

By: Representative Roberson

To: Public Health and Human Services

HOUSE BILL NO. 476

1 AN ACT TO AMEND SECTION 27-104-7, MISSISSIPPI CODE OF 1972,
2 TO EXTEND THE DATE OF THE REPEALER ON THE PROVISION OF LAW WHICH
3 REQUIRES THE DEPARTMENT OF HUMAN SERVICES AND THE DEPARTMENT OF
4 CHILD PROTECTION SERVICES TO GIVE NOTICE TO THE PUBLIC PROCUREMENT
5 REVIEW BOARD OF PERSONAL AND PROFESSIONAL SERVICES CONTRACTS AND
6 WHICH PROHIBITS THE BOARD FROM DISAPPROVING SUCH CONTRACTS; AND
7 FOR RELATED PURPOSES.

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

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

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

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

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

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



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

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

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

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

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

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

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

37 (c) When appointing members to the Public Procurement
38 Review Board, the Governor and Lieutenant Governor shall take into
39 consideration persons who possess at least five (5) years of
40 management experience in general business, health care or finance
41 for an organization, corporation or other public or private
42 entity. Any person, or any employee or owner of a company, who
43 receives any grants, procurements or contracts that are subject to
44 approval under this section shall not be appointed to the Public
45 Procurement Review Board. Any person, or any employee or owner of



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

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

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



71 Senate and House of Representatives and the chairs of the
72 Appropriations Committees of the Senate and House of
73 Representatives.

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

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

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

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

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



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

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



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

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

128 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,
129 Central or South American, or other Spanish or Portuguese culture
130 or origin regardless of race;

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

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

136 (v) Female;

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

143 (f) Promulgate rules and regulations governing the
144 solicitation and selection of contractual services personnel,
145 including personal and professional services contracts for any



146 form of consulting, policy analysis, public relations, marketing,
147 public affairs, legislative advocacy services or any other
148 contract that the board deems appropriate for oversight, with the
149 exception of any personal service contracts entered into by any
150 agency that employs only nonstate service employees as defined in
151 Section 25-9-107(c), any personal service contracts entered into
152 for computer or information technology-related services governed
153 by the Mississippi Department of Information Technology Services,
154 any personal service contracts entered into by the individual
155 state institutions of higher learning, any personal service
156 contracts entered into by the Mississippi Department of
157 Transportation, any personal service contracts entered into by the
158 Department of Human Services through June 30, * * * 2025, which
159 the Executive Director of the Department of Human Services
160 determines would be useful in establishing and operating the
161 Department of Child Protection Services, any personal service
162 contracts entered into by the Department of Child Protection
163 Services through June 30, * * * 2025, any contracts for
164 entertainers and/or performers at the Mississippi State
165 Fairgrounds entered into by the Mississippi Fair Commission, any
166 contracts entered into by the Department of Finance and
167 Administration when procuring aircraft maintenance, parts,
168 equipment and/or services, any contract entered into by the
169 Department of Public Safety for service on specialized equipment
170 and/or software required for the operation at such specialized



171 equipment for use by the Office of Forensics Laboratories, and any
172 contract for attorney, accountant, actuary auditor, architect,
173 engineer, anatomical pathologist, utility rate expert services,
174 and any personal service contracts approved by the Executive
175 Director of the Department of Finance and Administration and
176 entered into by the Coordinator of Mental Health Accessibility
177 through June 30, 2022. Any such rules and regulations shall
178 provide for maintaining continuous internal audit covering the
179 activities of such agency affecting its revenue and expenditures
180 as required under Section 7-7-3(6)(d). Any rules and regulation
181 changes related to personal and professional services contracts
182 that the Public Procurement Review Board may propose shall be
183 submitted to the Chairs of the Accountability, Efficiency and
184 Transparency Committees of the Senate and House of Representatives
185 and the Chairs of the Appropriation Committees of the Senate and
186 House of Representatives at least fifteen (15) days before the
187 board votes on the proposed changes, and those rules and
188 regulation changes, if adopted, shall be promulgated in accordance
189 with the Mississippi Administrative Procedures Act;

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

194 (h) Develop mandatory standards with respect to
195 contractual services personnel that require invitations for public



196 bid, requests for proposals, record keeping and financial
197 responsibility of contractors. The Public Procurement Review
198 Board shall, unless exempted under this paragraph (h) or under
199 paragraph (i) or (o) of this subsection (2), require the agency
200 involved to submit the procurement to a competitive procurement
201 process, and may reserve the right to reject any or all resulting
202 procurements;

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

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

218 (ii) Contracts between two (2) state agencies,
219 both under Public Procurement Review Board purview, shall not
220 require Public Procurement Review Board approval. However, the



221 contracts shall still be entered into the enterprise resource
222 planning system;

223 (j) Provide standards for the issuance of requests for
224 proposals, the evaluation of proposals received, consideration of
225 costs and quality of services proposed, contract negotiations, the
226 administrative monitoring of contract performance by the agency
227 and successful steps in terminating a contract;

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

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

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

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



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

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

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

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

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



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

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

274 4. An explanation of why the amount to be
275 expended for the personal or professional service is reasonable;
276 and

277 5. The efforts that the agency went through
278 to obtain the best possible price for the personal or professional
279 service.

280 (iv) If any person or entity objects and proposes
281 that the personal or professional service published under
282 subparagraph (iii) of this paragraph (o) is not a sole source
283 service and can be provided by another person or entity, then the
284 objecting person or entity shall notify the Public Procurement
285 Review Board and the agency that published the proposed sole
286 source contract with a detailed explanation of why the personal or
287 professional service is not a sole source service.

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



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

295 2. If the agency determines after review that
296 there is only one (1) source for the required personal or
297 professional service, then the agency may appeal to the Public
298 Procurement Review Board. The agency has the burden of proving
299 that the personal or professional service is only provided by one
300 (1) source.

301 3. If the Public Procurement Review Board has
302 any reasonable doubt as to whether the personal or professional
303 service can only be provided by one (1) source, then the agency
304 must submit the procurement of the personal or professional
305 service to an advertised competitive bid or selection process. No
306 action taken by the Public Procurement Review Board in this appeal
307 process shall be valid unless approved by a majority of the
308 members of the Public Procurement Review Board present and voting.

309 (vi) The Public Procurement Review Board shall
310 prepare and submit a quarterly report to the House of
311 Representatives and Senate Accountability, Efficiency and
312 Transparency Committees that details the sole source contracts
313 presented to the Public Procurement Review Board and the reasons
314 that the Public Procurement Review Board approved or rejected each
315 contract. These quarterly reports shall also include the
316 documentation and memoranda required in subsection (4) of this
317 section. An agency that submitted a sole source contract shall be



318 prepared to explain the sole source contract to each committee by
319 December 15 of each year upon request by the committee;

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

322 (3) All submissions shall be made sufficiently in advance of
323 each monthly meeting of the Public Procurement Review Board as
324 prescribed by the Public Procurement Review Board. If the Public
325 Procurement Review Board rejects any contract submitted for review
326 or approval, the Public Procurement Review Board shall clearly set
327 out the reasons for its action, including, but not limited to, the
328 policy that the agency has violated in its submitted contract and
329 any corrective actions that the agency may take to amend the
330 contract to comply with the rules and regulations of the Public
331 Procurement Review Board.

332 (4) All sole source contracts for personal and professional
333 services awarded by state agencies, other than those exempted
334 under * * * subsections(2) (f) and (8) of this section, whether
335 approved by an agency head or the Public Procurement Review Board,
336 shall contain in the procurement file a written determination for
337 the approval, using a request form furnished by the Public
338 Procurement Review Board. The written determination shall
339 document the basis for the determination, including any market
340 analysis conducted in order to ensure that the service required
341 was practicably available from only one (1) source. A memorandum



342 shall accompany the request form and address the following four
343 (4) points:

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

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

348 (c) Explanation of why the price is considered
349 reasonable; and

350 (d) Description of the efforts that were made to
351 conduct a noncompetitive negotiation to get the best possible
352 price for the taxpayers.

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



366 contract for personnel services in compliance with those
367 regulations.

368 (6) No member of the Public Procurement Review Board shall
369 use his or her official authority or influence to coerce, by
370 threat of discharge from employment, or otherwise, the purchase of
371 commodities, the contracting for personal or professional
372 services, or the contracting for public construction under this
373 chapter.

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

377 (8) Nothing in this section shall impair or limit the
378 authority of the Board of Trustees of the Public Employees'
379 Retirement System to enter into any personal or professional
380 services contracts directly related to their constitutional
381 obligation to manage the trust funds, including, but not limited
382 to, actuarial, custodial banks, cash management, investment
383 consultant and investment management contracts.

384 (9) Notwithstanding the exemption of personal and
385 professional services contracts entered into by the Department of
386 Human Services and personal and professional services contracts
387 entered into by the Department of Child Protection Services from
388 the provisions of this section under subsection (2)(f), before the
389 Department of Human Services or the Department of Child Protection
390 Services may enter into a personal or professional service



391 contract, the department(s) shall give notice of the proposed
392 personal or professional service contract to the Public
393 Procurement Review Board for any recommendations by the board.
394 Upon receipt of the notice, the board shall post the notice on its
395 website and on the procurement portal website established by
396 Sections 25-53-151 and 27-104-165. If the board does not respond
397 to the department(s) within seven (7) calendar days after
398 receiving the notice, the department(s) may enter the proposed
399 personal or professional service contract. If the board responds
400 to the department(s) within seven (7) calendar days, then the
401 board has seven (7) calendar days from the date of its initial
402 response to provide any additional recommendations. After the end
403 of the second seven-day period, the department(s) may enter the
404 proposed personal or professional service contract. The board is
405 not authorized to disapprove any proposed personal or professional
406 services contracts. This subsection shall stand repealed on July
407 1, * * * 2025.

408 **SECTION 2.** This act shall take effect and be in force from
409 and after July 1, 2022.

