

By: Representatives Read, Anderson (122nd),
Turner, McGee, Stamps, Foster, Faulkner,
Reynolds, Arnold

To: Appropriations

HOUSE BILL NO. 1425

1 AN ACT TO PROVIDE THAT THE DEPARTMENT OF ENVIRONMENTAL
2 QUALITY SHALL ESTABLISH A GRANT PROGRAM TO BE KNOWN AS THE ARPA
3 WASTEWATER INFRASTRUCTURE GRANT PROGRAM TO ASSIST POLITICAL
4 SUBDIVISIONS AND NONPROFIT UTILITIES IN THE CONSTRUCTION OF
5 ELIGIBLE WASTEWATER AND STORMWATER INFRASTRUCTURE PROJECTS UNDER
6 THE AMERICAN RESCUE PLAN ACT (ARPA); TO CREATE A SPECIAL FUND IN
7 THE STATE TREASURY TO BE KNOWN AS THE ARPA WASTEWATER
8 INFRASTRUCTURE FUND, WHICH SHALL BE USED BY THE DEPARTMENT TO MAKE
9 GRANTS UNDER THE GRANT PROGRAM; TO PROVIDE THAT UPON THE APPROVAL
10 OF AN APPLICATION FOR A GRANT UNDER THE PROGRAM, THE DEPARTMENT
11 SHALL ENTER INTO A PROJECT GRANT AGREEMENT WITH EACH GRANTEE TO
12 ESTABLISH THE TERMS OF THE GRANT FOR THE PROJECT, INCLUDING THE
13 AMOUNT OF THE GRANT; TO PROVIDE THAT ANY ASSISTANCE PROVIDED FOR A
14 PROJECT UNDER THE GRANT PROGRAM SHALL BE SUBJECT TO A GRANTEE
15 COST-SHARING REQUIREMENT OF NOT LESS THAN TWENTY PERCENT; TO
16 PROVIDE THAT ANY PERSONAL OR PROFESSIONAL SERVICES CONTRACTS
17 ENTERED INTO BY THE DEPARTMENT IN CARRYING OUT ITS
18 RESPONSIBILITIES UNDER THE GRANT PROGRAM SHALL BE EXEMPT FROM
19 REVIEW AND APPROVAL BY THE PUBLIC PROCUREMENT REVIEW BOARD; TO
20 PROVIDE THAT THE STATE DEPARTMENT OF HEALTH SHALL ESTABLISH A
21 GRANT PROGRAM TO BE KNOWN AS THE ARPA DRINKING WATER
22 INFRASTRUCTURE GRANT PROGRAM TO ASSIST POLITICAL SUBDIVISIONS AND
23 NONPROFIT UTILITIES IN THE CONSTRUCTION OF ELIGIBLE DRINKING WATER
24 INFRASTRUCTURE PROJECTS UNDER THE AMERICAN RESCUE PLAN ACT (ARPA);
25 TO CREATE A SPECIAL FUND IN THE STATE TREASURY TO BE KNOWN AS THE
26 ARPA DRINKING WATER INFRASTRUCTURE FUND, WHICH SHALL BE USED BY
27 THE DEPARTMENT TO MAKE GRANTS UNDER THE GRANT PROGRAM; TO PROVIDE
28 THAT UPON THE APPROVAL OF AN APPLICATION FOR A GRANT UNDER THE
29 PROGRAM, THE DEPARTMENT SHALL ENTER INTO A PROJECT GRANT AGREEMENT
30 WITH EACH GRANTEE TO ESTABLISH THE TERMS OF THE GRANT FOR THE
31 PROJECT, INCLUDING THE AMOUNT OF THE GRANT; TO PROVIDE THAT ANY
32 ASSISTANCE PROVIDED FOR A PROJECT UNDER THE GRANT PROGRAM SHALL BE
33 SUBJECT TO A GRANTEE COST-SHARING REQUIREMENT OF NOT LESS THAN
34 TWENTY PERCENT; TO PROVIDE THAT ANY PERSONAL OR PROFESSIONAL



35 SERVICES CONTRACTS ENTERED INTO BY THE DEPARTMENT IN CARRYING OUT
36 ITS RESPONSIBILITIES UNDER THE GRANT PROGRAM SHALL BE EXEMPT FROM
37 REVIEW AND APPROVAL BY THE PUBLIC PROCUREMENT REVIEW BOARD; TO
38 AMEND SECTION 27-104-7, MISSISSIPPI CODE OF 1972, TO CONFORM TO
39 THE PRECEDING PROVISION; AND FOR RELATED PURPOSES.

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

41 **SECTION 1.** (1) The Department of Environmental Quality
42 (department) shall establish a grant program to be known as the
43 ARPA Wastewater Infrastructure Grant Program to assist political
44 subdivisions and nonprofit utilities in the construction of
45 eligible wastewater and stormwater infrastructure projects as
46 provided in the Final Rule for the Coronavirus State and Local
47 Fiscal Recovery Funds as established by ARPA.

48 (2) There is created in the State Treasury a special fund to
49 be known as the American Rescue Plan Act (ARPA) Wastewater
50 Infrastructure Fund (the "ARPA Wastewater Infrastructure Fund"),
51 which will consist of funds made available by the Legislature from
52 federal ARPA funds. Monies in the fund shall be used by the
53 department, upon appropriation of the Legislature, to make grants
54 under the ARPA Wastewater Infrastructure Grant Program for the
55 purposes provided in subsection (1) of this section. It is the
56 intent of the Legislature that, in the first fiscal year after the
57 effective date of this act, twenty percent (20%) of the funds
58 appropriated to the ARPA Wastewater Infrastructure Fund be
59 obligated to projects that have completed plans and
60 specifications, acquired all necessary land and/or easements, and
61 are ready to proceed to construction.



62 (3) The department shall obligate the funds by the deadline
63 set by the rules and guidelines of the United States Department of
64 the Treasury and will adhere to the Treasury's rules and
65 guidelines for reporting and monitoring projects funded through
66 the American Rescue Plan Act.

67 (4) The department shall develop a system for use in ranking
68 the grant applications received. The ranking system shall include
69 the following factors, at a minimum: (a) the environmental impact
70 of the proposed project; (b) the proposed project's ability to
71 address noncompliance with state/federal requirements; (c) the
72 extent to which the project promotes economic development; (d) the
73 number of people served by the project (both new and existing
74 users); (e) impacts of the proposed project on disadvantaged/
75 overburdened communities; (f) the grant applicant's prior efforts
76 to secure funding to address the proposed project's objectives;
77 (g) the grant applicant's proposed contribution of other funds or
78 in-kind cost-sharing to the proposed project; (h) the grant
79 applicant's long-term plans for the financial and physical
80 operation and maintenance of the project; and (i) the grant
81 applicant's capacity to initiate construction in a timely manner
82 and complete the proposed project by the deadline specified by
83 rules and guidelines of the United States Department of the
84 Treasury for ARPA funds.



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

88 (6) Upon the approval of an application for a grant under
89 this section, the department shall enter into a project grant
90 agreement with each grantee to establish the terms of the grant
91 for the project, including the amount of the grant. Any
92 assistance provided under this section for a project shall be
93 subject to a grantee cost-sharing requirement of not less than
94 twenty percent (20%). However, the cost-sharing requirement for a
95 small municipality (a municipality with a population of ten
96 thousand (10,000) or less, according to the most recent federal
97 decennial census, at the time the application is submitted) and a
98 limited population county (a county with a population of thirty
99 thousand (30,000) or less, according to the most recent federal
100 decennial census) shall be not less than five percent (5%). The
101 grantee share may be provided in the form of in-kind
102 contributions.

103 (7) The department shall have all powers necessary to
104 implement and administer the ARPA Wastewater Infrastructure Grant
105 Program established under this section. Of the funds appropriated
106 to the ARPA Wastewater Infrastructure Fund, up to ten percent
107 (10%) shall be used by the department to cover the department's
108 costs of administering the program.



109 (8) In carrying out its responsibilities under the ARPA
110 Wastewater Infrastructure Grant Program, for any contract under
111 the purview of the Public Procurement Review Board (PPRB), the
112 department shall be exempt from any requirement that the PPRB
113 approve any personal or professional services contracts or
114 pre-approve any solicitation of such contracts. This subsection
115 shall stand repealed on July 1, 2026.

116 (9) The department shall submit an annual report regarding
117 the ARPA Wastewater Infrastructure Grant Program no later than
118 December 31 of each year to the Lieutenant Governor, the Speaker
119 of the House, and the Chairmen of the Senate and House
120 Appropriations Committees.

121 **SECTION 2.** (1) The State Department of Health (department)
122 shall establish a grant program to be known as the ARPA Drinking
123 Water Infrastructure Grant Program to assist political
124 subdivisions and nonprofit utilities in the construction of
125 eligible drinking water infrastructure projects as provided in the
126 Final Rule for the Coronavirus State and Local Fiscal Recovery
127 Funds as established by ARPA.

128 (2) There is created in the State Treasury a special fund to
129 be known as the American Rescue Plan Act (ARPA) Drinking Water
130 Infrastructure Fund (the "ARPA Drinking Water Infrastructure
131 Fund"), which will consist of funds made available by the
132 Legislature from federal ARPA funds. Monies in the fund shall be
133 used by the department, upon appropriation of the Legislature, to



134 make grants under the ARPA Drinking Water Infrastructure Grant
135 Program for the purposes provided in subsection (1) of this
136 section. It is the intent of the Legislature that, in the first
137 fiscal year after the effective date of this act, twenty percent
138 (20%) of the funds appropriated to the ARPA Drinking Water
139 Infrastructure Fund be obligated to projects that have completed
140 plans and specifications, acquired all necessary land and/or
141 easements, and are ready to proceed to construction.

142 (3) The department shall obligate the funds by the deadline
143 set by the rules and guidelines of the United States Department of
144 the Treasury and will adhere to the Treasury's rules and
145 guidelines for reporting and monitoring projects funded through
146 the American Rescue Plan Act.

147 (4) The department shall develop a system for use in ranking
148 the grant applications received. The ranking system shall include
149 the following factors, at a minimum: (a) the environmental impact
150 of the proposed project; (b) the proposed project's ability to
151 address noncompliance with state/federal requirements; (c) the
152 extent to which the project promotes economic development; (d) the
153 number of people served by the project (both new and existing
154 users); (e) impacts of the proposed project on disadvantaged/
155 overburdened communities; (f) the grant applicant's prior efforts
156 to secure funding to address the proposed project's objectives;
157 (g) the grant applicant's proposed contribution of other funds or
158 in-kind cost-sharing to the proposed project; (h) the grant



159 applicant's long-term plans for the financial and physical
160 operation and maintenance of the project; and (i) the grant
161 applicant's capacity to initiate construction in a timely manner
162 and complete the proposed project by the deadline specified by
163 rules and guidelines of the United States Department of the
164 Treasury for ARPA funds.

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

168 (6) Upon the approval of an application for a grant under
169 this section, the department shall enter into a project grant
170 agreement with each grantee to establish the terms of the grant
171 for the project, including the amount of the grant. Any
172 assistance provided under this section for a project shall be
173 subject to a grantee cost-sharing requirement of not less than
174 twenty percent (20%). However, the cost-sharing requirement for a
175 small municipality (a municipality with a population of ten
176 thousand (10,000) or less, according to the most recent federal
177 decennial census, at the time the application is submitted) and a
178 limited population county (a county with a population of thirty
179 thousand (30,000) or less, according to the most recent federal
180 decennial census) shall be not less than five percent (5%). The
181 grantee share may be provided in the form of in-kind
182 contributions.



183 (7) The department shall have all powers necessary to
184 implement and administer the ARPA Drinking Water Infrastructure
185 Grant Program established under this section. Of the funds
186 appropriated to the ARPA Drinking Water Infrastructure Fund, up to
187 ten percent (10%) shall be used by the department to cover the
188 department's costs of administering the program.

189 (8) In carrying out its responsibilities under the ARPA
190 Drinking Water Infrastructure Grant Program, for any contract
191 under the purview of the Public Procurement Review Board (PPRB),
192 the department shall be exempt from any requirement that the PPRB
193 approve any personal or professional services contracts or
194 pre-approve any solicitation of such contracts. This subsection
195 shall stand repealed on July 1, 2026.

196 (9) The department shall submit an annual report regarding
197 the ARPA Drinking Water Infrastructure Grant Program no later than
198 December 31 of each year to the Lieutenant Governor, the Speaker
199 of the House, and the Chairmen of the Senate and House
200 Appropriations Committees.

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

203 27-104-7. (1) (a) There is created the Public Procurement
204 Review Board, which shall be reconstituted on January 1, 2018, and
205 shall be composed of the following members:

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



208 (ii) Two (2) individuals appointed by the
209 Lieutenant Governor with the advice and consent of the Senate; and
210 (iii) The Executive Director of the Department of
211 Finance and Administration, serving as an ex officio and nonvoting
212 member.

213 (b) The initial terms of each appointee shall be as
214 follows:

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

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

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

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

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

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

229 (c) When appointing members to the Public Procurement
230 Review Board, the Governor and Lieutenant Governor shall take into
231 consideration persons who possess at least five (5) years of
232 management experience in general business, health care or finance



233 for an organization, corporation or other public or private
234 entity. Any person, or any employee or owner of a company, who
235 receives any grants, procurements or contracts that are subject to
236 approval under this section shall not be appointed to the Public
237 Procurement Review Board. Any person, or any employee or owner of
238 a company, who is a principal of the source providing a personal
239 or professional service shall not be appointed to the Public
240 Procurement Review Board if the principal owns or controls a
241 greater than five percent (5%) interest or has an ownership value
242 of One Million Dollars (\$1,000,000.00) in the source's business,
243 whichever is smaller. No member shall be an officer or employee
244 of the State of Mississippi while serving as a voting member on
245 the Public Procurement Review Board.

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

249 (e) The members of the Public Procurement Review Board
250 shall elect a chair from among the membership, and he or she shall
251 preside over the meetings of the board. The board shall annually
252 elect a vice chair, who shall serve in the absence of the chair.
253 No business shall be transacted, including adoption of rules of
254 procedure, without the presence of a quorum of the board. Three
255 (3) members shall be a quorum. No action shall be valid unless
256 approved by a majority of the members present and voting, entered
257 upon the minutes of the board and signed by the chair. Necessary



258 clerical and administrative support for the board shall be
259 provided by the Department of Finance and Administration. Minutes
260 shall be kept of the proceedings of each meeting, copies of which
261 shall be filed on a monthly basis with the chairs of the
262 Accountability, Efficiency and Transparency Committees of the
263 Senate and House of Representatives and the chairs of the
264 Appropriations Committees of the Senate and House of
265 Representatives.

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

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

272 (b) Adopt regulations governing the approval of
273 contracts let for the construction and maintenance of state
274 buildings and other state facilities as well as related contracts
275 for architectural and engineering services.

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

280 (c) Adopt regulations governing any lease or rental
281 agreement by any state agency or department, including any state
282 agency financed entirely by federal funds, for space outside the



283 buildings under the jurisdiction of the Department of Finance and
284 Administration. These regulations shall require each agency
285 requesting to lease such space to provide the following
286 information that shall be published by the Department of Finance
287 and Administration on its website: the agency to lease the space;
288 the terms of the lease; the approximate square feet to be leased;
289 the use for the space; a description of a suitable space; the
290 general location desired for the leased space; the contact
291 information for a person from the agency; the deadline date for
292 the agency to have received a lease proposal; any other specific
293 terms or conditions of the agency; and any other information
294 deemed appropriate by the Division of Real Property Management of
295 the Department of Finance and Administration or the Public
296 Procurement Review Board. The information shall be provided
297 sufficiently in advance of the time the space is needed to allow
298 the Division of Real Property Management of the Department of
299 Finance and Administration to review and preapprove the lease
300 before the time for advertisement begins;

301 (d) Adopt, in its discretion, regulations to set aside
302 at least five percent (5%) of anticipated annual expenditures for
303 the purchase of commodities from minority businesses; however, all
304 such set-aside purchases shall comply with all purchasing
305 regulations promulgated by the department and shall be subject to
306 all bid requirements. Set-aside purchases for which competitive
307 bids are required shall be made from the lowest and best minority



308 business bidder; however, if no minority bid is available or if
309 the minority bid is more than two percent (2%) higher than the
310 lowest bid, then bids shall be accepted and awarded to the lowest
311 and best bidder. However, the provisions in this paragraph shall
312 not be construed to prohibit the rejection of a bid when only one
313 (1) bid is received. Such rejection shall be placed in the
314 minutes. For the purposes of this paragraph, the term "minority
315 business" means a business which is owned by a person who is a
316 citizen or lawful permanent resident of the United States and who
317 is:

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

320 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,
321 Central or South American, or other Spanish or Portuguese culture
322 or origin regardless of race;

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

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

328 (v) Female;

329 (e) In consultation with and approval by the Chairs of
330 the Senate and House Public Property Committees, approve leases,
331 for a term not to exceed eighteen (18) months, entered into by
332 state agencies for the purpose of providing parking arrangements



333 for state employees who work in the Woolfolk Building, the Carroll
334 Gartin Justice Building or the Walter Sillers Office Building;
335 (f) Promulgate rules and regulations governing the
336 solicitation and selection of contractual services personnel,
337 including personal and professional services contracts for any
338 form of consulting, policy analysis, public relations, marketing,
339 public affairs, legislative advocacy services or any other
340 contract that the board deems appropriate for oversight, with the
341 exception of any personal service contracts entered into by any
342 agency that employs only nonstate service employees as defined in
343 Section 25-9-107(c), any personal service contracts entered into
344 for computer or information technology-related services governed
345 by the Mississippi Department of Information Technology Services,
346 any personal service contracts entered into by the individual
347 state institutions of higher learning, any personal service
348 contracts entered into by the Mississippi Department of
349 Transportation, any personal service contracts entered into by the
350 Department of Human Services through June 30, 2019, which the
351 Executive Director of the Department of Human Services determines
352 would be useful in establishing and operating the Department of
353 Child Protection Services, any personal service contracts entered
354 into by the Department of Child Protection Services through June
355 30, 2019, any contracts for entertainers and/or performers at the
356 Mississippi State Fairgrounds entered into by the Mississippi Fair
357 Commission, any contracts entered into by the Department of



358 Finance and Administration when procuring aircraft maintenance,
359 parts, equipment and/or services, any contract entered into by the
360 Department of Public Safety for service on specialized equipment
361 and/or software required for the operation at such specialized
362 equipment for use by the Office of Forensics Laboratories, * * *
363 any contract for attorney, accountant, actuary auditor, architect,
364 engineer, anatomical pathologist, utility rate expert
365 services, * * * any personal service contracts approved by the
366 Executive Director of the Department of Finance and Administration
367 and entered into by the Coordinator of Mental Health Accessibility
368 through June 30, 2022, any personal or professional services
369 contract entered into by the Department of Environmental Quality
370 in carrying out its responsibilities under the ARPA Wastewater
371 Infrastructure Grant Program through June 30, 2026, and any
372 personal or professional services contract entered into by the
373 State Department of Health in carrying out its responsibilities
374 under the ARPA Drinking Water Infrastructure Grant Program through
375 June 30, 2026. Any such rules and regulations shall provide for
376 maintaining continuous internal audit covering the activities of
377 such agency affecting its revenue and expenditures as required
378 under Section 7-7-3(6) (d). Any rules and regulation changes
379 related to personal and professional services contracts that the
380 Public Procurement Review Board may propose shall be submitted to
381 the Chairs of the Accountability, Efficiency and Transparency
382 Committees of the Senate and House of Representatives and the



383 Chairs of the Appropriation Committees of the Senate and House of
384 Representatives at least fifteen (15) days before the board votes
385 on the proposed changes, and those rules and regulation changes,
386 if adopted, shall be promulgated in accordance with the
387 Mississippi Administrative Procedures Act;

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

392 (h) Develop mandatory standards with respect to
393 contractual services personnel that require invitations for public
394 bid, requests for proposals, record keeping and financial
395 responsibility of contractors. The Public Procurement Review
396 Board shall, unless exempted under this paragraph (h) or under
397 paragraph (i) or (o) of this subsection (2), require the agency
398 involved to submit the procurement to a competitive procurement
399 process, and may reserve the right to reject any or all resulting
400 procurements;

401 (i) Prescribe certain circumstances by which agency
402 heads may enter into contracts for personal and professional
403 services without receiving prior approval from the Public
404 Procurement Review Board. The Public Procurement Review Board may
405 establish a preapproved list of providers of various personal and
406 professional services for set prices with which state agencies may
407 contract without bidding or prior approval from the board;



408 (i) Agency requirements may be fulfilled by
409 procuring services performed incident to the state's own programs.
410 The agency head shall determine in writing whether the price
411 represents a fair market value for the services. When the
412 procurements are made from other governmental entities, the
413 private sector need not be solicited; however, these contracts
414 shall still be submitted for approval to the Public Procurement
415 Review Board.

416 (ii) Contracts between two (2) state agencies,
417 both under Public Procurement Review Board purview, shall not
418 require Public Procurement Review Board approval. However, the
419 contracts shall still be entered into the enterprise resource
420 planning system;

421 (j) Provide standards for the issuance of requests for
422 proposals, the evaluation of proposals received, consideration of
423 costs and quality of services proposed, contract negotiations, the
424 administrative monitoring of contract performance by the agency
425 and successful steps in terminating a contract;

426 (k) Present recommendations for governmental
427 privatization and to evaluate privatization proposals submitted by
428 any state agency;

429 (l) Authorize personal and professional service
430 contracts to be effective for more than one (1) year provided a
431 funding condition is included in any such multiple year contract,
432 except the State Board of Education, which shall have the



433 authority to enter into contractual agreements for student
434 assessment for a period up to ten (10) years. The State Board of
435 Education shall procure these services in accordance with the
436 Public Procurement Review Board procurement regulations;

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

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

443 (o) Develop and implement the following standards and
444 procedures for the approval of any sole source contract for
445 personal and professional services regardless of the value of the
446 procurement:

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

450 (ii) An agency that has been issued a binding,
451 valid court order mandating that a particular source or provider
452 must be used for the required service must include a copy of the
453 applicable court order in all future sole source contract reviews
454 for the particular personal or professional service referenced in
455 the court order.

456 (iii) Any agency alleging to have a sole source
457 for any personal or professional service, other than those



458 exempted under paragraph (f) of this subsection (2) and subsection
459 (8), shall publish on the procurement portal website established
460 by Sections 25-53-151 and 27-104-165, for at least fourteen (14)
461 days, the terms of the proposed contract for those services. In
462 addition, the publication shall include, but is not limited to,
463 the following information:

464 1. The personal or professional service
465 offered in the contract;

466 2. An explanation of why the personal or
467 professional service is the only one that can meet the needs of
468 the agency;

469 3. An explanation of why the source is the
470 only person or entity that can provide the required personal or
471 professional service;

472 4. An explanation of why the amount to be
473 expended for the personal or professional service is reasonable;
474 and

475 5. The efforts that the agency went through
476 to obtain the best possible price for the personal or professional
477 service.

478 (iv) If any person or entity objects and proposes
479 that the personal or professional service published under
480 subparagraph (iii) of this paragraph (o) is not a sole source
481 service and can be provided by another person or entity, then the
482 objecting person or entity shall notify the Public Procurement



483 Review Board and the agency that published the proposed sole
484 source contract with a detailed explanation of why the personal or
485 professional service is not a sole source service.

486 (v) 1. If the agency determines after review that
487 the personal or professional service in the proposed sole source
488 contract can be provided by another person or entity, then the
489 agency must withdraw the sole source contract publication from the
490 procurement portal website and submit the procurement of the
491 personal or professional service to an advertised competitive bid
492 or selection process.

493 2. If the agency determines after review that
494 there is only one (1) source for the required personal or
495 professional service, then the agency may appeal to the Public
496 Procurement Review Board. The agency has the burden of proving
497 that the personal or professional service is only provided by one
498 (1) source.

499 3. If the Public Procurement Review Board has
500 any reasonable doubt as to whether the personal or professional
501 service can only be provided by one (1) source, then the agency
502 must submit the procurement of the personal or professional
503 service to an advertised competitive bid or selection process. No
504 action taken by the Public Procurement Review Board in this appeal
505 process shall be valid unless approved by a majority of the
506 members of the Public Procurement Review Board present and voting.



507 (vi) The Public Procurement Review Board shall
508 prepare and submit a quarterly report to the House of
509 Representatives and Senate Accountability, Efficiency and
510 Transparency Committees that details the sole source contracts
511 presented to the Public Procurement Review Board and the reasons
512 that the Public Procurement Review Board approved or rejected each
513 contract. These quarterly reports shall also include the
514 documentation and memoranda required in subsection (4) of this
515 section. An agency that submitted a sole source contract shall be
516 prepared to explain the sole source contract to each committee by
517 December 15 of each year upon request by the committee;

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

520 (3) All submissions shall be made sufficiently in advance of
521 each monthly meeting of the Public Procurement Review Board as
522 prescribed by the Public Procurement Review Board. If the Public
523 Procurement Review Board rejects any contract submitted for review
524 or approval, the Public Procurement Review Board shall clearly set
525 out the reasons for its action, including, but not limited to, the
526 policy that the agency has violated in its submitted contract and
527 any corrective actions that the agency may take to amend the
528 contract to comply with the rules and regulations of the Public
529 Procurement Review Board.

530 (4) All sole source contracts for personal and professional
531 services awarded by state agencies, other than those exempted



532 under Section 27-104-7(2) (f) and (8), whether approved by an
533 agency head or the Public Procurement Review Board, shall contain
534 in the procurement file a written determination for the approval,
535 using a request form furnished by the Public Procurement Review
536 Board. The written determination shall document the basis for the
537 determination, including any market analysis conducted in order to
538 ensure that the service required was practicably available from
539 only one (1) source. A memorandum shall accompany the request
540 form and address the following four (4) points:

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

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

545 (c) Explanation of why the price is considered
546 reasonable; and

547 (d) Description of the efforts that were made to
548 conduct a noncompetitive negotiation to get the best possible
549 price for the taxpayers.

550 (5) In conjunction with the State Personnel Board, the
551 Public Procurement Review Board shall develop and promulgate rules
552 and regulations to define the allowable legal relationship between
553 contract employees and the contracting departments, agencies and
554 institutions of state government under the jurisdiction of the
555 State Personnel Board, in compliance with the applicable rules and
556 regulations of the federal Internal Revenue Service (IRS) for



557 federal employment tax purposes. Under these regulations, the
558 usual common law rules are applicable to determine and require
559 that such worker is an independent contractor and not an employee,
560 requiring evidence of lawful behavioral control, lawful financial
561 control and lawful relationship of the parties. Any state
562 department, agency or institution shall only be authorized to
563 contract for personnel services in compliance with those
564 regulations.

565 (6) No member of the Public Procurement Review Board shall
566 use his or her official authority or influence to coerce, by
567 threat of discharge from employment, or otherwise, the purchase of
568 commodities, the contracting for personal or professional
569 services, or the contracting for public construction under this
570 chapter.

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

574 (8) Nothing in this section shall impair or limit the
575 authority of the Board of Trustees of the Public Employees'
576 Retirement System to enter into any personal or professional
577 services contracts directly related to their constitutional
578 obligation to manage the trust funds, including, but not limited
579 to, actuarial, custodial banks, cash management, investment
580 consultant and investment management contracts.



581 (9) Notwithstanding the exemption of personal and
582 professional services contracts entered into by the Department of
583 Human Services and personal and professional services contracts
584 entered into by the Department of Child Protection Services from
585 the provisions of this section under subsection (2)(f), before the
586 Department of Human Services or the Department of Child Protection
587 Services may enter into a personal or professional service
588 contract, the department(s) shall give notice of the proposed
589 personal or professional service contract to the Public
590 Procurement Review Board for any recommendations by the board.
591 Upon receipt of the notice, the board shall post the notice on its
592 website and on the procurement portal website established by
593 Sections 25-53-151 and 27-104-165. If the board does not respond
594 to the department(s) within seven (7) calendar days after
595 receiving the notice, the department(s) may enter the proposed
596 personal or professional service contract. If the board responds
597 to the department(s) within seven (7) calendar days, then the
598 board has seven (7) calendar days from the date of its initial
599 response to provide any additional recommendations. After the end
600 of the second seven-day period, the department(s) may enter the
601 proposed personal or professional service contract. The board is
602 not authorized to disapprove any proposed personal or professional
603 services contracts. This subsection shall stand repealed on July
604 1, 2022.



605 **SECTION 4.** This act shall take effect and be in force from
606 and after July 1, 2022.

