

By: Representative Hopkins

To: Appropriations

HOUSE BILL NO. 1387

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;



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

104                   3. Food and beverages for immediate  
105 consumption provided by a lobbyist up to a value of Ten Dollars  
106 (\$10.00) in the aggregate during any calendar year;

107                   4. Campaign contributions reported in  
108 accordance with Section 23-15-801 et seq., Mississippi Code of  
109 1972.

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

112                   (c) "Compensation" means:

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

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

123                   (d) "Executive action" means the proposal, drafting,  
124 development, consideration, amendment, adoption, approval,  
125 promulgation, issuance, modification, rejection or postponement by  
126 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;



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

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

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

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

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

170 (h) "Gift" means anything of value to the extent that  
171 consideration of equal or greater value is not received, including  
172 a rebate or discount in the price of anything of value unless the  
173 rebate or discount is made in the ordinary course of business to a  
174 member of the public without regard to that person's status as an  
175 executive, legislative or public official.

176 (i) "Legislative action" means:



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

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

186 (iii) Action by the Legislature in:

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

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

191 (j) "Legislative official" means:

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

194 (ii) A member of a commission or other entity  
195 established by and responsible to either or both houses of the  
196 Legislature;

197 (iii) A staff member, officer or employee to a  
198 member or member-elect of the Legislature, to a member of a  
199 commission or other entity established by and responsible to  
200 either or both houses of the Legislature, or to the Legislature or  
201 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.



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

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

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

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

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

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

272 27-104-7. (1) (a) There is created the Public Procurement  
273 Review Board, which shall be reconstituted on January 1, 2018, and  
274 shall be composed of the following members:



275 (i) Three (3) individuals appointed by the  
276 Governor with the advice and consent of the Senate;  
277 (ii) Two (2) individuals appointed by the  
278 Lieutenant Governor with the advice and consent of the Senate; and  
279 (iii) The Executive Director of the Department of  
280 Finance and Administration, serving as an ex officio and nonvoting  
281 member.

282 (b) The initial terms of each appointee shall be as  
283 follows:

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

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

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

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

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

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

298 (c) When appointing members to the Public Procurement  
299 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



325 approved by a majority of the members present and voting, entered  
326 upon the minutes of the board and signed by the chair. Necessary  
327 clerical and administrative support for the board shall be  
328 provided by the Department of Finance and Administration. Minutes  
329 shall be kept of the proceedings of each meeting, copies of which  
330 shall be filed on a monthly basis with the chairs of the  
331 Accountability, Efficiency and Transparency Committees of the  
332 Senate and House of Representatives and the chairs of the  
333 Appropriations Committees of the Senate and House of  
334 Representatives.

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

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

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

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



349 (c) Adopt regulations governing any lease or rental  
350 agreement by any state agency or department, including any state  
351 agency financed entirely by federal funds, for space outside the  
352 buildings under the jurisdiction of the Department of Finance and  
353 Administration. These regulations shall require each agency  
354 requesting to lease such space to provide the following  
355 information that shall be published by the Department of Finance  
356 and Administration on its website: the agency to lease the space;  
357 the terms of the lease; the approximate square feet to be leased;  
358 the use for the space; a description of a suitable space; the  
359 general location desired for the leased space; the contact  
360 information for a person from the agency; the deadline date for  
361 the agency to have received a lease proposal; any other specific  
362 terms or conditions of the agency; and any other information  
363 deemed appropriate by the Division of Real Property Management of  
364 the Department of Finance and Administration or the Public  
365 Procurement Review Board. The information shall be provided  
366 sufficiently in advance of the time the space is needed to allow  
367 the Division of Real Property Management of the Department of  
368 Finance and Administration to review and preapprove the lease  
369 before the time for advertisement begins;

370 (d) Adopt, in its discretion, regulations to set aside  
371 at least five percent (5%) of anticipated annual expenditures for  
372 the purchase of commodities from minority businesses; however, all  
373 such set-aside purchases shall comply with all purchasing



374 regulations promulgated by the department and shall be subject to  
375 all bid requirements. Set-aside purchases for which competitive  
376 bids are required shall be made from the lowest and best minority  
377 business bidder; however, if no minority bid is available or if  
378 the minority bid is more than two percent (2%) higher than the  
379 lowest bid, then bids shall be accepted and awarded to the lowest  
380 and best bidder. However, the provisions in this paragraph shall  
381 not be construed to prohibit the rejection of a bid when only one  
382 (1) bid is received. Such rejection shall be placed in the  
383 minutes. For the purposes of this paragraph, the term "minority  
384 business" means a business which is owned by a person who is a  
385 citizen or lawful permanent resident of the United States and who  
386 is:

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

389 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,  
390 Central or South American, or other Spanish or Portuguese culture  
391 or origin regardless of race;

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

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

397 (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, any contract entered into by the  
429 Department of Public Safety for service on specialized equipment  
430 and/or software required for the operation at such specialized  
431 equipment for use by the Office of Forensics Laboratories, and any  
432 contract for attorney, accountant, actuary auditor, architect,  
433 engineer, anatomical pathologist, utility rate expert services,  
434 and any personal service contracts approved by the Executive  
435 Director of the Department of Finance and Administration and  
436 entered into by the Coordinator of Mental Health Accessibility  
437 through June 30, 2022. Any such rules and regulations shall  
438 provide for maintaining continuous internal audit covering the  
439 activities of such agency affecting its revenue and expenditures  
440 as required under Section 7-7-3(6)(d). Any rules and regulation  
441 changes related to personal and professional services contracts  
442 that the Public Procurement Review Board may propose shall be  
443 submitted to the Chairs of the Accountability, Efficiency and  
444 Transparency Committees of the Senate and House of Representatives  
445 and the Chairs of the Appropriation Committees of the Senate and  
446 House of Representatives at least fifteen (15) days before the  
447 board votes on the proposed changes, and those rules and



448 regulation changes, if adopted, shall be promulgated in accordance  
449 with the Mississippi Administrative Procedures Act;

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

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

463 (i) Prescribe certain circumstances by which agency  
464 heads may enter into contracts for personal and professional  
465 services without receiving prior approval from the Public  
466 Procurement Review Board. The Public Procurement Review Board may  
467 establish a preapproved list of providers of various personal and  
468 professional services for set prices with which state agencies may  
469 contract without bidding or prior approval from the board;

470 (i) Agency requirements may be fulfilled by  
471 procuring services performed incident to the state's own programs.  
472 The agency head shall determine in writing whether the price



473 represents a fair market value for the services. When the  
474 procurements are made from other governmental entities, the  
475 private sector need not be solicited; however, these contracts  
476 shall still be submitted for approval to the Public Procurement  
477 Review Board.

478 (ii) Contracts between two (2) state agencies,  
479 both under Public Procurement Review Board purview, shall not  
480 require Public Procurement Review Board approval. However, the  
481 contracts shall still be entered into the enterprise resource  
482 planning system;

483 (j) Provide standards for the issuance of requests for  
484 proposals, the evaluation of proposals received, consideration of  
485 costs and quality of services proposed, contract negotiations, the  
486 administrative monitoring of contract performance by the agency  
487 and successful steps in terminating a contract;

488 (k) Present recommendations for governmental  
489 privatization and to evaluate privatization proposals submitted by  
490 any state agency;

491 (l) Authorize personal and professional service  
492 contracts to be effective for more than one (1) year provided a  
493 funding condition is included in any such multiple year contract,  
494 except the State Board of Education, which shall have the  
495 authority to enter into contractual agreements for student  
496 assessment for a period up to ten (10) years. The State Board of



497 Education shall procure these services in accordance with the  
498 Public Procurement Review Board procurement regulations;

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

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

505 (o) Develop and implement the following standards and  
506 procedures for the approval of any sole source contract for  
507 personal and professional services regardless of the value of the  
508 procurement:

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

512 (ii) An agency that has been issued a binding,  
513 valid court order mandating that a particular source or provider  
514 must be used for the required service must include a copy of the  
515 applicable court order in all future sole source contract reviews  
516 for the particular personal or professional service referenced in  
517 the court order.

518 (iii) Any agency alleging to have a sole source  
519 for any personal or professional service, other than those  
520 exempted under paragraph (f) of this subsection (2) and subsection  
521 (8), shall publish on the procurement portal website established



522 by Sections 25-53-151 and 27-104-165, for at least fourteen (14)  
523 days, the terms of the proposed contract for those services. In  
524 addition, the publication shall include, but is not limited to,  
525 the following information:

526                   1. The personal or professional service  
527 offered in the contract;

528                   2. An explanation of why the personal or  
529 professional service is the only one that can meet the needs of  
530 the agency;

531                   3. An explanation of why the source is the  
532 only person or entity that can provide the required personal or  
533 professional service;

534                   4. An explanation of why the amount to be  
535 expended for the personal or professional service is reasonable;  
536 and

537                   5. The efforts that the agency went through  
538 to obtain the best possible price for the personal or professional  
539 service.

540                   (iv) If any person or entity objects and proposes  
541 that the personal or professional service published under  
542 subparagraph (iii) of this paragraph (o) is not a sole source  
543 service and can be provided by another person or entity, then the  
544 objecting person or entity shall notify the Public Procurement  
545 Review Board and the agency that published the proposed sole



546 source contract with a detailed explanation of why the personal or  
547 professional service is not a sole source service.

548 (v) 1. If the agency determines after review that  
549 the personal or professional service in the proposed sole source  
550 contract can be provided by another person or entity, then the  
551 agency must withdraw the sole source contract publication from the  
552 procurement portal website and submit the procurement of the  
553 personal or professional service to an advertised competitive bid  
554 or selection process.

555 2. If the agency determines after review that  
556 there is only one (1) source for the required personal or  
557 professional service, then the agency may appeal to the Public  
558 Procurement Review Board. The agency has the burden of proving  
559 that the personal or professional service is only provided by one  
560 (1) source.

561 3. If the Public Procurement Review Board has  
562 any reasonable doubt as to whether the personal or professional  
563 service can only be provided by one (1) source, then the agency  
564 must submit the procurement of the personal or professional  
565 service to an advertised competitive bid or selection process. No  
566 action taken by the Public Procurement Review Board in this appeal  
567 process shall be valid unless approved by a majority of the  
568 members of the Public Procurement Review Board present and voting.

569 (vi) The Public Procurement Review Board shall  
570 prepare and submit a quarterly report to the House of



571 Representatives and Senate Accountability, Efficiency and  
572 Transparency Committees that details the sole source contracts  
573 presented to the Public Procurement Review Board and the reasons  
574 that the Public Procurement Review Board approved or rejected each  
575 contract. These quarterly reports shall also include the  
576 documentation and memoranda required in subsection (4) of this  
577 section. An agency that submitted a sole source contract shall be  
578 prepared to explain the sole source contract to each committee by  
579 December 15 of each year upon request by the committee;

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

582 (3) All submissions shall be made sufficiently in advance of  
583 each monthly meeting of the Public Procurement Review Board as  
584 prescribed by the Public Procurement Review Board. If the Public  
585 Procurement Review Board rejects any contract submitted for review  
586 or approval, the Public Procurement Review Board shall clearly set  
587 out the reasons for its action, including, but not limited to, the  
588 policy that the agency has violated in its submitted contract and  
589 any corrective actions that the agency may take to amend the  
590 contract to comply with the rules and regulations of the Public  
591 Procurement Review Board.

592 (4) All sole source contracts for personal and professional  
593 services awarded by state agencies, other than those exempted  
594 under Section 27-104-7(2)(f) and (8), whether approved by an  
595 agency head or the Public Procurement Review Board, shall contain





596 in the procurement file a written determination for the approval,  
597 using a request form furnished by the Public Procurement Review  
598 Board. The written determination shall document the basis for the  
599 determination, including any market analysis conducted in order to  
600 ensure that the service required was practicably available from  
601 only one (1) source. A memorandum shall accompany the request  
602 form and address the following four (4) points:

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

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

607 (c) Explanation of why the price is considered  
608 reasonable; and

609 (d) Description of the efforts that were made to  
610 conduct a noncompetitive negotiation to get the best possible  
611 price for the taxpayers.

612 (5) In conjunction with the State Personnel Board, the  
613 Public Procurement Review Board shall develop and promulgate rules  
614 and regulations to define the allowable legal relationship between  
615 contract employees and the contracting departments, agencies and  
616 institutions of state government under the jurisdiction of the  
617 State Personnel Board, in compliance with the applicable rules and  
618 regulations of the federal Internal Revenue Service (IRS) for  
619 federal employment tax purposes. Under these regulations, the  
620 usual common law rules are applicable to determine and require



621 that such worker is an independent contractor and not an employee,  
622 requiring evidence of lawful behavioral control, lawful financial  
623 control and lawful relationship of the parties. Any state  
624 department, agency or institution shall only be authorized to  
625 contract for personnel services in compliance with those  
626 regulations.

627 (6) No member of the Public Procurement Review Board shall  
628 use his or her official authority or influence to coerce, by  
629 threat of discharge from employment, or otherwise, the purchase of  
630 commodities, the contracting for personal or professional  
631 services, or the contracting for public construction under this  
632 chapter.

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

636 (8) Nothing in this section shall impair or limit the  
637 authority of the Board of Trustees of the Public Employees'  
638 Retirement System to enter into any personal or professional  
639 services contracts directly related to their constitutional  
640 obligation to manage the trust funds, including, but not limited  
641 to, actuarial, custodial banks, cash management, investment  
642 consultant and investment management contracts.

643 (9) Notwithstanding the exemption of personal and  
644 professional services contracts entered into by the Department of  
645 Human Services and personal and professional services contracts



646 entered into by the Department of Child Protection Services from  
647 the provisions of this section under subsection (2)(f), before the  
648 Department of Human Services or the Department of Child Protection  
649 Services may enter into a personal or professional service  
650 contract, the department(s) shall give notice of the proposed  
651 personal or professional service contract to the Public  
652 Procurement Review Board for any recommendations by the board.  
653 Upon receipt of the notice, the board shall post the notice on its  
654 website and on the procurement portal website established by  
655 Sections 25-53-151 and 27-104-165. If the board does not respond  
656 to the department(s) within seven (7) calendar days after  
657 receiving the notice, the department(s) may enter the proposed  
658 personal or professional service contract. If the board responds  
659 to the department(s) within seven (7) calendar days, then the  
660 board has seven (7) calendar days from the date of its initial  
661 response to provide any additional recommendations. After the end  
662 of the second seven-day period, the department(s) may enter the  
663 proposed personal or professional service contract. The board is  
664 not authorized to disapprove any proposed personal or professional  
665 services contracts. This subsection shall stand repealed on July  
666 1, 2022.

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

669       5-8-7. Notwithstanding any other provisions of this chapter,  
670 except as otherwise provided in Section 5-8-3(1)(iv), the



671 following person shall not be included within the definition of  
672 "lobbyist" or "lobbyist's client" under this chapter, and  
673 accordingly the registration and reporting provisions, including  
674 the payment of related fees, of this chapter do not apply to:

675 (a) A legislative or public official acting in an  
676 official capacity.

677 (b) An individual who:

678 (i) Represents or purports to represent only the  
679 individual;

680 (ii) Receives no compensation or anything of value  
681 for lobbying; and

682 (iii) Has no pecuniary interest in the legislative  
683 or executive action.

684 (c) An individual lobbying in his or her own interest,  
685 his or her own business interest, who pays, or promises to pay,  
686 offers to pay or causes to be paid to public officials,  
687 legislative officials or public employees any thing or things of  
688 value aggregating in value to less than Two Hundred Dollars  
689 (\$200.00) in any calendar year.

690 (d) An individual lobbying on behalf of his or her  
691 employer's business interest where such lobbying is not a primary  
692 or regular function of his employment position if such individual  
693 pays, promises to pay, offers to pay, or causes to be paid  
694 individually or on the employer's behalf to public officials,  
695 legislative officials, or public employees any thing or things of



696 value aggregating in value to less than Two Hundred Dollars  
697 (\$200.00) in any calendar year.

698 (e) An individual lobbying on behalf of an association  
699 of which he or she is a member, where such lobbying is not a  
700 primary or regular function of his or her position in the  
701 association, if such individual pays, promises to pay, offers to  
702 pay, or causes to be paid individually or on the association's  
703 behalf to public officials, legislative officials or public  
704 employees any thing or things of value aggregating in value to  
705 less than Two Hundred Dollars (\$200.00) in any calendar year.

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

714 (g) An individual who:

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

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



720 (h) An individual who is a licensed attorney  
721 representing a client by:

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

727 (ii) Providing information, on behalf of the  
728 client, to an executive or public official, a public employee, or  
729 an agency, board, commission, governing authority or other body of  
730 state or local government where such services are usual and  
731 customary professional legal services including or related to a  
732 particular nonlegislative matter, case or controversy.

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

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



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

753           **SECTION 5.** Section 5-8-13, Mississippi Code of 1972, is  
754 brought forward as follows:

755           5-8-13. (1) A lobbyist shall not contract to receive or  
756 accept compensation dependent upon the success or failure of a  
757 legislative or executive action.

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

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

767           (4) An executive, legislative or public official or public  
768 employee shall not be a lobbyist, except that he may act as a  
769 lobbyist when acting in his official capacity.



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

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

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

790 (b) The board shall have general supervision of the affairs  
791 of all the institutions of higher learning, including the  
792 departments and the schools thereof. The board shall have the  
793 power in its discretion to determine who shall be privileged to  
794 enter, to remain in, or to graduate therefrom. The board shall





795 have general supervision of the conduct of libraries and  
796 laboratories, the care of dormitories, buildings, and grounds; the  
797 business methods and arrangement of accounts and records; the  
798 organization of the administrative plan of each institution; and  
799 all other matters incident to the proper functioning of the  
800 institutions. The board shall have the authority to establish  
801 minimum standards of achievement as a prerequisite for entrance  
802 into any of the institutions under its jurisdiction, which  
803 standards need not be uniform between the various institutions and  
804 which may be based upon such criteria as the board may establish.

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



819 (d) For all institutions specified herein, the board shall  
820 provide a uniform system of recording and of accounting approved  
821 by the State Department of Audit. The board shall annually  
822 prepare, or cause to be prepared, a budget for each institution of  
823 higher learning for the succeeding year which must be prepared and  
824 in readiness for at least thirty (30) days before the convening of  
825 the regular session of the Legislature. All relationships and  
826 negotiations between the State Legislature and its various  
827 committees and the institutions named herein shall be carried on  
828 through the board of trustees. No official, employee or agent  
829 representing any of the separate institutions shall appear before  
830 the Legislature or any committee thereof except upon the written  
831 order of the board or upon the request of the Legislature or a  
832 committee thereof.

833 (e) For all institutions specified herein, the board shall  
834 prepare an annual report to the Legislature setting forth the  
835 disbursements of all monies appropriated to the respective  
836 institutions. Each report to the Legislature shall show how the  
837 money appropriated to the several institutions has been expended,  
838 beginning and ending with the fiscal years of the institutions,  
839 showing the name of each teacher, officer, and employee, and the  
840 salary paid each, and an itemized statement of each and every item  
841 of receipts and expenditures. Each report must be balanced, and  
842 must begin with the former balance. If any property belonging to  
843 the state or the institution is used for profit, the reports shall



844 show the expense incurred in managing the property and the amount  
845 received therefrom. The reports shall also show a summary of the  
846 gross receipts and gross disbursements for each year and shall  
847 show the money on hand at the beginning of the fiscal period of  
848 the institution next preceding each session of the Legislature and  
849 the necessary amount of expense to be incurred from said date to  
850 January 1 following. The board shall keep the annual expenditures  
851 of each institution herein mentioned within the income derived  
852 from legislative appropriations and other sources, but in case of  
853 emergency arising from acts of providence, epidemics, fire or  
854 storm with the written approval of the Governor and by written  
855 consent of a majority of the senators and of the representatives  
856 it may exceed the income. The board shall require a surety bond  
857 in a surety company authorized to do business in this state of  
858 every employee who is the custodian of funds belonging to one or  
859 more of the institutions mentioned herein, which bond shall be in  
860 a sum to be fixed by the board in an amount that will properly  
861 safeguard the said funds, the premium for which shall be paid out  
862 of the funds appropriated for said institutions.

863 (f) The board shall have the power and authority to elect  
864 the heads of the various institutions of higher learning and to  
865 contract with all deans, professors, and other members of the  
866 teaching staff, and all administrative employees of said  
867 institutions for a term not exceeding four (4) years. The board  
868 shall have the power and authority to terminate any such contract



869 at any time for malfeasance, inefficiency, or contumacious  
870 conduct, but never for political reasons. It shall be the policy  
871 of the board to permit the executive head of each institution to  
872 nominate for election by the board all subordinate employees of  
873 the institution over which he presides. It shall be the policy of  
874 the board to elect all officials for a definite tenure of service  
875 and to reelect during the period of satisfactory service. The  
876 board shall have the power to make any adjustments it thinks  
877 necessary between the various departments and schools of any  
878 institution or between the different institutions.

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

882 (h) The board shall have the power to enter into an energy  
883 performance contract, energy services contract, on a  
884 shared-savings, lease or lease-purchase basis, for energy  
885 efficiency services and/or equipment as prescribed in Section  
886 31-7-14.

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



893 (j) In connection with any international contract between  
894 the board or one (1) of the state's institutions of higher  
895 learning and any party outside of the United States, the board or  
896 institution that is the party to the international contract is  
897 hereby authorized and empowered to include in the contract a  
898 provision for the resolution by arbitration of any controversy  
899 between the parties to the contract relating to such contract or  
900 the failure or refusal to perform any part of the contract. Such  
901 provision shall be valid, enforceable and irrevocable without  
902 regard to the justiciable character of the controversy. Provided,  
903 however, that in the event either party to such contract initiates  
904 litigation against the other with respect to the contract, the  
905 arbitration provision shall be deemed waived unless asserted as a  
906 defense on or before the responding party is required to answer  
907 such litigation.

908 (k) The Board of Trustees of State Institutions of Higher  
909 Learning ("board"), on behalf of any institution under its  
910 jurisdiction, shall purchase and maintain business property  
911 insurance and business personal property insurance on all  
912 university-owned buildings and/or contents as required by federal  
913 law and regulations of the Federal Emergency Management Agency  
914 (FEMA) as is necessary for receiving public assistance or  
915 reimbursement for repair, reconstruction, replacement or other  
916 damage to those buildings and/or contents caused by the Hurricane  
917 Katrina Disaster of 2005 or subsequent disasters. The board is



918 authorized to expend funds from any available source for the  
919 purpose of obtaining and maintaining that property insurance. The  
920 board is authorized to enter into agreements with the Department  
921 of Finance and Administration, local school districts,  
922 community/junior college districts, community hospitals and/or  
923 other state agencies to pool their liabilities to participate in a  
924 group business property and/or business personal property  
925 insurance program, subject to uniform rules and regulations as may  
926 be adopted by the Department of Finance and Administration.

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

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

941 (ii) Additionally, the board is authorized to oversee,  
942 administer and approve contracts for the construction and



943 maintenance of buildings and other facilities of the state  
944 institutions of higher learning, including related contracts for  
945 architectural and engineering services, which are funded in whole  
946 or in part by general obligation bonds of the State of Mississippi  
947 at institutions designated annually by the board as being capable  
948 to procure and administer all such contracts. Prior to the  
949 disbursement of funds, an agreement for each project between the  
950 institution and the Department of Finance and Administration shall  
951 be executed. The approval and execution of the agreement shall  
952 not be withheld by either party unless the withholding party  
953 provides a written, detailed explanation of the basis for  
954 withholding to the other party. The agreement shall stipulate the  
955 responsibilities of each party, applicable procurement  
956 regulations, documentation and reporting requirements, conditions  
957 prior to, and schedule of, disbursement of general obligation bond  
958 funds to the institution and provisions concerning handling any  
959 remaining general obligation bonds at the completion of the  
960 project. Such agreement shall not include provisions that  
961 constitute additional qualifications or criteria that act to  
962 invalidate the designation of an institution as capable of  
963 procuring and administering such project. Inclusion of any such  
964 provisions may be appealed to the Public Procurement Review Board.  
965 This subparagraph (ii) shall stand repealed from and after July 1,  
966 2022.



967           **SECTION 7.** This act shall take effect and be in force from  
968 and after July 1, 2022.

