

By: Senator(s) Bryan

To: Public Health and
Welfare; Accountability,
Efficiency, Transparency

SENATE BILL NO. 2021
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 41-20-3, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT THE COORDINATOR OF MENTAL HEALTH ACCESSIBILITY SHALL
3 BE HOUSED WITHIN THE DEPARTMENT OF FINANCE AND ADMINISTRATION; TO
4 PROVIDE THAT ALL EXPENSES OF THE COORDINATOR SHALL BE PAID OUT OF
5 FUNDS APPROPRIATED TO THE DEPARTMENT OF FINANCE AND
6 ADMINISTRATION; TO AMEND SECTION 41-20-7, MISSISSIPPI CODE OF
7 1972, TO PROVIDE THAT THE COORDINATOR MAY HIRE STAFF SUBJECT TO
8 THE APPROVAL OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF
9 FINANCE AND ADMINISTRATION; TO AMEND SECTION 27-104-7, MISSISSIPPI
10 CODE OF 1972, TO EXEMPT ANY PERSONAL SERVICE CONTRACTS ENTERED
11 INTO BY THE COORDINATOR OF MENTAL HEALTH ACCESSIBILITY THROUGH
12 JUNE 30, 2022, FROM THE RULES AND REGULATIONS OF THE PERSONAL
13 SERVICE CONTRACT REVIEW BOARD; AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** Section 41-20-3, Mississippi Code of 1972, is
16 amended as follows:

17 41-20-3. (1) There is created within the Department of
18 Finance and Administration a position to be known as the
19 Coordinator of Mental Health Accessibility. The coordinator shall
20 be appointed by the Executive Director of the Department of
21 Finance and Administration and shall serve at the will and
22 pleasure of the executive director. The executive director shall
23 appoint the coordinator within thirty (30) days from July 8, 2020.



24 (2) The coordinator must have a master's degree, doctoral
25 degree or juris doctorate from an accredited institution of higher
26 learning and have not less than five (5) years of professional
27 experience.

28 (3) The coordinator shall be housed at the * * * Department
29 of Finance and Administration. All of the expenses of the
30 coordinator, including the coordinator's salary and the salaries
31 of any staff of the coordinator, shall be paid out of funds
32 appropriated to the * * * Department of Finance and
33 Administration.

34 **SECTION 2.** Section 41-20-7, Mississippi Code of 1972, is
35 amended as follows:

36 41-20-7. In fulfilling the responsibilities of this chapter,
37 the coordinator may, subject to federal law:

38 (a) Hire staff needed for the performance of his or her
39 duties under this chapter, subject to the approval of the * * *
40 Executive Director of the Department of Finance and Administration
41 and provided that funds are specifically appropriated for that
42 purpose. * * *

43 (b) Enter any part of the mental health system,
44 including any facility or building used to provide mental health
45 services.

46 (c) Interview, on a confidential basis or otherwise,
47 persons and employees in the mental health system.



48 (d) Access services, documents, records, programs and
49 materials as necessary to assess the status of the mental health
50 system.

51 (e) Recommend changes to any portion of the mental
52 health system either in the coordinator's status reports or to the
53 board(s) of supervisors or regional commissions or to the State
54 Department of Mental Health or as otherwise determined to be
55 necessary by the coordinator.

56 (f) Develop and implement a plan to provide access to
57 mental health services in any county or geographic area within a
58 county, where services are determined to be inadequate, if
59 required by Section 41-20-9.

60 (g) Communicate with any governmental entity as is
61 necessary to fulfill the coordinator's duties under this chapter.

62 (h) Perform any other actions as the coordinator deems
63 necessary to fulfill the coordinator's duties under this chapter.

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

66 27-104-7. (1) (a) There is created the Public Procurement
67 Review Board, which shall be reconstituted on January 1, 2018, and
68 shall be composed of the following members:

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

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



73 (iii) The Executive Director of the Department of
74 Finance and Administration, serving as an ex officio and nonvoting
75 member.

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

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

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

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

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

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

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

92 (c) When appointing members to the Public Procurement
93 Review Board, the Governor and Lieutenant Governor shall take into
94 consideration persons who possess at least five (5) years of
95 management experience in general business, health care or finance
96 for an organization, corporation or other public or private
97 entity. Any person, or any employee or owner of a company, who



98 receives any grants, procurements or contracts that are subject to
99 approval under this section shall not be appointed to the Public
100 Procurement Review Board. Any person, or any employee or owner of
101 a company, who is a principal of the source providing a personal
102 or professional service shall not be appointed to the Public
103 Procurement Review Board if the principal owns or controls a
104 greater than five percent (5%) interest or has an ownership value
105 of One Million Dollars (\$1,000,000.00) in the source's business,
106 whichever is smaller. No member shall be an officer or employee
107 of the State of Mississippi while serving as a voting member on
108 the Public Procurement Review Board.

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

112 (e) The members of the Public Procurement Review Board
113 shall elect a chair from among the membership, and he or she shall
114 preside over the meetings of the board. The board shall annually
115 elect a vice chair, who shall serve in the absence of the chair.
116 No business shall be transacted, including adoption of rules of
117 procedure, without the presence of a quorum of the board. Three
118 (3) members shall be a quorum. No action shall be valid unless
119 approved by a majority of the members present and voting, entered
120 upon the minutes of the board and signed by the chair. Necessary
121 clerical and administrative support for the board shall be
122 provided by the Department of Finance and Administration. Minutes



123 shall be kept of the proceedings of each meeting, copies of which
124 shall be filed on a monthly basis with the chairs of the
125 Accountability, Efficiency and Transparency Committees of the
126 Senate and House of Representatives and the chairs of the
127 Appropriations Committees of the Senate and House of
128 Representatives.

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

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

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

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

143 (c) Adopt regulations governing any lease or rental
144 agreement by any state agency or department, including any state
145 agency financed entirely by federal funds, for space outside the
146 buildings under the jurisdiction of the Department of Finance and
147 Administration. These regulations shall require each agency



148 requesting to lease such space to provide the following
149 information that shall be published by the Department of Finance
150 and Administration on its website: the agency to lease the space;
151 the terms of the lease; the approximate square feet to be leased;
152 the use for the space; a description of a suitable space; the
153 general location desired for the leased space; the contact
154 information for a person from the agency; the deadline date for
155 the agency to have received a lease proposal; any other specific
156 terms or conditions of the agency; and any other information
157 deemed appropriate by the Division of Real Property Management of
158 the Department of Finance and Administration or the Public
159 Procurement Review Board. The information shall be provided
160 sufficiently in advance of the time the space is needed to allow
161 the Division of Real Property Management of the Department of
162 Finance and Administration to review and preapprove the lease
163 before the time for advertisement begins;

164 (d) Adopt, in its discretion, regulations to set aside
165 at least five percent (5%) of anticipated annual expenditures for
166 the purchase of commodities from minority businesses; however, all
167 such set-aside purchases shall comply with all purchasing
168 regulations promulgated by the department and shall be subject to
169 all bid requirements. Set-aside purchases for which competitive
170 bids are required shall be made from the lowest and best minority
171 business bidder; however, if no minority bid is available or if
172 the minority bid is more than two percent (2%) higher than the



173 lowest bid, then bids shall be accepted and awarded to the lowest
174 and best bidder. However, the provisions in this paragraph shall
175 not be construed to prohibit the rejection of a bid when only one
176 (1) bid is received. Such rejection shall be placed in the
177 minutes. For the purposes of this paragraph, the term "minority
178 business" means a business which is owned by a person who is a
179 citizen or lawful permanent resident of the United States and who
180 is:

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

183 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,
184 Central or South American, or other Spanish or Portuguese culture
185 or origin regardless of race;

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

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

191 (v) Female;

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



198 (f) Promulgate rules and regulations governing the
199 solicitation and selection of contractual services personnel
200 including personal and professional services contracts for any
201 form of consulting, policy analysis, public relations, marketing,
202 public affairs, legislative advocacy services or any other
203 contract that the board deems appropriate for oversight, with the
204 exception of any personal service contracts entered into by any
205 agency that employs only nonstate service employees as defined in
206 Section 25-9-107(c), any personal service contracts entered into
207 for computer or information technology-related services governed
208 by the Mississippi Department of Information Technology Services,
209 any personal service contracts entered into by the individual
210 state institutions of higher learning, any personal service
211 contracts entered into by the Mississippi Department of
212 Transportation, any personal service contracts entered into by the
213 Department of Human Services through June 30, 2019, which the
214 Executive Director of the Department of Human Services determines
215 would be useful in establishing and operating the Department of
216 Child Protection Services, any personal service contracts entered
217 into by the Department of Child Protection Services through June
218 30, 2019, any contracts for entertainers and/or performers at the
219 Mississippi State Fairgrounds entered into by the Mississippi Fair
220 Commission, any contracts entered into by the Department of
221 Finance and Administration when procuring aircraft maintenance,
222 parts, equipment and/or services, and any contract for attorney,



223 accountant, actuary auditor, architect, engineer, * * * utility
224 rate expert services, and any personal service contracts approved
225 by the Executive Director of the Department of Finance and
226 Administration and entered into by the Coordinator of Mental
227 Health Accessibility through June 30, 2022. Any such rules and
228 regulations shall provide for maintaining continuous internal
229 audit covering the activities of such agency affecting its revenue
230 and expenditures as required under Section 7-7-3(6)(d). Any rules
231 and regulation changes related to personal and professional
232 services contracts that the Public Procurement Review Board may
233 propose shall be submitted to the Chairs of the Accountability,
234 Efficiency and Transparency Committees of the Senate and House of
235 Representatives and the Chairs of the Appropriation Committees of
236 the Senate and House of Representatives at least fifteen (15) days
237 before the board votes on the proposed changes, and those rules
238 and regulation changes, if adopted, shall be promulgated in
239 accordance with the Mississippi Administrative Procedures Act;

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

244 (h) Develop mandatory standards with respect to
245 contractual services personnel that require invitations for public
246 bid, requests for proposals, record keeping and financial
247 responsibility of contractors. The Public Procurement Review



248 Board shall, unless exempted under this paragraph (h) or under
249 paragraph (i) or (o) of this subsection (2), require the agency
250 involved to submit the procurement to a competitive procurement
251 process, and may reserve the right to reject any or all resulting
252 procurements;

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

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

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



273 (j) Provide standards for the issuance of requests for
274 proposals, the evaluation of proposals received, consideration of
275 costs and quality of services proposed, contract negotiations, the
276 administrative monitoring of contract performance by the agency
277 and successful steps in terminating a contract;

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

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

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

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

295 (o) Develop and implement the following standards and
296 procedures for the approval of any sole source contract for



297 personal and professional services regardless of the value of the
298 procurement:

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

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

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

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

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



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

324 4. An explanation of why the amount to be
325 expended for the personal or professional service is reasonable;
326 and

327 5. The efforts that the agency went through
328 to obtain the best possible price for the personal or professional
329 service.

330 (iv) If any person or entity objects and proposes
331 that the personal or professional service published under
332 subparagraph (iii) of this paragraph (o) is not a sole source
333 service and can be provided by another person or entity, then the
334 objecting person or entity shall notify the Public Procurement
335 Review Board and the agency that published the proposed sole
336 source contract with a detailed explanation of why the personal or
337 professional service is not a sole source service.

338 (v) 1. If the agency determines after review that
339 the personal or professional service in the proposed sole source
340 contract can be provided by another person or entity, then the
341 agency must withdraw the sole source contract publication from the
342 procurement portal website and submit the procurement of the
343 personal or professional service to an advertised competitive bid
344 or selection process.



345 2. If the agency determines after review that
346 there is only one (1) source for the required personal or
347 professional service, then the agency may appeal to the Public
348 Procurement Review Board. The agency has the burden of proving
349 that the personal or professional service is only provided by one
350 (1) source.

351 3. If the Public Procurement Review Board has
352 any reasonable doubt as to whether the personal or professional
353 service can only be provided by one (1) source, then the agency
354 must submit the procurement of the personal or professional
355 service to an advertised competitive bid or selection process. No
356 action taken by the Public Procurement Review Board in this appeal
357 process shall be valid unless approved by a majority of the
358 members of the Public Procurement Review Board present and voting.

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



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

372 (3) All submissions shall be made sufficiently in advance of
373 each monthly meeting of the Public Procurement Review Board as
374 prescribed by the Public Procurement Review Board. If the Public
375 Procurement Review Board rejects any contract submitted for review
376 or approval, the Public Procurement Review Board shall clearly set
377 out the reasons for its action, including, but not limited to, the
378 policy that the agency has violated in its submitted contract and
379 any corrective actions that the agency may take to amend the
380 contract to comply with the rules and regulations of the Public
381 Procurement Review Board.

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

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



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

397 (c) Explanation of why the price is considered
398 reasonable; and

399 (d) Description of the efforts that were made to
400 conduct a noncompetitive negotiation to get the best possible
401 price for the taxpayers.

402 (5) In conjunction with the State Personnel Board, the
403 Public Procurement Review Board shall develop and promulgate rules
404 and regulations to define the allowable legal relationship between
405 contract employees and the contracting departments, agencies and
406 institutions of state government under the jurisdiction of the
407 State Personnel Board, in compliance with the applicable rules and
408 regulations of the federal Internal Revenue Service (IRS) for
409 federal employment tax purposes. Under these regulations, the
410 usual common law rules are applicable to determine and require
411 that such worker is an independent contractor and not an employee,
412 requiring evidence of lawful behavioral control, lawful financial
413 control and lawful relationship of the parties. Any state
414 department, agency or institution shall only be authorized to
415 contract for personnel services in compliance with those
416 regulations.

417 (6) No member of the Public Procurement Review Board shall
418 use his or her official authority or influence to coerce, by
419 threat of discharge from employment, or otherwise, the purchase of



420 commodities, the contracting for personal or professional
421 services, or the contracting for public construction under this
422 chapter.

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

426 (8) Nothing in this section shall impair or limit the
427 authority of the Board of Trustees of the Public Employees'
428 Retirement System to enter into any personal or professional
429 services contracts directly related to their constitutional
430 obligation to manage the trust funds, including, but not limited
431 to, actuarial, custodial banks, cash management, investment
432 consultant and investment management contracts.

433 (9) Notwithstanding the exemption of personal and
434 professional services contracts entered into by the Department of
435 Human Services and personal and professional services contracts
436 entered into by the Department of Child Protection Services from
437 the provisions of this section under subsection (2)(f), before the
438 Department of Human Services or the Department of Child Protection
439 Services may enter into a personal or professional service
440 contract, the department(s) shall give notice of the proposed
441 personal or professional service contract to the Public
442 Procurement Review Board for any recommendations by the board.
443 Upon receipt of the notice, the board shall post the notice on its
444 website and on the procurement portal website established by



445 Sections 25-53-151 and 27-104-165. If the board does not respond
446 to the department(s) within seven (7) calendar days after
447 receiving the notice, the department(s) may enter the proposed
448 personal or professional service contract. If the board responds
449 to the department(s) within seven (7) calendar days, then the
450 board has seven (7) calendar days from the date of its initial
451 response to provide any additional recommendations. After the end
452 of the second seven-day period, the department(s) may enter the
453 proposed personal or professional service contract. The board is
454 not authorized to disapprove any proposed personal or professional
455 services contracts. This subsection shall stand repealed on July
456 1, 2022.

457 **SECTION 4.** This act shall take effect and be in force from
458 and after its passage.

