

By: Representatives Read, Anthony, Foster,
Faulkner, Stamps, Reynolds

To: Appropriations

HOUSE BILL NO. 1421
(As Passed the House)

1 AN ACT TO PROVIDE THAT THE STATE DEPARTMENT OF HEALTH SHALL
2 ESTABLISH A GRANT PROGRAM TO BE KNOWN AS THE ARPA RURAL WATER
3 ASSOCIATIONS INFRASTRUCTURE GRANT PROGRAM TO ASSIST RURAL WATER
4 ASSOCIATIONS IN THE CONSTRUCTION OF ELIGIBLE DRINKING WATER
5 INFRASTRUCTURE PROJECTS UNDER THE AMERICAN RESCUE PLAN ACT (ARPA);
6 TO CREATE A SPECIAL FUND IN THE STATE TREASURY TO BE KNOWN AS THE
7 ARPA RURAL WATER ASSOCIATIONS INFRASTRUCTURE FUND, WHICH SHALL BE
8 USED BY THE DEPARTMENT TO MAKE GRANTS UNDER THE GRANT PROGRAM; TO
9 PROVIDE THAT UPON THE APPROVAL OF AN APPLICATION FOR A GRANT UNDER
10 THE PROGRAM, THE DEPARTMENT SHALL ENTER INTO A PROJECT GRANT
11 AGREEMENT WITH EACH GRANTEE TO ESTABLISH THE TERMS OF THE GRANT
12 FOR THE PROJECT, INCLUDING THE AMOUNT OF THE GRANT; TO PROVIDE
13 THAT ANY PERSONAL OR PROFESSIONAL SERVICES CONTRACTS ENTERED INTO
14 BY THE DEPARTMENT IN CARRYING OUT ITS RESPONSIBILITIES UNDER THE
15 GRANT PROGRAM SHALL BE EXEMPT FROM REVIEW AND APPROVAL BY THE
16 PUBLIC PROCUREMENT REVIEW BOARD; TO AMEND SECTION 27-104-7,
17 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING PROVISION;
18 AND FOR RELATED PURPOSES.

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

20 **SECTION 1.** (1) The State Department of Health (department)
21 shall establish a grant program to be known as the ARPA Rural
22 Water Associations Infrastructure Grant Program to assist rural
23 water associations in the construction of eligible drinking water
24 infrastructure projects as provided in the Final Rule for the
25 Coronavirus State and Local Fiscal Recovery Funds as established
26 by ARPA.



27 (2) There is created in the State Treasury a special fund to
28 be known as the American Rescue Plan Act (ARPA) Rural Water
29 Associations Infrastructure Fund (the "ARPA Rural Water
30 Associations Infrastructure Fund"), which will consist of funds
31 made available by the Legislature from federal ARPA funds. Monies
32 in the fund shall be used by the department, upon appropriation of
33 the Legislature, to make grants under the ARPA Rural Water
34 Associations Infrastructure Grant Program for the purposes
35 provided in subsection (1) of this section. It is the intent of
36 the Legislature that, in the first fiscal year after the effective
37 date of this act, twenty percent (20%) of the funds appropriated
38 to the ARPA Rural Water Associations Infrastructure Fund be
39 obligated to projects that have completed plans and
40 specifications, acquired all necessary land and/or easements, and
41 are ready to proceed to construction.

42 (3) The department shall obligate the funds by the deadline
43 set by the rules and guidelines of the United States Department of
44 the Treasury and will adhere to the Treasury's rules and
45 guidelines for reporting and monitoring projects funded through
46 the American Rescue Plan Act.

47 (4) The department shall develop a system for use in ranking
48 the grant applications received. The ranking system shall include
49 the following factors, at a minimum: (a) the environmental impact
50 of the proposed project; (b) the proposed project's ability to
51 address noncompliance with state/federal requirements; (c) the



52 extent to which the project promotes economic development; (d) the
53 number of people served by the project (both new and existing
54 users); (e) impacts of the proposed project on disadvantaged/
55 overburdened communities; (f) the grant applicant's prior efforts
56 to secure funding to address the proposed project's objectives;
57 (g) the grant applicant's proposed contribution of other funds or
58 in-kind cost-sharing to the proposed project; (h) the grant
59 applicant's long-term plans for the financial and physical
60 operation and maintenance of the project; and (i) the grant
61 applicant's capacity to initiate construction in a timely manner
62 and complete the proposed project by the deadline specified by
63 rules and guidelines of the United States Department of the
64 Treasury for ARPA funds.

65 (5) An application for a grant under this section shall be
66 submitted at such time, be in such form, and contain such
67 information as the department prescribes.

68 (6) Upon the approval of an application for a grant under
69 this section, the department shall enter into a project grant
70 agreement with each grantee to establish the terms of the grant
71 for the project, including the amount of the grant.

72 (7) The department shall have all powers necessary to
73 implement and administer the ARPA Rural Water Associations
74 Infrastructure Grant Program established under this section. Of
75 the funds appropriated to the ARPA Rural Water Associations
76 Infrastructure Fund, up to ten percent (10%) shall be used by the



77 department to cover the department's costs of administering the
78 program.

79 (8) In carrying out its responsibilities under the ARPA
80 Rural Water Associations Infrastructure Grant Program, for any
81 contract under the purview of the Public Procurement Review Board
82 (PPRB), the department shall be exempt from any requirement that
83 the PPRB approve any personal or professional services contracts
84 or pre-approve any solicitation of such contracts. This
85 subsection shall stand repealed on July 1, 2026.

86 (9) The department shall submit an annual report regarding
87 the ARPA Rural Water Associations Infrastructure Grant Program no
88 later than December 31 of each year to the Lieutenant Governor,
89 the Speaker of the House, and the Chairmen of the Senate and House
90 Appropriations Committees.

91 **SECTION 2.** Section 27-104-7, Mississippi Code of 1972, is
92 amended as follows:

93 27-104-7. (1) (a) There is created the Public Procurement
94 Review Board, which shall be reconstituted on January 1, 2018, and
95 shall be composed of the following members:

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

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



100 (iii) The Executive Director of the Department of
101 Finance and Administration, serving as an ex officio and nonvoting
102 member.

103 (b) The initial terms of each appointee shall be as
104 follows:

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

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

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

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

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

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

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



125 receives any grants, procurements or contracts that are subject to
126 approval under this section shall not be appointed to the Public
127 Procurement Review Board. Any person, or any employee or owner of
128 a company, who is a principal of the source providing a personal
129 or professional service shall not be appointed to the Public
130 Procurement Review Board if the principal owns or controls a
131 greater than five percent (5%) interest or has an ownership value
132 of One Million Dollars (\$1,000,000.00) in the source's business,
133 whichever is smaller. No member shall be an officer or employee
134 of the State of Mississippi while serving as a voting member on
135 the Public Procurement Review Board.

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

139 (e) The members of the Public Procurement Review Board
140 shall elect a chair from among the membership, and he or she shall
141 preside over the meetings of the board. The board shall annually
142 elect a vice chair, who shall serve in the absence of the chair.
143 No business shall be transacted, including adoption of rules of
144 procedure, without the presence of a quorum of the board. Three
145 (3) members shall be a quorum. No action shall be valid unless
146 approved by a majority of the members present and voting, entered
147 upon the minutes of the board and signed by the chair. Necessary
148 clerical and administrative support for the board shall be
149 provided by the Department of Finance and Administration. Minutes



150 shall be kept of the proceedings of each meeting, copies of which
151 shall be filed on a monthly basis with the chairs of the
152 Accountability, Efficiency and Transparency Committees of the
153 Senate and House of Representatives and the chairs of the
154 Appropriations Committees of the Senate and House of
155 Representatives.

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

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

162 (b) Adopt regulations governing the approval of
163 contracts let for the construction and maintenance of state
164 buildings and other state facilities as well as related contracts
165 for architectural and engineering services.

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

170 (c) Adopt regulations governing any lease or rental
171 agreement by any state agency or department, including any state
172 agency financed entirely by federal funds, for space outside the
173 buildings under the jurisdiction of the Department of Finance and
174 Administration. These regulations shall require each agency



175 requesting to lease such space to provide the following
176 information that shall be published by the Department of Finance
177 and Administration on its website: the agency to lease the space;
178 the terms of the lease; the approximate square feet to be leased;
179 the use for the space; a description of a suitable space; the
180 general location desired for the leased space; the contact
181 information for a person from the agency; the deadline date for
182 the agency to have received a lease proposal; any other specific
183 terms or conditions of the agency; and any other information
184 deemed appropriate by the Division of Real Property Management of
185 the Department of Finance and Administration or the Public
186 Procurement Review Board. The information shall be provided
187 sufficiently in advance of the time the space is needed to allow
188 the Division of Real Property Management of the Department of
189 Finance and Administration to review and preapprove the lease
190 before the time for advertisement begins;

191 (d) Adopt, in its discretion, regulations to set aside
192 at least five percent (5%) of anticipated annual expenditures for
193 the purchase of commodities from minority businesses; however, all
194 such set-aside purchases shall comply with all purchasing
195 regulations promulgated by the department and shall be subject to
196 all bid requirements. Set-aside purchases for which competitive
197 bids are required shall be made from the lowest and best minority
198 business bidder; however, if no minority bid is available or if
199 the minority bid is more than two percent (2%) higher than the



200 lowest bid, then bids shall be accepted and awarded to the lowest
201 and best bidder. However, the provisions in this paragraph shall
202 not be construed to prohibit the rejection of a bid when only one
203 (1) bid is received. Such rejection shall be placed in the
204 minutes. For the purposes of this paragraph, the term "minority
205 business" means a business which is owned by a person who is a
206 citizen or lawful permanent resident of the United States and who
207 is:

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

210 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,
211 Central or South American, or other Spanish or Portuguese culture
212 or origin regardless of race;

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

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

218 (v) Female;

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



225 (f) Promulgate rules and regulations governing the
226 solicitation and selection of contractual services personnel,
227 including personal and professional services contracts for any
228 form of consulting, policy analysis, public relations, marketing,
229 public affairs, legislative advocacy services or any other
230 contract that the board deems appropriate for oversight, with the
231 exception of any personal service contracts entered into by any
232 agency that employs only nonstate service employees as defined in
233 Section 25-9-107(c), any personal service contracts entered into
234 for computer or information technology-related services governed
235 by the Mississippi Department of Information Technology Services,
236 any personal service contracts entered into by the individual
237 state institutions of higher learning, any personal service
238 contracts entered into by the Mississippi Department of
239 Transportation, any personal service contracts entered into by the
240 Department of Human Services through June 30, 2019, which the
241 Executive Director of the Department of Human Services determines
242 would be useful in establishing and operating the Department of
243 Child Protection Services, any personal service contracts entered
244 into by the Department of Child Protection Services through June
245 30, 2019, any contracts for entertainers and/or performers at the
246 Mississippi State Fairgrounds entered into by the Mississippi Fair
247 Commission, any contracts entered into by the Department of
248 Finance and Administration when procuring aircraft maintenance,
249 parts, equipment and/or services, any contract entered into by the



250 Department of Public Safety for service on specialized equipment
251 and/or software required for the operation at such specialized
252 equipment for use by the Office of Forensics Laboratories, * * *
253 any contract for attorney, accountant, actuary auditor, architect,
254 engineer, anatomical pathologist, utility rate expert
255 services, * * * any personal service contracts approved by the
256 Executive Director of the Department of Finance and Administration
257 and entered into by the Coordinator of Mental Health Accessibility
258 through June 30, 2022, and any personal or professional services
259 contract entered into by the State Department of Health in
260 carrying out its responsibilities under the ARPA Rural Water
261 Associations Infrastructure Grant Program through June 30, 2026.
262 Any such rules and regulations shall provide for maintaining
263 continuous internal audit covering the activities of such agency
264 affecting its revenue and expenditures as required under Section
265 7-7-3(6) (d). Any rules and regulation changes related to personal
266 and professional services contracts that the Public Procurement
267 Review Board may propose shall be submitted to the Chairs of the
268 Accountability, Efficiency and Transparency Committees of the
269 Senate and House of Representatives and the Chairs of the
270 Appropriation Committees of the Senate and House of
271 Representatives at least fifteen (15) days before the board votes
272 on the proposed changes, and those rules and regulation changes,
273 if adopted, shall be promulgated in accordance with the
274 Mississippi Administrative Procedures Act;



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

279 (h) Develop mandatory standards with respect to
280 contractual services personnel that require invitations for public
281 bid, requests for proposals, record keeping and financial
282 responsibility of contractors. The Public Procurement Review
283 Board shall, unless exempted under this paragraph (h) or under
284 paragraph (i) or (o) of this subsection (2), require the agency
285 involved to submit the procurement to a competitive procurement
286 process, and may reserve the right to reject any or all resulting
287 procurements;

288 (i) Prescribe certain circumstances by which agency
289 heads may enter into contracts for personal and professional
290 services without receiving prior approval from the Public
291 Procurement Review Board. The Public Procurement Review Board may
292 establish a preapproved list of providers of various personal and
293 professional services for set prices with which state agencies may
294 contract without bidding or prior approval from the board;

295 (i) Agency requirements may be fulfilled by
296 procuring services performed incident to the state's own programs.
297 The agency head shall determine in writing whether the price
298 represents a fair market value for the services. When the
299 procurements are made from other governmental entities, the



300 private sector need not be solicited; however, these contracts
301 shall still be submitted for approval to the Public Procurement
302 Review Board.

303 (ii) Contracts between two (2) state agencies,
304 both under Public Procurement Review Board purview, shall not
305 require Public Procurement Review Board approval. However, the
306 contracts shall still be entered into the enterprise resource
307 planning system;

308 (j) Provide standards for the issuance of requests for
309 proposals, the evaluation of proposals received, consideration of
310 costs and quality of services proposed, contract negotiations, the
311 administrative monitoring of contract performance by the agency
312 and successful steps in terminating a contract;

313 (k) Present recommendations for governmental
314 privatization and to evaluate privatization proposals submitted by
315 any state agency;

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



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

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

330 (o) Develop and implement the following standards and
331 procedures for the approval of any sole source contract for
332 personal and professional services regardless of the value of the
333 procurement:

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

337 (ii) An agency that has been issued a binding,
338 valid court order mandating that a particular source or provider
339 must be used for the required service must include a copy of the
340 applicable court order in all future sole source contract reviews
341 for the particular personal or professional service referenced in
342 the court order.

343 (iii) Any agency alleging to have a sole source
344 for any personal or professional service, other than those
345 exempted under paragraph (f) of this subsection (2) and subsection
346 (8), shall publish on the procurement portal website established
347 by Sections 25-53-151 and 27-104-165, for at least fourteen (14)
348 days, the terms of the proposed contract for those services. In



349 addition, the publication shall include, but is not limited to,
350 the following information:

351 1. The personal or professional service
352 offered in the contract;

353 2. An explanation of why the personal or
354 professional service is the only one that can meet the needs of
355 the agency;

356 3. An explanation of why the source is the
357 only person or entity that can provide the required personal or
358 professional service;

359 4. An explanation of why the amount to be
360 expended for the personal or professional service is reasonable;
361 and

362 5. The efforts that the agency went through
363 to obtain the best possible price for the personal or professional
364 service.

365 (iv) If any person or entity objects and proposes
366 that the personal or professional service published under
367 subparagraph (iii) of this paragraph (o) is not a sole source
368 service and can be provided by another person or entity, then the
369 objecting person or entity shall notify the Public Procurement
370 Review Board and the agency that published the proposed sole
371 source contract with a detailed explanation of why the personal or
372 professional service is not a sole source service.



373 (v) 1. If the agency determines after review that
374 the personal or professional service in the proposed sole source
375 contract can be provided by another person or entity, then the
376 agency must withdraw the sole source contract publication from the
377 procurement portal website and submit the procurement of the
378 personal or professional service to an advertised competitive bid
379 or selection process.

380 2. If the agency determines after review that
381 there is only one (1) source for the required personal or
382 professional service, then the agency may appeal to the Public
383 Procurement Review Board. The agency has the burden of proving
384 that the personal or professional service is only provided by one
385 (1) source.

386 3. If the Public Procurement Review Board has
387 any reasonable doubt as to whether the personal or professional
388 service can only be provided by one (1) source, then the agency
389 must submit the procurement of the personal or professional
390 service to an advertised competitive bid or selection process. No
391 action taken by the Public Procurement Review Board in this appeal
392 process shall be valid unless approved by a majority of the
393 members of the Public Procurement Review Board present and voting.

394 (vi) The Public Procurement Review Board shall
395 prepare and submit a quarterly report to the House of
396 Representatives and Senate Accountability, Efficiency and
397 Transparency Committees that details the sole source contracts



398 presented to the Public Procurement Review Board and the reasons
399 that the Public Procurement Review Board approved or rejected each
400 contract. These quarterly reports shall also include the
401 documentation and memoranda required in subsection (4) of this
402 section. An agency that submitted a sole source contract shall be
403 prepared to explain the sole source contract to each committee by
404 December 15 of each year upon request by the committee;

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

407 (3) All submissions shall be made sufficiently in advance of
408 each monthly meeting of the Public Procurement Review Board as
409 prescribed by the Public Procurement Review Board. If the Public
410 Procurement Review Board rejects any contract submitted for review
411 or approval, the Public Procurement Review Board shall clearly set
412 out the reasons for its action, including, but not limited to, the
413 policy that the agency has violated in its submitted contract and
414 any corrective actions that the agency may take to amend the
415 contract to comply with the rules and regulations of the Public
416 Procurement Review Board.

417 (4) All sole source contracts for personal and professional
418 services awarded by state agencies, other than those exempted
419 under Section 27-104-7(2) (f) and (8), whether approved by an
420 agency head or the Public Procurement Review Board, shall contain
421 in the procurement file a written determination for the approval,
422 using a request form furnished by the Public Procurement Review



423 Board. The written determination shall document the basis for the
424 determination, including any market analysis conducted in order to
425 ensure that the service required was practicably available from
426 only one (1) source. A memorandum shall accompany the request
427 form and address the following four (4) points:

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

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

432 (c) Explanation of why the price is considered
433 reasonable; and

434 (d) Description of the efforts that were made to
435 conduct a noncompetitive negotiation to get the best possible
436 price for the taxpayers.

437 (5) In conjunction with the State Personnel Board, the
438 Public Procurement Review Board shall develop and promulgate rules
439 and regulations to define the allowable legal relationship between
440 contract employees and the contracting departments, agencies and
441 institutions of state government under the jurisdiction of the
442 State Personnel Board, in compliance with the applicable rules and
443 regulations of the federal Internal Revenue Service (IRS) for
444 federal employment tax purposes. Under these regulations, the
445 usual common law rules are applicable to determine and require
446 that such worker is an independent contractor and not an employee,
447 requiring evidence of lawful behavioral control, lawful financial



448 control and lawful relationship of the parties. Any state
449 department, agency or institution shall only be authorized to
450 contract for personnel services in compliance with those
451 regulations.

452 (6) No member of the Public Procurement Review Board shall
453 use his or her official authority or influence to coerce, by
454 threat of discharge from employment, or otherwise, the purchase of
455 commodities, the contracting for personal or professional
456 services, or the contracting for public construction under this
457 chapter.

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

461 (8) Nothing in this section shall impair or limit the
462 authority of the Board of Trustees of the Public Employees'
463 Retirement System to enter into any personal or professional
464 services contracts directly related to their constitutional
465 obligation to manage the trust funds, including, but not limited
466 to, actuarial, custodial banks, cash management, investment
467 consultant and investment management contracts.

468 (9) Notwithstanding the exemption of personal and
469 professional services contracts entered into by the Department of
470 Human Services and personal and professional services contracts
471 entered into by the Department of Child Protection Services from
472 the provisions of this section under subsection (2)(f), before the



473 Department of Human Services or the Department of Child Protection
474 Services may enter into a personal or professional service
475 contract, the department(s) shall give notice of the proposed
476 personal or professional service contract to the Public
477 Procurement Review Board for any recommendations by the board.
478 Upon receipt of the notice, the board shall post the notice on its
479 website and on the procurement portal website established by
480 Sections 25-53-151 and 27-104-165. If the board does not respond
481 to the department(s) within seven (7) calendar days after
482 receiving the notice, the department(s) may enter the proposed
483 personal or professional service contract. If the board responds
484 to the department(s) within seven (7) calendar days, then the
485 board has seven (7) calendar days from the date of its initial
486 response to provide any additional recommendations. After the end
487 of the second seven-day period, the department(s) may enter the
488 proposed personal or professional service contract. The board is
489 not authorized to disapprove any proposed personal or professional
490 services contracts. This subsection shall stand repealed on July
491 1, 2022.

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

