

By: Representative Currie

To: Accountability,
Efficiency, Transparency

HOUSE BILL NO. 1190

1 AN ACT TO AMEND SECTION 27-104-7, MISSISSIPPI CODE OF 1972,
 2 TO REPLACE THE TERM "ATTORNEY" WITH THE TERM "LEGAL SERVICES" TO
 3 PROVIDE THAT ANY CONTRACT FOR LEGAL SERVICES, WHICH IS DEFINED AS
 4 ANY CONTRACT IN WHICH SERVICES ARE PROVIDED DIRECTLY BY AN
 5 ATTORNEY OR ANY EMPLOYEE OF AN ATTORNEY, SHALL BE EXEMPT FROM THE
 6 OVERSIGHT OF THE PUBLIC PROCUREMENT REVIEW BOARD; TO AMEND SECTION
 7 7-5-39, MISSISSIPPI CODE OF 1972, TO REQUIRE THAT ANY NEW CONTRACT
 8 OR ANY MODIFICATIONS TO A LEGAL SERVICES CONTRACT THAT CONTAINS
 9 NONLEGAL SERVICES SHALL BE DENIED IF THE ADDITIONAL SERVICES FALL
 10 UNDER THE PURVIEW OF THE PUBLIC PROCUREMENT REVIEW BOARD; AND FOR
 11 RELATED PURPOSES.

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

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

15 27-104-7. (1) (a) There is created the Public Procurement
 16 Review Board, which shall be reconstituted on January 1, 2018, and
 17 shall be composed of the following members:

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

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



22 (iii) The Executive Director of the Department of
23 Finance and Administration, serving as an ex officio and nonvoting
24 member.

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

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

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

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

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

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

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

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



47 receives any grants, procurements or contracts that are subject to
48 approval under this section shall not be appointed to the Public
49 Procurement Review Board. Any person, or any employee or owner of
50 a company, who is a principal of the source providing a personal
51 or professional service shall not be appointed to the Public
52 Procurement Review Board if the principal owns or controls a
53 greater than five percent (5%) interest or has an ownership value
54 of One Million Dollars (\$1,000,000.00) in the source's business,
55 whichever is smaller. No member shall be an officer or employee
56 of the State of Mississippi while serving as a voting member on
57 the Public Procurement Review Board.

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

61 (e) The members of the Public Procurement Review Board
62 shall elect a chair from among the membership, and he or she shall
63 preside over the meetings of the board. The board shall annually
64 elect a vice chair, who shall serve in the absence of the chair.
65 No business shall be transacted, including adoption of rules of
66 procedure, without the presence of a quorum of the board. Three
67 (3) members shall be a quorum. No action shall be valid unless
68 approved by a majority of the members present and voting, entered
69 upon the minutes of the board and signed by the chair. Necessary
70 clerical and administrative support for the board shall be
71 provided by the Department of Finance and Administration. Minutes



72 shall be kept of the proceedings of each meeting, copies of which
73 shall be filed on a monthly basis with the chairs of the
74 Accountability, Efficiency and Transparency Committees of the
75 Senate and House of Representatives and the chairs of the
76 Appropriations Committees of the Senate and House of
77 Representatives.

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

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

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

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

92 (c) Adopt regulations governing any lease or rental
93 agreement by any state agency or department, including any state
94 agency financed entirely by federal funds, for space outside the
95 buildings under the jurisdiction of the Department of Finance and
96 Administration. These regulations shall require each agency



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

113 (d) Adopt, in its discretion, regulations to set aside
114 at least five percent (5%) of anticipated annual expenditures for
115 the purchase of commodities from minority businesses; however, all
116 such set-aside purchases shall comply with all purchasing
117 regulations promulgated by the department and shall be subject to
118 all bid requirements. Set-aside purchases for which competitive
119 bids are required shall be made from the lowest and best minority
120 business bidder; however, if no minority bid is available or if
121 the minority bid is more than two percent (2%) higher than the



122 lowest bid, then bids shall be accepted and awarded to the lowest
123 and best bidder. However, the provisions in this paragraph shall
124 not be construed to prohibit the rejection of a bid when only one
125 (1) bid is received. Such rejection shall be placed in the
126 minutes. For the purposes of this paragraph, the term "minority
127 business" means a business which is owned by a person who is a
128 citizen or lawful permanent resident of the United States and who
129 is:

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

132 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,
133 Central or South American, or other Spanish or Portuguese culture
134 or origin regardless of race;

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

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

140 (v) Female;

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



147 (f) Promulgate rules and regulations governing the
148 solicitation and selection of contractual services personnel,
149 including personal and professional services contracts for any
150 form of consulting, policy analysis, public relations, marketing,
151 public affairs, legislative advocacy services or any other
152 contract that the board deems appropriate for oversight, with the
153 exception of any personal service contracts entered into by any
154 agency that employs only nonstate service employees as defined in
155 Section 25-9-107(c), any personal service contracts entered into
156 for computer or information technology-related services governed
157 by the Mississippi Department of Information Technology Services,
158 any personal service contracts entered into by the individual
159 state institutions of higher learning, any personal service
160 contracts entered into by the Mississippi Department of
161 Transportation, any personal service contracts entered into by the
162 Department of Human Services through June 30, 2019, which the
163 Executive Director of the Department of Human Services determines
164 would be useful in establishing and operating the Department of
165 Child Protection Services, any personal service contracts entered
166 into by the Department of Child Protection Services through June
167 30, 2019, any contracts for entertainers and/or performers at the
168 Mississippi State Fairgrounds entered into by the Mississippi Fair
169 Commission, any contracts entered into by the Department of
170 Finance and Administration when procuring aircraft maintenance,
171 parts, equipment and/or services, any contract entered into by the



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

195 (g) Approve all personal and professional services
196 contracts involving the expenditures of funds in excess of



197 Seventy-five Thousand Dollars (\$75,000.00), except as provided in
198 paragraph (f) of this subsection (2) and in subsection (8);

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

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

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



221 shall still be submitted for approval to the Public Procurement
222 Review Board.

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

228 (j) Provide standards for the issuance of requests for
229 proposals, the evaluation of proposals received, consideration of
230 costs and quality of services proposed, contract negotiations, the
231 administrative monitoring of contract performance by the agency
232 and successful steps in terminating a contract;

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

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

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



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

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

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

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

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



- 271 1. The personal or professional service
272 offered in the contract;
- 273 2. An explanation of why the personal or
274 professional service is the only one that can meet the needs of
275 the agency;
- 276 3. An explanation of why the source is the
277 only person or entity that can provide the required personal or
278 professional service;
- 279 4. An explanation of why the amount to be
280 expended for the personal or professional service is reasonable;
281 and
- 282 5. The efforts that the agency went through
283 to obtain the best possible price for the personal or professional
284 service.

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

293 (v) 1. If the agency determines after review that
294 the personal or professional service in the proposed sole source
295 contract can be provided by another person or entity, then the



296 agency must withdraw the sole source contract publication from the
297 procurement portal website and submit the procurement of the
298 personal or professional service to an advertised competitive bid
299 or selection process.

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

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

314 (vi) The Public Procurement Review Board shall
315 prepare and submit a quarterly report to the House of
316 Representatives and Senate Accountability, Efficiency and
317 Transparency Committees that details the sole source contracts
318 presented to the Public Procurement Review Board and the reasons
319 that the Public Procurement Review Board approved or rejected each
320 contract. These quarterly reports shall also include the



321 documentation and memoranda required in subsection (4) of this
322 section. An agency that submitted a sole source contract shall be
323 prepared to explain the sole source contract to each committee by
324 December 15 of each year upon request by the committee;

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

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

337 (4) All sole source contracts for personal and professional
338 services awarded by state agencies, other than those exempted
339 under Section 27-104-7(2) (f) and (8), whether approved by an
340 agency head or the Public Procurement Review Board, shall contain
341 in the procurement file a written determination for the approval,
342 using a request form furnished by the Public Procurement Review
343 Board. The written determination shall document the basis for the
344 determination, including any market analysis conducted in order to
345 ensure that the service required was practicably available from



346 only one (1) source. A memorandum shall accompany the request
347 form and address the following four (4) points:

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

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

352 (c) Explanation of why the price is considered
353 reasonable; and

354 (d) Description of the efforts that were made to
355 conduct a noncompetitive negotiation to get the best possible
356 price for the taxpayers.

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



370 contract for personnel services in compliance with those
371 regulations.

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

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

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

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



395 contract, the department(s) shall give notice of the proposed
396 personal or professional service contract to the Public
397 Procurement Review Board for any recommendations by the board.
398 Upon receipt of the notice, the board shall post the notice on its
399 website and on the procurement portal website established by
400 Sections 25-53-151 and 27-104-165. If the board does not respond
401 to the department(s) within seven (7) calendar days after
402 receiving the notice, the department(s) may enter the proposed
403 personal or professional service contract. If the board responds
404 to the department(s) within seven (7) calendar days, then the
405 board has seven (7) calendar days from the date of its initial
406 response to provide any additional recommendations. After the end
407 of the second seven-day period, the department(s) may enter the
408 proposed personal or professional service contract. The board is
409 not authorized to disapprove any proposed personal or professional
410 services contracts. This subsection shall stand repealed on July
411 1, 2022.

412 **SECTION 2.** Section 7-5-39, Mississippi Code of 1972, is
413 amended as follows:

414 7-5-39. (1) Except as otherwise provided by law, the
415 Attorney General shall represent the state, in person or by his
416 assistant, as counsel in all suits against the state in other
417 courts or the Supreme Court at the seat of government, and he
418 shall, in like manner, act as counsel for any of the state



419 officers in suits brought by or against them in their official
420 capacity, touching any official duty or trust.

421 (2) No civil legal action on behalf of the state, any arm or
422 agency of the state, or any statewide elected officer acting in
423 his official capacity may be taken until seven (7) working days'
424 written notice of the proposed legal action is given to the
425 statewide elected officer or proper person in charge of the arm or
426 agency unless irreparable injury to the state would result by
427 waiting for the expiration of the seven-day period.

428 (3) (a) The Attorney General shall authorize retention of
429 independent counsel from outside his office by an arm or agency of
430 the state or a statewide elected officer acting in his official
431 capacity if the Attorney General declines representation when
432 requested.

433 (b) (i) The Attorney General shall authorize retention
434 of independent counsel from outside his office by an arm or agency
435 of the state or a statewide elected officer acting in his official
436 capacity and shall withdraw from representation of the arm or
437 agency of the state or the statewide elected officer if there is a
438 significant disagreement with the Attorney General as to the legal
439 strategy to be used in the matter, and the Outside Counsel
440 Oversight Commission has first approved the retention of outside
441 counsel.

442 (ii) If an arm or agency of the state or statewide
443 elected officer acting in his official capacity retains outside



444 counsel under this subsection (3), the counsel shall be selected
445 by the arm or agency of the state or the statewide elected
446 officer. Fees of counsel employed on a fee basis shall not exceed
447 recognized bar rates for similar services; any contract for
448 outside counsel employed on a contingency fee basis shall conform
449 to the provisions of Section 7-5-8.

450 (c) Any contract for outside counsel under this
451 subsection (3), which contains additional services other than
452 legal services as defined by Section 27-104-7, shall be denied if
453 the additional services fall under the purview of the Public
454 Procurement Review Board.

455 (4) The Attorney General may pursue the collection of any
456 claim or judgment in favor of the state outside of the state.

457 **SECTION 3.** This act shall take effect and be in force from
458 and after July 1, 2022.

