

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

HOUSE BILL NO. 1425 (As Passed the House)

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, UTILITY AUTHORITIES AND NONPROFIT UTILITIES IN THE
5 CONSTRUCTION OF ELIGIBLE WASTEWATER AND STORMWATER INFRASTRUCTURE
6 PROJECTS UNDER THE AMERICAN RESCUE PLAN ACT (ARPA); TO CREATE A
7 SPECIAL FUND IN THE STATE TREASURY TO BE KNOWN AS THE ARPA
8 WASTEWATER INFRASTRUCTURE FUND, WHICH SHALL BE USED BY THE
9 DEPARTMENT TO MAKE GRANTS UNDER THE GRANT PROGRAM; TO PROVIDE THAT
10 UPON THE APPROVAL OF AN APPLICATION FOR A GRANT UNDER THE PROGRAM,
11 THE DEPARTMENT SHALL ENTER INTO A PROJECT GRANT AGREEMENT WITH
12 EACH GRANTEE TO ESTABLISH THE TERMS OF THE GRANT FOR THE PROJECT,
13 INCLUDING THE AMOUNT OF THE GRANT; TO PROVIDE THAT ANY ASSISTANCE
14 PROVIDED FOR A PROJECT UNDER THE GRANT PROGRAM SHALL BE SUBJECT TO
15 A GRANTEE COST-SHARING REQUIREMENT OF NOT LESS THAN TWENTY
16 PERCENT; TO PROVIDE THAT ANY PERSONAL OR PROFESSIONAL SERVICES
17 CONTRACTS 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,
23 UTILITY AUTHORITIES AND NONPROFIT UTILITIES IN THE CONSTRUCTION OF
24 ELIGIBLE DRINKING WATER INFRASTRUCTURE PROJECTS UNDER THE AMERICAN
25 RESCUE PLAN ACT (ARPA); TO CREATE A SPECIAL FUND IN THE STATE
26 TREASURY TO BE KNOWN AS THE ARPA DRINKING WATER INFRASTRUCTURE
27 FUND, WHICH SHALL BE USED BY THE DEPARTMENT TO MAKE GRANTS UNDER
28 THE GRANT PROGRAM; TO PROVIDE THAT UPON THE APPROVAL OF AN
29 APPLICATION FOR A GRANT UNDER THE PROGRAM, THE DEPARTMENT SHALL
30 ENTER INTO A PROJECT GRANT AGREEMENT WITH EACH GRANTEE TO
31 ESTABLISH THE TERMS OF THE GRANT FOR THE PROJECT, INCLUDING THE
32 AMOUNT OF THE GRANT; TO PROVIDE THAT ANY ASSISTANCE PROVIDED FOR A
33 PROJECT UNDER THE GRANT PROGRAM SHALL BE SUBJECT TO A GRANTEE
34 COST-SHARING REQUIREMENT OF NOT LESS THAN TWENTY PERCENT; TO



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

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

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

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



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

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



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

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

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



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

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

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

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



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

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

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



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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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



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

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

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

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

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

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



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

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



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

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

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

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

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

329 (v) Female;

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



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



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



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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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

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

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



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

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

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

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



582 (9) Notwithstanding the exemption of personal and
583 professional services contracts entered into by the Department of
584 Human Services and personal and professional services contracts
585 entered into by the Department of Child Protection Services from
586 the provisions of this section under subsection (2)(f), before the
587 Department of Human Services or the Department of Child Protection
588 Services may enter into a personal or professional service
589 contract, the department(s) shall give notice of the proposed
590 personal or professional service contract to the Public
591 Procurement Review Board for any recommendations by the board.
592 Upon receipt of the notice, the board shall post the notice on its
593 website and on the procurement portal website established by
594 Sections 25-53-151 and 27-104-165. If the board does not respond
595 to the department(s) within seven (7) calendar days after
596 receiving the notice, the department(s) may enter the proposed
597 personal or professional service contract. If the board responds
598 to the department(s) within seven (7) calendar days, then the
599 board has seven (7) calendar days from the date of its initial
600 response to provide any additional recommendations. After the end
601 of the second seven-day period, the department(s) may enter the
602 proposed personal or professional service contract. The board is
603 not authorized to disapprove any proposed personal or professional
604 services contracts. This subsection shall stand repealed on July
605 1, 2022.



606 **SECTION 4.** This act shall take effect and be in force from
607 and after July 1, 2022, and shall stand repealed on June 30, 2022.

