (l) "Lobbyist" means:

211 (i) An individual who is employed and receives

212 payments, or who contracts for economic consideration, including

213 reimbursement for reasonable travel and living expenses, for the

214 purpose of lobbying;

215 (ii) An individual who represents a legislative or

216 public official or public employee, or who represents a person,

217 organization, association or other group, for the purpose of

218 lobbying;

219 (iii) A sole proprietor, owner, part owner or

220 shareholder in a business who has a pecuniary interest in

221 legislative or executive action, who engages in lobbying

222 activities; or

223 (iv) Any individual described in subparagraphs

224 (i), (ii) or (iii) of this paragraph (l) who is employed by or has

225 contracted with any agency, legislative or public official or

226 public employee, or any other public entity for the purpose of



227 providing any type of consulting or other similar service but also
228 engages in any type of lobbying activities. Such individual shall
229 not qualify for any exemption under Section 5-8-7.

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

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

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

240 (p) "Public employee" means an individual appointed to
241 a position, including a position created by statute, whether
242 compensated or not, in state or local government and includes any
243 employee of the public employee. The term includes a member of
244 the board of trustees, chancellor, vice chancellor or the
245 equivalent thereof in the state university system or the state
246 community and junior college system, and a president of a state
247 college or university.

248 (q) "Public official" means an individual elected to a
249 state or local office, or an individual who is appointed to fill a
250 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) "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.

(u) "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.

(v) "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



300 consideration persons who possess at least five (5) years of
301 management experience in general business, health care or finance
302 for an organization, corporation or other public or private
303 entity. Any person, or any employee or owner of a company, who
304 receives any grants, procurements or contracts that are subject to
305 approval under this section shall not be appointed to the Public
306 Procurement Review Board. Any person, or any employee or owner of
307 a company, who is a principal of the source providing a personal
308 or professional service shall not be appointed to the Public
309 Procurement Review Board if the principal owns or controls a
310 greater than five percent (5%) interest or has an ownership value
311 of One Million Dollars (\$1,000,000.00) in the source's business,
312 whichever is smaller. No member shall be an officer or employee
313 of the State of Mississippi while serving as a voting member on
314 the Public Procurement Review Board.

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

318 (e) The members of the Public Procurement Review Board
319 shall elect a chair from among the membership, and he or she shall
320 preside over the meetings of the board. The board shall annually
321 elect a vice chair, who shall serve in the absence of the chair.
322 No business shall be transacted, including adoption of rules of
323 procedure, without the presence of a quorum of the board. Three
324 (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 (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;



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

404 (f) Promulgate rules and regulations governing the
405 solicitation and selection of contractual services personnel
406 including personal and professional services contracts for any
407 form of consulting, policy analysis, public relations, marketing,
408 public affairs * * * or any other contract that the board deems
409 appropriate for oversight, with the exception of any personal
410 service contracts entered into by any agency that employs only
411 nonstate service employees as defined in Section 25-9-107(c), any
412 personal service contracts entered into for computer or
413 information technology-related services governed by the
414 Mississippi Department of Information Technology Services, any
415 personal service contracts entered into by the individual state
416 institutions of higher learning, any personal service contracts
417 entered into by the Mississippi Department of Transportation, any
418 personal service contracts entered into by the Department of Human
419 Services through June 30, 2019, which the Executive Director of
420 the Department of Human Services determines would be useful in
421 establishing and operating the Department of Child Protection
422 Services, any personal service contracts entered into by the



423 Department of Child Protection Services through June 30, 2019, any
424 contracts for entertainers and/or performers at the Mississippi
425 State Fairgrounds entered into by the Mississippi Fair Commission,
426 any contracts entered into by the Department of Finance and
427 Administration when procuring aircraft maintenance, parts,
428 equipment and/or services, and any contract for attorney,
429 accountant, actuary auditor, architect, engineer, and utility rate
430 expert services. Any such rules and regulations shall provide for
431 maintaining continuous internal audit covering the activities of
432 such agency affecting its revenue and expenditures as required
433 under Section 7-7-3(6)(d). Any rules and regulation changes
434 related to personal and professional services contracts that the
435 Public Procurement Review Board may propose shall be submitted to
436 the Chairs of the Accountability, Efficiency and Transparency
437 Committees of the Senate and House of Representatives and the
438 Chairs of the Appropriation Committees of the Senate and House of
439 Representatives at least fifteen (15) days before the board votes
440 on the proposed changes, and those rules and regulation changes,
441 if adopted, shall be promulgated in accordance with the
442 Mississippi Administrative Procedures Act;

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



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

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

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



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

476 (j) Provide standards for the issuance of requests for
477 proposals, the evaluation of proposals received, consideration of
478 costs and quality of services proposed, contract negotiations, the
479 administrative monitoring of contract performance by the agency
480 and successful steps in terminating a contract;

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

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

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

494 (n) Prepare an annual report to the Legislature
495 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;



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

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

527 4. An explanation of why the amount to be
528 expended for the personal or professional service is reasonable;
529 and

530 5. The efforts that the agency went through
531 to obtain the best possible price for the personal or professional
532 service.

533 (iv) If any person or entity objects and proposes
534 that the personal or professional service published under
535 subparagraph (iii) of this paragraph (o) is not a sole source
536 service and can be provided by another person or entity, then the
537 objecting person or entity shall notify the Public Procurement
538 Review Board and the agency that published the proposed sole
539 source contract with a detailed explanation of why the personal or
540 professional service is not a sole source service.

541 (v) 1. If the agency determines after review that
542 the personal or professional service in the proposed sole source
543 contract can be provided by another person or entity, then the
544 agency must withdraw the sole source contract publication from the
545 procurement portal website and submit the procurement of the



personal or professional service to an advertised competitive bid or selection process.

2. If the agency determines after review that there is only one (1) source for the required personal or professional service, then the agency may appeal to the Public 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 prescribed by the Public Procurement Review Board. If the Public Procurement Review Board rejects any contract submitted for review or approval, the Public Procurement Review Board shall clearly set out the reasons for its action, including, but not limited to, the policy that the agency has violated in its submitted contract and any corrective actions that the agency may take to amend the contract to comply with the rules and regulations of the Public Procurement Review Board.

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



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

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

600 (c) Explanation of why the price is considered
601 reasonable; and

602 (d) Description of the efforts that were made to
603 conduct a noncompetitive negotiation to get the best possible
604 price for the taxpayers.

605 (5) In conjunction with the State Personnel Board, the
606 Public Procurement Review Board shall develop and promulgate rules
607 and regulations to define the allowable legal relationship between
608 contract employees and the contracting departments, agencies and
609 institutions of state government under the jurisdiction of the
610 State Personnel Board, in compliance with the applicable rules and
611 regulations of the federal Internal Revenue Service (IRS) for
612 federal employment tax purposes. Under these regulations, the
613 usual common law rules are applicable to determine and require
614 that such worker is an independent contractor and not an employee,
615 requiring evidence of lawful behavioral control, lawful financial
616 control and lawful relationship of the parties. Any state
617 department, agency or institution shall only be authorized to
618 contract for personnel services in compliance with those
619 regulations.



620 (6) No member of the Public Procurement Review Board shall
621 use his or her official authority or influence to coerce, by
622 threat of discharge from employment, or otherwise, the purchase of
623 commodities, the contracting for personal or professional
624 services, or the contracting for public construction under this
625 chapter.

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

629 (8) Nothing in this section shall impair or limit the
630 authority of the Board of Trustees of the Public Employees'
631 Retirement System to enter into any personal or professional
632 services contracts directly related to their constitutional
633 obligation to manage the trust funds, including, but not limited
634 to, actuarial, custodial banks, cash management, investment
635 consultant and investment management contracts.

636 (9) Notwithstanding the exemption of personal and
637 professional services contracts entered into by the Department of
638 Human Services and personal and professional services contracts
639 entered into by the Department of Child Protection Services from
640 the provisions of this section under subsection (2)(f), before the
641 Department of Human Services or the Department of Child Protection
642 Services may enter into a personal or professional service
643 contract, the department(s) shall give notice of the proposed
644 personal or professional service contract to the Public



645 Procurement Review Board for any recommendations by the board.
646 Upon receipt of the notice, the board shall post the notice on its
647 website and on the procurement portal website established by
648 Sections 25-53-151 and 27-104-165. If the board does not respond
649 to the department(s) within seven (7) calendar days after
650 receiving the notice, the department(s) may enter the proposed
651 personal or professional service contract. If the board responds
652 to the department(s) within seven (7) calendar days, then the
653 board has seven (7) calendar days from the date of its initial
654 response to provide any additional recommendations. After the end
655 of the second seven-day period, the department(s) may enter the
656 proposed personal or professional service contract. The board is
657 not authorized to disapprove any proposed personal or professional
658 services contracts. This subsection shall stand repealed on July
659 1, 2022.

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

662 5-8-7. Notwithstanding any other provisions of this chapter,
663 except as otherwise provided in Section 5-8-3(1)(iv), the
664 following person shall not be included within the definition of
665 "lobbyist" or "lobbyist's client" under this chapter, and
666 accordingly the registration and reporting provisions, including
667 the payment of related fees, of this chapter do not apply to:

668 (a) A legislative or public official acting in an
669 official capacity.



670 (b) An individual who:

671 (i) Represents or purports to represent only the

672 individual;

673 (ii) Receives no compensation or anything of value

674 for lobbying; and

675 (iii) Has no pecuniary interest in the legislative

676 or executive action.

677 (c) An individual lobbying in his or her own interest,

678 his or her own business interest, who pays, or promises to pay,

679 offers to pay or causes to be paid to public officials,

680 legislative officials or public employees any thing or things of

681 value aggregating in value to less than Two Hundred Dollars

682 (\$200.00) in any calendar year.

683 (d) An individual lobbying on behalf of his or her

684 employer's business interest where such lobbying is not a primary

685 or regular function of his employment position if such individual

686 pays, promises to pay, offers to pay, or causes to be paid

687 individually or on the employer's behalf to public officials,

688 legislative officials, or public employees any thing or things of

689 value aggregating in value to less than Two Hundred Dollars

690 (\$200.00) in any calendar year.

691 (e) An individual lobbying on behalf of an association

692 of which he or she is a member, where such lobbying is not a

693 primary or regular function of his or her position in the

694 association, if such individual pays, promises to pay, offers to



695 pay, or causes to be paid individually or on the association's
696 behalf to public officials, legislative officials or public
697 employees any thing or things of value aggregating in value to
698 less than Two Hundred Dollars (\$200.00) in any calendar year.

699 (f) An individual who is a shareholder, owner or part
700 owner of a business who lobbies on behalf of such business, where
701 such individual is not an employee of the business, if such
702 individual pays, promises to pay, offers to pay, or causes to be
703 paid individually or on behalf of the business to public
704 officials, legislative officials or public employees any thing or
705 things of value aggregating in value to less than Two Hundred
706 Dollars (\$200.00) in any calendar year.

707 (g) An individual who:

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

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

713 (h) An individual who is a licensed attorney
714 representing a client by:

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



720 (ii) Providing information, on behalf of the
721 client, to an executive or public official, a public employee, or
722 an agency, board, commission, governing authority or other body of
723 state or local government where such services are usual and
724 customary professional legal services including or related to a
725 particular nonlegislative matter, case or controversy.

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

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

738 (k) An individual who is a nonattorney professional and
739 who receives professional fees and expenses to represent clients
740 on executive agency matters, except that if anything of value
741 shall be paid or promised to be paid directly or indirectly on
742 behalf of a client for the personal use or benefit of an executive
743 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 brought forward 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, except that he may act as a lobbyist when acting in his official capacity.

(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:



768 37-101-15. (a) The Board of Trustees of State Institutions
769 of Higher Learning shall succeed to and continue to exercise
770 control of all records, books, papers, equipment, and supplies,
771 and all lands, buildings, and other real and personal property
772 belonging to or assigned to the use and benefit of the board of
773 trustees formerly supervising and controlling the institutions of
774 higher learning named in Section 37-101-1. The board shall have
775 and exercise control of the use, distribution and disbursement of
776 all funds, appropriations and taxes, now and hereafter in
777 possession, levied and collected, received, or appropriated for
778 the use, benefit, support, and maintenance or capital outlay
779 expenditures of the institutions of higher learning, including the
780 authorization of employees to sign vouchers for the disbursement
781 of funds for the various institutions, except where otherwise
782 specifically provided by law.

783 (b) The board shall have general supervision of the affairs
784 of all the institutions of higher learning, including the
785 departments and the schools thereof. The board shall have the
786 power in its discretion to determine who shall be privileged to
787 enter, to remain in, or to graduate therefrom. The board shall
788 have general supervision of the conduct of libraries and
789 laboratories, the care of dormitories, buildings, and grounds; the
790 business methods and arrangement of accounts and records; the
791 organization of the administrative plan of each institution; and
792 all other matters incident to the proper functioning of the



793 institutions. The board shall have the authority to establish
794 minimum standards of achievement as a prerequisite for entrance
795 into any of the institutions under its jurisdiction, which
796 standards need not be uniform between the various institutions and
797 which may be based upon such criteria as the board may establish.

798 (c) The board shall exercise all the powers and prerogatives
799 conferred upon it under the laws establishing and providing for
800 the operation of the several institutions herein specified. The
801 board shall adopt such bylaws and regulations from time to time as
802 it deems expedient for the proper supervision and control of the
803 several institutions of higher learning, insofar as such bylaws
804 and regulations are not repugnant to the Constitution and laws,
805 and not inconsistent with the object for which these institutions
806 were established. The board shall have power and authority to
807 prescribe rules and regulations for policing the campuses and all
808 buildings of the respective institutions, to authorize the arrest
809 of all persons violating on any campus any criminal law of the
810 state, and to have such law violators turned over to the civil
811 authorities.

812 (d) For all institutions specified herein, the board shall
813 provide a uniform system of recording and of accounting approved
814 by the State Department of Audit. The board shall annually
815 prepare, or cause to be prepared, a budget for each institution of
816 higher learning for the succeeding year which must be prepared and
817 in readiness for at least thirty (30) days before the convening of



the regular session of the Legislature. All relationships and negotiations between the State Legislature and its various committees and the institutions named herein shall be carried on through the board of trustees. No official, employee or agent representing any of the separate institutions shall appear before the Legislature or any committee thereof except upon the written order of the board or upon the request of the Legislature or a committee thereof.

(e) For all institutions specified herein, the board shall prepare an annual report to the Legislature setting forth the disbursements of all monies appropriated to the respective institutions. Each report to the Legislature shall show how the money appropriated to the several institutions has been expended, beginning and ending with the fiscal years of the institutions, showing the name of each teacher, officer, and employee, and the salary paid each, and an itemized statement of each and every item of receipts and expenditures. Each report must be balanced, and must begin with the former balance. If any property belonging to the state or the institution is used for profit, the reports shall show the expense incurred in managing the property and the amount received therefrom. The reports shall also show a summary of the gross receipts and gross disbursements for each year and shall show the money on hand at the beginning of the fiscal period of the institution next preceding each session of the Legislature and the necessary amount of expense to be incurred from said date to



843 January 1 following. The board shall keep the annual expenditures
844 of each institution herein mentioned within the income derived
845 from legislative appropriations and other sources, but in case of
846 emergency arising from acts of providence, epidemics, fire or
847 storm with the written approval of the Governor and by written
848 consent of a majority of the senators and of the representatives
849 it may exceed the income. The board shall require a surety bond
850 in a surety company authorized to do business in this state of
851 every employee who is the custodian of funds belonging to one or
852 more of the institutions mentioned herein, which bond shall be in
853 a sum to be fixed by the board in an amount that will properly
854 safeguard the said funds, the premium for which shall be paid out
855 of the funds appropriated for said institutions.

856 (f) The board shall have the power and authority to elect
857 the heads of the various institutions of higher learning and to
858 contract with all deans, professors, and other members of the
859 teaching staff, and all administrative employees of said
860 institutions for a term not exceeding four (4) years. The board
861 shall have the power and authority to terminate any such contract
862 at any time for malfeasance, inefficiency, or contumacious
863 conduct, but never for political reasons. It shall be the policy
864 of the board to permit the executive head of each institution to
865 nominate for election by the board all subordinate employees of
866 the institution over which he presides. It shall be the policy of
867 the board to elect all officials for a definite tenure of service



and to reelect during the period of satisfactory service. The board shall have the power to make any adjustments it thinks necessary between the various departments and schools of any institution or between the different institutions.

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

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

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

(j) In connection with any international contract between the board or one (1) of the state's institutions of higher learning and any party outside of the United States, the board or institution that is the party to the international contract is hereby authorized and empowered to include in the contract a provision for the resolution by arbitration of any controversy between the parties to the contract relating to such contract or



893 the failure or refusal to perform any part of the contract. Such
894 provision shall be valid, enforceable and irrevocable without
895 regard to the justiciable character of the controversy. Provided,
896 however, that in the event either party to such contract initiates
897 litigation against the other with respect to the contract, the
898 arbitration provision shall be deemed waived unless asserted as a
899 defense on or before the responding party is required to answer
900 such litigation.

901 (k) The Board of Trustees of State Institutions of Higher
902 Learning ("board"), on behalf of any institution under its
903 jurisdiction, shall purchase and maintain business property
904 insurance and business personal property insurance on all
905 university-owned buildings and/or contents as required by federal
906 law and regulations of the Federal Emergency Management Agency
907 (FEMA) as is necessary for receiving public assistance or
908 reimbursement for repair, reconstruction, replacement or other
909 damage to those buildings and/or contents caused by the Hurricane
910 Katrina Disaster of 2005 or subsequent disasters. The board is
911 authorized to expend funds from any available source for the
912 purpose of obtaining and maintaining that property insurance. The
913 board is authorized to enter into agreements with the Department
914 of Finance and Administration, local school districts,
915 community/junior college districts, community hospitals and/or
916 other state agencies to pool their liabilities to participate in a
917 group business property and/or business personal property



insurance program, subject to uniform rules and regulations as may be adopted by the Department of Finance and Administration.

(l) The Board of Trustees of State Institutions of Higher Learning, or its designee, may approve the payment or reimbursement of reasonable travel expenses incurred by candidates for open positions at the board's executive office or at any of the state institutions of higher learning, when the job candidate has incurred expenses in traveling to a job interview at the request of the board, the Commissioner of Higher Education or a state institution of higher learning administrator.

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

(ii) Additionally, the board is authorized to oversee, administer and approve contracts for the construction and maintenance of buildings and other facilities of the state institutions of higher learning, including related contracts for architectural and engineering services, which are funded in whole or in part by general obligation bonds of the State of Mississippi at institutions designated annually by the board as being capable to procure and administer all such contracts. Prior to the disbursement of funds, an agreement for each project between the



institution and the Department of Finance and Administration shall be executed. The approval and execution of the agreement shall not be withheld by either party unless the withholding party provides a written, detailed explanation of the basis for withholding to the other party. The agreement shall stipulate the responsibilities of each party, applicable procurement regulations, documentation and reporting requirements, conditions prior to, and schedule of, disbursement of general obligation bond funds to the institution and provisions concerning handling any remaining general obligation bonds at the completion of the project. Such agreement shall not include provisions that constitute additional qualifications or criteria that act to invalidate the designation of an institution as capable of procuring and administering such project. Inclusion of any such provisions may be appealed to the Public Procurement Review Board. This subparagraph (ii) shall stand repealed from and after July 1, 2022.

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

