

By: Senator(s) Blackwell, Chassaniol,  
Younger, McMahan, Norwood, Kirby, Sparks

To: Accountability,  
Efficiency, Transparency

SENATE BILL NO. 2793

1 AN ACT TO AMEND SECTION 27-104-7, MISSISSIPPI CODE OF 1972,  
2 TO CLARIFY THE EXEMPTION FOR ATTORNEY SERVICES WITH REGARD TO  
3 OVERSIGHT BY THE PUBLIC PROCUREMENT REVIEW BOARD; TO AMEND SECTION  
4 7-5-39, MISSISSIPPI CODE OF 1972, TO REQUIRE THE ATTORNEY GENERAL  
5 TO DISAPPROVE ANY CONTRACT FOR OUTSIDE COUNSEL THAT CONTAINS  
6 NONLEGAL SERVICES IF THE ADDITIONAL SERVICES FALL UNDER THE  
7 PURVIEW OF THE PUBLIC PROCUREMENT REVIEW BOARD; AND FOR RELATED  
8 PURPOSES.

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

10 **SECTION 1.** Section 27-104-7, Mississippi Code of 1972, is  
11 amended as follows:

12 27-104-7. (1) (a) There is created the Public Procurement  
13 Review Board, which shall be reconstituted on January 1, 2018, and  
14 shall be composed of the following members:

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

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

19 (iii) The Executive Director of the Department of  
20 Finance and Administration, serving as an ex officio and nonvoting  
21 member.



22 (b) The initial terms of each appointee shall be as  
23 follows:

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

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

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

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

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

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

38 (c) When appointing members to the Public Procurement  
39 Review Board, the Governor and Lieutenant Governor shall take into  
40 consideration persons who possess at least five (5) years of  
41 management experience in general business, health care or finance  
42 for an organization, corporation or other public or private  
43 entity. Any person, or any employee or owner of a company, who  
44 receives any grants, procurements or contracts that are subject to  
45 approval under this section shall not be appointed to the Public  
46 Procurement Review Board. Any person, or any employee or owner of



47 a company, who is a principal of the source providing a personal  
48 or professional service shall not be appointed to the Public  
49 Procurement Review Board if the principal owns or controls a  
50 greater than five percent (5%) interest or has an ownership value  
51 of One Million Dollars (\$1,000,000.00) in the source's business,  
52 whichever is smaller. No member shall be an officer or employee  
53 of the State of Mississippi while serving as a voting member on  
54 the Public Procurement Review Board.

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

58 (e) The members of the Public Procurement Review Board  
59 shall elect a chair from among the membership, and he or she shall  
60 preside over the meetings of the board. The board shall annually  
61 elect a vice chair, who shall serve in the absence of the chair.  
62 No business shall be transacted, including adoption of rules of  
63 procedure, without the presence of a quorum of the board. Three  
64 (3) members shall be a quorum. No action shall be valid unless  
65 approved by a majority of the members present and voting, entered  
66 upon the minutes of the board and signed by the chair. Necessary  
67 clerical and administrative support for the board shall be  
68 provided by the Department of Finance and Administration. Minutes  
69 shall be kept of the proceedings of each meeting, copies of which  
70 shall be filed on a monthly basis with the chairs of the  
71 Accountability, Efficiency and Transparency Committees of the



72 Senate and House of Representatives and the chairs of the  
73 Appropriations Committees of the Senate and House of  
74 Representatives.

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

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

81 (b) Adopt regulations governing the approval of  
82 contracts let for the construction and maintenance of state  
83 buildings and other state facilities as well as related contracts  
84 for architectural and engineering services.

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

89 (c) Adopt regulations governing any lease or rental  
90 agreement by any state agency or department, including any state  
91 agency financed entirely by federal funds, for space outside the  
92 buildings under the jurisdiction of the Department of Finance and  
93 Administration. These regulations shall require each agency  
94 requesting to lease such space to provide the following  
95 information that shall be published by the Department of Finance  
96 and Administration on its website: the agency to lease the space;



97 the terms of the lease; the approximate square feet to be leased;  
98 the use for the space; a description of a suitable space; the  
99 general location desired for the leased space; the contact  
100 information for a person from the agency; the deadline date for  
101 the agency to have received a lease proposal; any other specific  
102 terms or conditions of the agency; and any other information  
103 deemed appropriate by the Division of Real Property Management of  
104 the Department of Finance and Administration or the Public  
105 Procurement Review Board. The information shall be provided  
106 sufficiently in advance of the time the space is needed to allow  
107 the Division of Real Property Management of the Department of  
108 Finance and Administration to review and preapprove the lease  
109 before the time for advertisement begins;

110 (d) Adopt, in its discretion, regulations to set aside  
111 at least five percent (5%) of anticipated annual expenditures for  
112 the purchase of commodities from minority businesses; however, all  
113 such set-aside purchases shall comply with all purchasing  
114 regulations promulgated by the department and shall be subject to  
115 all bid requirements. Set-aside purchases for which competitive  
116 bids are required shall be made from the lowest and best minority  
117 business bidder; however, if no minority bid is available or if  
118 the minority bid is more than two percent (2%) higher than the  
119 lowest bid, then bids shall be accepted and awarded to the lowest  
120 and best bidder. However, the provisions in this paragraph shall  
121 not be construed to prohibit the rejection of a bid when only one



122 (1) bid is received. Such rejection shall be placed in the  
123 minutes. For the purposes of this paragraph, the term "minority  
124 business" means a business which is owned by a person who is a  
125 citizen or lawful permanent resident of the United States and who  
126 is:

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

129 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,  
130 Central or South American, or other Spanish or Portuguese culture  
131 or origin regardless of race;

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

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

137 (v) Female;

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

144 (f) Promulgate rules and regulations governing the  
145 solicitation and selection of contractual services personnel,  
146 including personal and professional services contracts for any



147 form of consulting, policy analysis, public relations, marketing,  
148 public affairs, legislative advocacy services or any other  
149 contract that the board deems appropriate for oversight, with the  
150 exception of any personal service contracts entered into by any  
151 agency that employs only nonstate service employees as defined in  
152 Section 25-9-107(c), any personal service contracts entered into  
153 for computer or information technology-related services governed  
154 by the Mississippi Department of Information Technology Services,  
155 any personal service contracts entered into by the individual  
156 state institutions of higher learning, any personal service  
157 contracts entered into by the Mississippi Department of  
158 Transportation, any personal service contracts entered into by the  
159 Department of Human Services through June 30, 2019, which the  
160 Executive Director of the Department of Human Services determines  
161 would be useful in establishing and operating the Department of  
162 Child Protection Services, any personal service contracts entered  
163 into by the Department of Child Protection Services through June  
164 30, 2019, any contracts for entertainers and/or performers at the  
165 Mississippi State Fairgrounds entered into by the Mississippi Fair  
166 Commission, any contracts entered into by the Department of  
167 Finance and Administration when procuring aircraft maintenance,  
168 parts, equipment and/or services, any contract entered into by the  
169 Department of Public Safety for service on specialized equipment  
170 and/or software required for the operation at such specialized  
171 equipment for use by the Office of Forensics Laboratories, and any



172 contract for \* \* \* legal service, which is defined as any contract  
173 in which services are provided directly by an attorney or an  
174 employee of an attorney, any contract for an accountant, actuary  
175 auditor, architect, engineer, anatomical pathologist, utility rate  
176 expert services, and any personal service contracts approved by  
177 the Executive Director of the Department of Finance and  
178 Administration and entered into by the Coordinator of Mental  
179 Health Accessibility through June 30, 2022. Any such rules and  
180 regulations shall provide for maintaining continuous internal  
181 audit covering the activities of such agency affecting its revenue  
182 and expenditures as required under Section 7-7-3(6)(d). Any rules  
183 and regulation changes related to personal and professional  
184 services contracts that the Public Procurement Review Board may  
185 propose shall be submitted to the Chairs of the Accountability,  
186 Efficiency and Transparency Committees of the Senate and House of  
187 Representatives and the Chairs of the Appropriation Committees of  
188 the Senate and House of Representatives at least fifteen (15) days  
189 before the board votes on the proposed changes, and those rules  
190 and regulation changes, if adopted, shall be promulgated in  
191 accordance with the Mississippi Administrative Procedures Act;

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





196           (h) Develop mandatory standards with respect to  
197 contractual services personnel that require invitations for public  
198 bid, requests for proposals, record keeping and financial  
199 responsibility of contractors. The Public Procurement Review  
200 Board shall, unless exempted under this paragraph (h) or under  
201 paragraph (i) or (o) of this subsection (2), require the agency  
202 involved to submit the procurement to a competitive procurement  
203 process, and may reserve the right to reject any or all resulting  
204 procurements;

205           (i) Prescribe certain circumstances by which agency  
206 heads may enter into contracts for personal and professional  
207 services without receiving prior approval from the Public  
208 Procurement Review Board. The Public Procurement Review Board may  
209 establish a preapproved list of providers of various personal and  
210 professional services for set prices with which state agencies may  
211 contract without bidding or prior approval from the board;

212           (i) Agency requirements may be fulfilled by  
213 procuring services performed incident to the state's own programs.  
214 The agency head shall determine in writing whether the price  
215 represents a fair market value for the services. When the  
216 procurements are made from other governmental entities, the  
217 private sector need not be solicited; however, these contracts  
218 shall still be submitted for approval to the Public Procurement  
219 Review Board.



220 (ii) Contracts between two (2) state agencies,  
221 both under Public Procurement Review Board purview, shall not  
222 require Public Procurement Review Board approval. However, the  
223 contracts shall still be entered into the enterprise resource  
224 planning system;

225 (j) Provide standards for the issuance of requests for  
226 proposals, the evaluation of proposals received, consideration of  
227 costs and quality of services proposed, contract negotiations, the  
228 administrative monitoring of contract performance by the agency  
229 and successful steps in terminating a contract;

230 (k) Present recommendations for governmental  
231 privatization and to evaluate privatization proposals submitted by  
232 any state agency;

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

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

243 (n) Prepare an annual report to the Legislature  
244 concerning the issuance of personal and professional services



245 contracts during the previous year, collecting any necessary  
246 information from state agencies in making such report;

247 (o) Develop and implement the following standards and  
248 procedures for the approval of any sole source contract for  
249 personal and professional services regardless of the value of the  
250 procurement:

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

254 (ii) An agency that has been issued a binding,  
255 valid court order mandating that a particular source or provider  
256 must be used for the required service must include a copy of the  
257 applicable court order in all future sole source contract reviews  
258 for the particular personal or professional service referenced in  
259 the court order.

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

268 1. The personal or professional service  
269 offered in the contract;



270                   2. An explanation of why the personal or  
271 professional service is the only one that can meet the needs of  
272 the agency;

273                   3. An explanation of why the source is the  
274 only person or entity that can provide the required personal or  
275 professional service;

276                   4. An explanation of why the amount to be  
277 expended for the personal or professional service is reasonable;  
278 and

279                   5. The efforts that the agency went through  
280 to obtain the best possible price for the personal or professional  
281 service.

282                   (iv) If any person or entity objects and proposes  
283 that the personal or professional service published under  
284 subparagraph (iii) of this paragraph (o) is not a sole source  
285 service and can be provided by another person or entity, then the  
286 objecting person or entity shall notify the Public Procurement  
287 Review Board and the agency that published the proposed sole  
288 source contract with a detailed explanation of why the personal or  
289 professional service is not a sole source service.

290                   (v) 1. If the agency determines after review that  
291 the personal or professional service in the proposed sole source  
292 contract can be provided by another person or entity, then the  
293 agency must withdraw the sole source contract publication from the  
294 procurement portal website and submit the procurement of the



295 personal or professional service to an advertised competitive bid  
296 or selection process.

297                   2. If the agency determines after review that  
298 there is only one (1) source for the required personal or  
299 professional service, then the agency may appeal to the Public  
300 Procurement Review Board. The agency has the burden of proving  
301 that the personal or professional service is only provided by one  
302 (1) source.

303                   3. If the Public Procurement Review Board has  
304 any reasonable doubt as to whether the personal or professional  
305 service can only be provided by one (1) source, then the agency  
306 must submit the procurement of the personal or professional  
307 service to an advertised competitive bid or selection process. No  
308 action taken by the Public Procurement Review Board in this appeal  
309 process shall be valid unless approved by a majority of the  
310 members of the Public Procurement Review Board present and voting.

311                   (vi) The Public Procurement Review Board shall  
312 prepare and submit a quarterly report to the House of  
313 Representatives and Senate Accountability, Efficiency and  
314 Transparency Committees that details the sole source contracts  
315 presented to the Public Procurement Review Board and the reasons  
316 that the Public Procurement Review Board approved or rejected each  
317 contract. These quarterly reports shall also include the  
318 documentation and memoranda required in subsection (4) of this  
319 section. An agency that submitted a sole source contract shall be



320 prepared to explain the sole source contract to each committee by  
321 December 15 of each year upon request by the committee;

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

324 (3) All submissions shall be made sufficiently in advance of  
325 each monthly meeting of the Public Procurement Review Board as  
326 prescribed by the Public Procurement Review Board. If the Public  
327 Procurement Review Board rejects any contract submitted for review  
328 or approval, the Public Procurement Review Board shall clearly set  
329 out the reasons for its action, including, but not limited to, the  
330 policy that the agency has violated in its submitted contract and  
331 any corrective actions that the agency may take to amend the  
332 contract to comply with the rules and regulations of the Public  
333 Procurement Review Board.

334 (4) All sole source contracts for personal and professional  
335 services awarded by state agencies, other than those exempted  
336 under Section 27-104-7(2) (f) and (8), whether approved by an  
337 agency head or the Public Procurement Review Board, shall contain  
338 in the procurement file a written determination for the approval,  
339 using a request form furnished by the Public Procurement Review  
340 Board. The written determination shall document the basis for the  
341 determination, including any market analysis conducted in order to  
342 ensure that the service required was practicably available from  
343 only one (1) source. A memorandum shall accompany the request  
344 form and address the following four (4) points:



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

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

349 (c) Explanation of why the price is considered  
350 reasonable; and

351 (d) Description of the efforts that were made to  
352 conduct a noncompetitive negotiation to get the best possible  
353 price for the taxpayers.

354 (5) In conjunction with the State Personnel Board, the  
355 Public Procurement Review Board shall develop and promulgate rules  
356 and regulations to define the allowable legal relationship between  
357 contract employees and the contracting departments, agencies and  
358 institutions of state government under the jurisdiction of the  
359 State Personnel Board, in compliance with the applicable rules and  
360 regulations of the federal Internal Revenue Service (IRS) for  
361 federal employment tax purposes. Under these regulations, the  
362 usual common law rules are applicable to determine and require  
363 that such worker is an independent contractor and not an employee,  
364 requiring evidence of lawful behavioral control, lawful financial  
365 control and lawful relationship of the parties. Any state  
366 department, agency or institution shall only be authorized to  
367 contract for personnel services in compliance with those  
368 regulations.



369 (6) No member of the Public Procurement Review Board shall  
370 use his or her official authority or influence to coerce, by  
371 threat of discharge from employment, or otherwise, the purchase of  
372 commodities, the contracting for personal or professional  
373 services, or the contracting for public construction under this  
374 chapter.

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

378 (8) Nothing in this section shall impair or limit the  
379 authority of the Board of Trustees of the Public Employees'  
380 Retirement System to enter into any personal or professional  
381 services contracts directly related to their constitutional  
382 obligation to manage the trust funds, including, but not limited  
383 to, actuarial, custodial banks, cash management, investment  
384 consultant and investment management contracts.

385 (9) Notwithstanding the exemption of personal and  
386 professional services contracts entered into by the Department of  
387 Human Services and personal and professional services contracts  
388 entered into by the Department of Child Protection Services from  
389 the provisions of this section under subsection (2)(f), before the  
390 Department of Human Services or the Department of Child Protection  
391 Services may enter into a personal or professional service  
392 contract, the department(s) shall give notice of the proposed  
393 personal or professional service contract to the Public





394 Procurement Review Board for any recommendations by the board.  
395 Upon receipt of the notice, the board shall post the notice on its  
396 website and on the procurement portal website established by  
397 Sections 25-53-151 and 27-104-165. If the board does not respond  
398 to the department(s) within seven (7) calendar days after  
399 receiving the notice, the department(s) may enter the proposed  
400 personal or professional service contract. If the board responds  
401 to the department(s) within seven (7) calendar days, then the  
402 board has seven (7) calendar days from the date of its initial  
403 response to provide any additional recommendations. After the end  
404 of the second seven-day period, the department(s) may enter the  
405 proposed personal or professional service contract. The board is  
406 not authorized to disapprove any proposed personal or professional  
407 services contracts. This subsection shall stand repealed on July  
408 1, 2022.

409       **SECTION 2.** Section 7-5-39, Mississippi Code of 1972, is  
410 amended as follows:

411       7-5-39. (1) Except as otherwise provided by law, the  
412 Attorney General shall represent the state, in person or by his  
413 assistant, as counsel in all suits against the state in other  
414 courts or the Supreme Court at the seat of government, and he  
415 shall, in like manner, act as counsel for any of the state  
416 officers in suits brought by or against them in their official  
417 capacity, touching any official duty or trust.



418 (2) No civil legal action on behalf of the state, any arm or  
419 agency of the state, or any statewide elected officer acting in  
420 his official capacity may be taken until seven (7) working days'  
421 written notice of the proposed legal action is given to the  
422 statewide elected officer or proper person in charge of the arm or  
423 agency unless irreparable injury to the state would result by  
424 waiting for the expiration of the seven-day period.

425 (3) (a) The Attorney General shall authorize retention of  
426 independent counsel from outside his office by an arm or agency of  
427 the state or a statewide elected officer acting in his official  
428 capacity if the Attorney General declines representation when  
429 requested.

430 (b) (i) The Attorney General shall authorize retention  
431 of independent counsel from outside his office by an arm or agency  
432 of the state or a statewide elected officer acting in his official  
433 capacity and shall withdraw from representation of the arm or  
434 agency of the state or the statewide elected officer if there is a  
435 significant disagreement with the Attorney General as to the legal  
436 strategy to be used in the matter, and the Outside Counsel  
437 Oversight Commission has first approved the retention of outside  
438 counsel.

439 (ii) If an arm or agency of the state or statewide  
440 elected officer acting in his official capacity retains outside  
441 counsel under this subsection (3), the counsel shall be selected  
442 by the arm or agency of the state or the statewide elected



443 officer. Fees of counsel employed on a fee basis shall not exceed  
444 recognized bar rates for similar services; any contract for  
445 outside counsel employed on a contingency fee basis shall conform  
446 to the provisions of Section 7-5-8.

447 (c) The Attorney General must disapprove any contract  
448 for outside counsel under this subsection (3) which contains  
449 additional services, other than legal services as defined by  
450 Section 24-104-7, if the additional services fall under the  
451 purview of the Public Procurement Review Board.

452 (4) The Attorney General may pursue the collection of any  
453 claim or judgment in favor of the state outside of the state.

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

