

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

To: Appropriations

HOUSE BILL NO. 1421
(As Sent to Governor)

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 PROVIDE THAT THE PROGRAM SHALL BE FUNDED FROM APPROPRIATIONS
7 FROM THE CORONAVIRUS STATE FISCAL RECOVERY FUND; TO PROVIDE THAT
8 UPON THE APPROVAL OF AN APPLICATION FOR A GRANT UNDER THE PROGRAM,
9 THE DEPARTMENT SHALL ENTER INTO A PROJECT GRANT AGREEMENT WITH
10 EACH GRANTEE TO ESTABLISH THE TERMS OF THE GRANT FOR THE PROJECT,
11 INCLUDING THE AMOUNT OF THE GRANT; TO PROVIDE THAT ANY PERSONAL OR
12 PROFESSIONAL SERVICES CONTRACTS ENTERED INTO BY THE DEPARTMENT IN
13 CARRYING OUT ITS RESPONSIBILITIES UNDER THE GRANT PROGRAM SHALL BE
14 EXEMPT FROM REVIEW AND APPROVAL BY THE PUBLIC PROCUREMENT REVIEW
15 BOARD; TO AMEND SECTION 27-104-7, MISSISSIPPI CODE OF 1972, TO
16 CONFORM TO THE PRECEDING PROVISION; AND FOR RELATED PURPOSES.

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

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



25 (2) The program shall be funded from appropriations by the
26 Legislature to the department from the Coronavirus State Fiscal
27 Recovery Fund, and the department shall expend all such funds for
28 the purposes provided in subsection (1) of this section. It is
29 the intent of the Legislature that, in the first fiscal year after
30 the effective date of this act, twenty percent (20%) of the funds
31 appropriated to the department for the program be obligated to
32 projects that have completed plans and specifications, acquired
33 all necessary land and/or easements, and are ready to proceed to
34 construction.

35 (3) The department shall obligate the funds by the deadline
36 set by the rules and guidelines of the United States Department of
37 the Treasury and will adhere to the Treasury's rules and
38 guidelines for reporting and monitoring projects funded through
39 ARPA.

40 (4) The department shall develop a system for use in ranking
41 the grant applications received. The ranking system shall include
42 the following factors, at a minimum: (a) the environmental impact
43 of the proposed project; (b) the proposed project's ability to
44 address noncompliance with state/federal requirements; (c) the
45 extent to which the project promotes economic development; (d) the
46 number of people served by the project (both new and existing
47 users); (e) impacts of the proposed project on disadvantaged/
48 overburdened communities; (f) the grant applicant's prior efforts
49 to secure funding to address the proposed project's objectives;



50 (g) the grant applicant's proposed contribution of other funds or
51 in-kind cost-sharing to the proposed project; (h) the grant
52 applicant's long-term plans for the financial and physical
53 operation and maintenance of the project; and (i) the grant
54 applicant's capacity to initiate construction in a timely manner
55 and complete the proposed project by the deadline specified by
56 rules and guidelines of the United States Department of the
57 Treasury for ARPA funds.

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

61 (6) Upon the approval of an application for a grant under
62 this section, the department shall enter into a project grant
63 agreement with each grantee to establish the terms of the grant
64 for the project, including the amount of the grant. The maximum
65 amount of funds that may be provided to any rural water
66 association from all grants under the program is Two Million Five
67 Hundred Thousand Dollars (\$2,500,000.00).

68 (7) The department shall have all powers necessary to
69 implement and administer the program. Of the funds appropriated
70 to the department for the program, not more than five percent (5%)
71 may be used by the department to cover the department's costs of
72 administering the program.

73 (8) In carrying out its responsibilities under the program,
74 for any contract under the purview of the Public Procurement



75 Review Board (PPRB), the department shall be exempt from any
76 requirement that the PPRB approve any personal or professional
77 services contracts or pre-approve any solicitation of such
78 contracts. This subsection shall stand repealed on July 1, 2026.

79 (9) The department shall submit an annual report regarding
80 the program no later than December 31 of each year to the
81 Lieutenant Governor, the Speaker of the House, and the Chairmen of
82 the Senate and House Appropriations Committees.

83 **SECTION 2.** Section 27-104-7, Mississippi Code of 1972, as
84 amended by Senate Bill No. 2818, 2022 Regular Session, is amended
85 as follows:

86 27-104-7. (1) (a) There is created the Public Procurement
87 Review Board, which shall be reconstituted on January 1, 2018, and
88 shall be composed of the following members:

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

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

93 (iii) The Executive Director of the Department of
94 Finance and Administration, serving as an ex officio and nonvoting
95 member.

96 (b) The initial terms of each appointee shall be as
97 follows:

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



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

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

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

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

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

112 (c) When appointing members to the Public Procurement
113 Review Board, the Governor and Lieutenant Governor shall take into
114 consideration persons who possess at least five (5) years of
115 management experience in general business, health care or finance
116 for an organization, corporation or other public or private
117 entity. Any person, or any employee or owner of a company, who
118 receives any grants, procurements or contracts that are subject to
119 approval under this section shall not be appointed to the Public
120 Procurement Review Board. Any person, or any employee or owner of
121 a company, who is a principal of the source providing a personal
122 or professional service shall not be appointed to the Public
123 Procurement Review Board if the principal owns or controls a
124 greater than five percent (5%) interest or has an ownership value



125 of One Million Dollars (\$1,000,000.00) in the source's business,
126 whichever is smaller. No member shall be an officer or employee
127 of the State of Mississippi while serving as a voting member on
128 the Public Procurement Review Board.

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

132 (e) The members of the Public Procurement Review Board
133 shall elect a chair from among the membership, and he or she shall
134 preside over the meetings of the board. The board shall annually
135 elect a vice chair, who shall serve in the absence of the chair.
136 No business shall be transacted, including adoption of rules of
137 procedure, without the presence of a quorum of the board. Three
138 (3) members shall be a quorum. No action shall be valid unless
139 approved by a majority of the members present and voting, entered
140 upon the minutes of the board and signed by the chair. Necessary
141 clerical and administrative support for the board shall be
142 provided by the Department of Finance and Administration. Minutes
143 shall be kept of the proceedings of each meeting, copies of which
144 shall be filed on a monthly basis with the chairs of the
145 Accountability, Efficiency and Transparency Committees of the
146 Senate and House of Representatives and the chairs of the
147 Appropriations Committees of the Senate and House of
148 Representatives.



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

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

155 (b) Adopt regulations governing the approval of
156 contracts let for the construction and maintenance of state
157 buildings and other state facilities as well as related contracts
158 for architectural and engineering services.

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

163 (c) Adopt regulations governing any lease or rental
164 agreement by any state agency or department, including any state
165 agency financed entirely by federal funds, for space outside the
166 buildings under the jurisdiction of the Department of Finance and
167 Administration. These regulations shall require each agency
168 requesting to lease such space to provide the following
169 information that shall be published by the Department of Finance
170 and Administration on its website: the agency to lease the space;
171 the terms of the lease; the approximate square feet to be leased;
172 the use for the space; a description of a suitable space; the
173 general location desired for the leased space; the contact



174 information for a person from the agency; the deadline date for
175 the agency to have received a lease proposal; any other specific
176 terms or conditions of the agency; and any other information
177 deemed appropriate by the Division of Real Property Management of
178 the Department of Finance and Administration or the Public
179 Procurement Review Board. The information shall be provided
180 sufficiently in advance of the time the space is needed to allow
181 the Division of Real Property Management of the Department of
182 Finance and Administration to review and preapprove the lease
183 before the time for advertisement begins;

184 (d) Adopt, in its discretion, regulations to set aside
185 at least five percent (5%) of anticipated annual expenditures for
186 the purchase of commodities from minority businesses; however, all
187 such set-aside purchases shall comply with all purchasing
188 regulations promulgated by the department and shall be subject to
189 all bid requirements. Set-aside purchases for which competitive
190 bids are required shall be made from the lowest and best minority
191 business bidder; however, if no minority bid is available or if
192 the minority bid is more than two percent (2%) higher than the
193 lowest bid, then bids shall be accepted and awarded to the lowest
194 and best bidder. However, the provisions in this paragraph shall
195 not be construed to prohibit the rejection of a bid when only one
196 (1) bid is received. Such rejection shall be placed in the
197 minutes. For the purposes of this paragraph, the term "minority
198 business" means a business which is owned by a person who is a



199 citizen or lawful permanent resident of the United States and who
200 is:

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

203 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,
204 Central or South American, or other Spanish or Portuguese culture
205 or origin regardless of race;

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

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

211 (v) Female;

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

218 (f) Promulgate rules and regulations governing the
219 solicitation and selection of contractual services personnel,
220 including personal and professional services contracts for any
221 form of consulting, policy analysis, public relations, marketing,
222 public affairs, legislative advocacy services or any other
223 contract that the board deems appropriate for oversight, with the



224 exception of any personal service contracts entered into by any
225 agency that employs only nonstate service employees as defined in
226 Section 25-9-107(c), any personal service contracts entered into
227 for computer or information technology-related services governed
228 by the Mississippi Department of Information Technology Services,
229 any personal service contracts entered into by the individual
230 state institutions of higher learning, any personal service
231 contracts entered into by the Mississippi Department of
232 Transportation, any personal service contracts entered into by the
233 Department of Human Services through June 30, 2019, which the
234 Executive Director of the Department of Human Services determines
235 would be useful in establishing and operating the Department of
236 Child Protection Services, any personal service contracts entered
237 into by the Department of Child Protection Services through June
238 30, 2019, any contracts for entertainers and/or performers at the
239 Mississippi State Fairgrounds entered into by the Mississippi Fair
240 Commission, any contracts entered into by the Department of
241 Finance and Administration when procuring aircraft maintenance,
242 parts, equipment and/or services, any contract entered into by the
243 Department of Public Safety for service on specialized equipment
244 and/or software required for the operation at such specialized
245 equipment for use by the Office of Forensics Laboratories, * * *
246 any personal or professional service contract entered into by the
247 Mississippi Department of Health and/or the Department of Revenue
248 solely in connection with their respective responsibilities under



249 the Mississippi Medical Cannabis Act from February 2, 2022,
250 through June 30, 2023, any contract for attorney, accountant,
251 actuary auditor, architect, engineer, anatomical pathologist,
252 utility rate expert services, * * * any personal service contracts
253 approved by the Executive Director of the Department of Finance
254 and Administration and entered into by the Coordinator of Mental
255 Health Accessibility through June 30, 2022, and any personal or
256 professional services contract entered into by the State
257 Department of Health in carrying out its responsibilities under
258 the ARPA Rural Water Associations Infrastructure Grant Program
259 through June 30, 2026. Any such rules and regulations shall
260 provide for maintaining continuous internal audit covering the
261 activities of such agency affecting its revenue and expenditures
262 as required under Section 7-7-3(6)(d). Any rules and regulation
263 changes related to personal and professional services contracts
264 that the Public Procurement Review Board may propose shall be
265 submitted to the Chairs of the Accountability, Efficiency and
266 Transparency Committees of the Senate and House of Representatives
267 and the Chairs of the Appropriation Committees of the Senate and
268 House of Representatives at least fifteen (15) days before the
269 board votes on the proposed changes, and those rules and
270 regulation changes, if adopted, shall be promulgated in accordance
271 with the Mississippi Administrative Procedures Act;

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



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

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

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

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



298 shall still be submitted for approval to the Public Procurement
299 Review Board.

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

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

310 (k) Present recommendations for governmental
311 privatization and to evaluate privatization proposals submitted by
312 any state agency;

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

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



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

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

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

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

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



- 348 1. The personal or professional service
349 offered in the contract;
- 350 2. An explanation of why the personal or
351 professional service is the only one that can meet the needs of
352 the agency;
- 353 3. An explanation of why the source is the
354 only person or entity that can provide the required personal or
355 professional service;
- 356 4. An explanation of why the amount to be
357 expended for the personal or professional service is reasonable;
358 and
- 359 5. The efforts that the agency went through
360 to obtain the best possible price for the personal or professional
361 service.

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

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



373 agency must withdraw the sole source contract publication from the
374 procurement portal website and submit the procurement of the
375 personal or professional service to an advertised competitive bid
376 or selection process.

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

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

391 (vi) The Public Procurement Review Board shall
392 prepare and submit a quarterly report to the House of
393 Representatives and Senate Accountability, Efficiency and
394 Transparency Committees that details the sole source contracts
395 presented to the Public Procurement Review Board and the reasons
396 that the Public Procurement Review Board approved or rejected each
397 contract. These quarterly reports shall also include the



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

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

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

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



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

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

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

429 (c) Explanation of why the price is considered
430 reasonable; and

431 (d) Description of the efforts that were made to
432 conduct a noncompetitive negotiation to get the best possible
433 price for the taxpayers.

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



447 contract for personnel services in compliance with those
448 regulations.

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

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

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

465 (9) Notwithstanding the exemption of personal and
466 professional services contracts entered into by the Department of
467 Human Services and personal and professional services contracts
468 entered into by the Department of Child Protection Services from
469 the provisions of this section under subsection (2)(f), before the
470 Department of Human Services or the Department of Child Protection
471 Services may enter into a personal or professional service



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

489 **SECTION 3.** This act shall take effect and be in force from
490 and after its passage.

