

By: Senator(s) Michel, Polk, Butler (36th),
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Boyd, McMahan, Parker, Seymour, Sparks, Hill,
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To: Appropriations

SENATE BILL NO. 2822
(As Sent to Governor)

1 AN ACT TO ESTABLISH THE "MISSISSIPPI MUNICIPALITY AND COUNTY
2 WATER INFRASTRUCTURE GRANT PROGRAM ACT OF 2022" ADMINISTERED BY
3 THE MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY UTILIZING
4 CORONAVIRUS STATE FISCAL RECOVERY FUNDS MADE AVAILABLE UNDER THE
5 FEDERAL AMERICAN RESCUE PLAN ACT (ARPA); TO PROVIDE THAT SUCH
6 GRANTS SHALL BE MADE AVAILABLE TO MUNICIPALITIES, COUNTIES AND
7 CERTAIN UTILITIES ON A ONE-TO-ONE MATCHING BASIS AND TO PROVIDE AN
8 ADDITIONAL GRANT TO SMALLER MUNICIPALITIES BASED ON CORONAVIRUS
9 LOCAL FISCAL RECOVERY FUNDS; TO PRESCRIBE ELIGIBLE PROJECTS UNDER
10 THE GRANT PROGRAM; TO AUTHORIZE MULTIPLE ROUNDS OF WATER,
11 WASTEWATER, AND STORMWATER INFRASTRUCTURE GRANT PROJECTS; TO
12 AUTHORIZE THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO PROMULGATE
13 GRANT APPLICATION REGULATIONS AND ENGINEERING ASSISTANCE; TO
14 AUTHORIZE THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADMINISTER
15 THE MCWI GRANT PROGRAM AND RETAIN ADMINISTRATIVE COSTS; TO EXEMPT
16 DEQ FROM THE ADMINISTRATIVE PROCEDURES LAW IN PROMULGATING
17 REQUIREMENTS FOR GRANT APPLICATIONS AND FROM OVERSIGHT BY THE
18 PUBLIC PROCUREMENT REVIEW BOARD WHEN ENTERING INTO NECESSARY
19 CONTRACTS FOR PROFESSIONAL SERVICES; TO PROVIDE THAT A UTILITY MAY
20 NOT DENY WATER SERVICE SOLELY ON THE BASIS THAT THE CUSTOMER IS A
21 MEDICAL MARIJUANA LICENSEE; TO AMEND SECTION 27-104-7, MISSISSIPPI
22 CODE OF 1972, IN CONFORMITY; AND FOR RELATED PURPOSES.

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

24 **SECTION 1.** (1) This act shall be known and may be cited as
25 the "Mississippi Municipality and County Water Infrastructure
26 Grant Program Act of 2022."

27 (2) There is hereby established within the Mississippi
28 Department of Environmental Quality the Mississippi Municipality



29 and County Water Infrastructure (MCWI) Grant Program under which
30 municipalities, counties and certain public utilities not
31 regulated by the Public Service Commission may apply for
32 reimbursable grants to make necessary investments in water,
33 wastewater, and stormwater infrastructure to be funded by the
34 Legislature utilizing Coronavirus State Fiscal Recovery Funds made
35 available under the federal American Rescue Plan Act of 2021
36 (ARPA). Such grants shall be made available to municipalities and
37 counties to be matched with the Coronavirus Local Fiscal Recovery
38 Funds awarded or to be awarded to them under ARPA on a one-to-one
39 matching basis. Coronavirus Local Fiscal Recovery Funds that a
40 county transfers to a municipality or that a county or
41 municipality transfers to a public utility not regulated by the
42 Public Service Commission are eligible on a one-to-one matching
43 basis. Municipalities that received less than One Million Dollars
44 (\$1,000,000.00) in the total allocation of Coronavirus Local
45 Fiscal Recovery Funds are eligible for a two-to-one match only on
46 the Coronavirus Local Fiscal Recovery Funds awarded or to be
47 awarded to them under ARPA. The total funds provided for all
48 two-to-one matches shall not exceed Fifty Million Dollars
49 (\$50,000,000.00). The dollar amount for professional fees that
50 can be allocated as a part of a county's, municipality's or public
51 utility's matching share is not to exceed four percent (4%) of the
52 total project cost.



53 (3) For purposes of this act, unless the context requires
54 otherwise, the following terms shall have the meanings ascribed
55 herein:

56 (a) "MCWI Grant Program" means the Mississippi
57 Municipality and County Water Infrastructure Grant Program.

58 (b) "ARPA" means the federal American Rescue Plan Act
59 of 2021, Public Law 117-2, which amends Title VI of the Social
60 Security Act.

61 (c) "State Recovery Funds" means Coronavirus State
62 Fiscal Recovery Funds awarded through Section 602 of Title VI of
63 the Social Security Act amended by Section 9901 of the federal
64 American Rescue Plan Act of 2021, Public Law 117-2.

65 (d) "Local Recovery Funds" means Coronavirus Local
66 Fiscal Recovery Funds awarded through Section 603 of Title VI of
67 the Social Security Act amended by Section 9901 of the federal
68 American Rescue Plan Act of 2021, Public Law 117-2.

69 (e) "Department" means the Department of Environmental
70 Quality.

71 (f) "Professional fees" means fees for the services of
72 attorneys and engineering, surveying, and environmental studies.

73 (g) "Project" means the infrastructure improvements
74 defined in an application that (i) complies with all requirements
75 of ARPA, and (ii) is eligible for a grant award under this
76 section.



77 (4) (a) On or before July 1, 2022, the Department of
78 Environmental Quality shall promulgate rules and regulations
79 necessary to administer the MCWI Grant Program prescribed under
80 this act, including application procedures and deadlines. The
81 department is exempt from compliance with the Mississippi
82 Administrative Procedures Law in fulfilling the requirements of
83 this section.

84 (b) The Department of Health shall advise the
85 Mississippi Department of Environmental Quality regarding all such
86 rules and regulations as related to the federal Safe Drinking
87 Water Act.

88 (5) Funding under the MCWI Grant Program shall be allocated
89 to projects certified by the Mississippi Department of
90 Environmental Quality as eligible for federal funding, including,
91 but not be limited to, the following:

92 (a) Construction of publicly owned treatment works;

93 (b) Projects pursuant to the implementation of a
94 nonpoint source pollution management program established under the
95 Clean Water Act (CWA);

96 (c) Decentralized wastewater treatment systems that
97 treat municipal wastewater or domestic sewage;

98 (d) Management and treatment of stormwater or
99 subsurface drainage water;

100 (e) Water conservation, efficiency, or reuse measures;



- 101 (f) Development and implementation of a conservation
102 and management plan under the CWA;
- 103 (g) Watershed projects meeting the criteria set forth
104 in the CWA;
- 105 (h) Energy consumption reduction for publicly owned
106 treatment works;
- 107 (i) Reuse or recycling of wastewater, stormwater, or
108 subsurface drainage water;
- 109 (j) Facilities to improve drinking water quality;
- 110 (k) Transmission and distribution, including
111 improvements of water pressure or prevention of contamination in
112 infrastructure and lead service line replacements;
- 113 (l) New sources to replace contaminated drinking water
114 or increase drought resilience, including aquifer storage and
115 recovery system for water storage;
- 116 (m) Storage of drinking water, such as to prevent
117 contaminants or equalize water demands;
- 118 (n) Purchase of water systems and interconnection of
119 systems;
- 120 (o) New community water systems;
- 121 (p) Culvert repair, resizing, and removal, replacement
122 of storm sewers, and additional types of stormwater
123 infrastructure;



124 (q) Dam and reservoir rehabilitation, if the primary
125 purpose of dam or reservoir is for drinking water supply and
126 project is necessary for the provision of drinking water;

127 (r) Broad set of lead remediation projects eligible
128 under EPA grant programs authorized by the Water Infrastructure
129 Improvements for the Nation (WIIN) Act; and

130 (s) Any eligible drinking water, wastewater or
131 stormwater project through ARPA guidelines, guidance, rules,
132 regulations and other criteria, as may be amended from time to
133 time, by the United States Department of the Treasury.

134 (6) The governing authority of a municipality, county or
135 public utility that is not regulated by the Public Service
136 Commission may submit an application for grant funds under this
137 act if the applicant is an operator-member of Mississippi 811,
138 Inc., as defined in Section 77-13-3. Applicants shall certify to
139 the department that each expenditure of the funds awarded to them
140 under this act is in compliance with ARPA guidelines, guidance,
141 rules, regulations and other criteria, as may be amended from time
142 to time, by the United States Department of the Treasury regarding
143 the use of monies from the State Coronavirus State Fiscal Recovery
144 Funds. Subsequent submissions will be due by the dates
145 established by the department.

146 (7) An application for a grant under this act shall be
147 submitted at such time, be in such form, and contain such
148 information as the department prescribes. Each application for



149 grant funds shall include the following at a minimum: (a)
150 applicant contact information; (b) project description and type of
151 project; (c) project map; (d) estimate of population affected by
152 the project; (e) disadvantaged community criteria (population,
153 median household income, unemployment, current water/sewer rates);
154 (f) estimated project cost; (g) list of match funds of direct
155 Coronavirus Local Fiscal Recovery Funds received and to be
156 received from the federal government, a certification that such
157 funds have been or will be used for the project detailed in the
158 application, and documentation of commitment; (h) estimated
159 project schedule and readiness to proceed; (i) engineering
160 services agreement; (j) engineering reports; and (k) information
161 about status of obtaining any required permits.

162 (8) The department must apply a system for use in ranking
163 the grant applications received. When applying the ranking
164 system, the department shall apply a greater weight to projects
165 that have approved engineering/design, plans and permits if the
166 department has deemed the project is ready to begin construction
167 within six (6) months. Projects that are included on the
168 municipal or county engineer's approved list and provide
169 applicable supporting documentation shall receive additional
170 consideration awarded to the application. The ranking system
171 shall include the following factors, at a minimum: (a) the
172 environmental impact of the proposed project; (b) the proposed
173 project's ability to address noncompliance with state/federal



174 requirements; (c) the extent to which the project promotes
175 economic development; (d) the number of people served by the
176 project and the number of communities the project serves; (e)
177 impacts of the proposed project on disadvantaged/overburdened
178 communities; (f) the grant applicant's prior efforts to secure
179 funding to address the proposed project's objectives; (g) the
180 grant applicant's proposed contribution of other funds or in-kind
181 cost-sharing to the proposed project; (h) the grant applicant's
182 long-term plans for the financial and physical operation and
183 maintenance of the project; (i) the grant applicant's capacity to
184 initiate construction in a timely manner and complete the proposed
185 project by the deadline specified by the United States Department
186 of Treasury rules for ARPA funds; (j) the extent to which the
187 project benefits multiple political subdivisions in a regional
188 manner; (k) the project's ability to enhance public service
189 infrastructure, including transportation and emergency access; and
190 (l) any other factors as determined by the department.

191 (9) The grant program shall include a specific emphasis on
192 addressing the needs of an economically disadvantaged community,
193 including providing safe, reliable drinking water in areas that
194 lack infrastructure, providing sewage treatment capacity in
195 unsewered areas and providing regional development of
196 infrastructure to serve multiple communities.

197 (10) Applications shall be reviewed and scored as they are
198 received. The Mississippi Department of Environmental Quality



199 shall certify whether each project submitted is a "necessary
200 investment" in water, wastewater, or stormwater infrastructure as
201 defined in the American Rescue Plan Act and all applicable
202 guidance issued by the United States Department of the Treasury.
203 The Department of Environmental Quality shall review the lists of
204 recommended water infrastructure projects and issue its list of
205 recommended projects to the Mississippi Department of Health for
206 its advice. Grant agreements shall be executed between the
207 recipient and the Mississippi Department of Environmental Quality.
208 All final awards shall be determined at the discretion of the
209 executive director of the department. Any funds awarded to the
210 City of Jackson under this section shall be deposited in the
211 Capital City Water/Sewer Projects Fund of the State Treasury.
212 Funds shall be obligated to a grantee upon the execution of a
213 grant agreement between the department and the approved applicant.
214 Funds shall be made available to a grantee when the department
215 obtains the necessary support for reimbursement. The department
216 is authorized to conduct additional rounds of grants as needed;
217 however, in the first round no more than forty percent (40%) of
218 the total funds appropriated for each grant program may be awarded
219 by the department, and the remaining funds may be awarded in the
220 second or subsequent rounds which shall occur no later than six
221 (6) months from the previous round. To ensure equitable treatment
222 between the categories of projects, no less than twenty percent
223 (20%) awarded under this section shall be allocated to each of the



224 three (3) categories of drinking water projects, wastewater
225 projects and stormwater projects. In second or subsequent rounds,
226 any funds not requested may be allocated to any category.

227 (11) Grant funds shall be used prospectively; however, grant
228 funds may be used to reimburse expenses incurred before the
229 enactment of this program if the costs are adequately documented
230 and comply with applicable ARPA guidelines. An applicant must
231 agree to obtain all necessary state and federal permits and follow
232 all state bidding and contracting laws and fiscally sound practices
233 in the administration of the funds.

234 (12) (a) Monies must be disbursed under this section in
235 compliance with the guidelines, guidance, rules, regulations or
236 other criteria, as may be amended from time to time, of the United
237 States Department of the Treasury regarding the use of monies from
238 the Coronavirus State Fiscal Recovery Fund, established by the
239 American Rescue Plan of 2021.

240 (b) The use of funds allocated under this program shall
241 be subject to audit by the United States Department of the
242 Treasury's Office of Inspector General and the Mississippi Office
243 of the State Auditor. Each person receiving funds under these
244 programs found to be fully or partially noncompliant with the
245 requirements in this act shall return to the state all or a
246 portion of the funds received.

247 (13) The department shall submit to the Lieutenant Governor,
248 Speaker of the House, House and Senate Appropriations Chairmen,



249 and the Legislative Budget Office quarterly reports and annual
250 reports that are due by the dates established in the Compliance
251 and Reporting Guidance by the United States Department of
252 Treasury. The reports shall contain the applications received,
253 the score of the applications, the amount of grant funds awarded
254 to each applicant, the amount of grant funds expended by each
255 applicant, and status of each applicant's project.

256 (14) Grant funds shall be available under this act through
257 December 31, 2026, or on the date of the fund expenditure deadline
258 provided by the federal government, whichever occurs later. Each
259 grant recipient shall certify for any project for which a grant is
260 awarded that if the project is not completed by December 31, 2026,
261 and the United States Congress does not enact an extension of the
262 deadline on the availability of ARPA funds, then the grant
263 recipient will complete the project through other funds.

264 (15) The Mississippi Department of Environmental Quality may
265 retain an amount not to exceed five percent (5%) of the total
266 funds allocated to the program to defray administrative costs.

267 (16) The department shall be exempt from provisions of the
268 Public Procurement Review Board for any requirements of personal
269 or professional service contracts or the pre-approval of the
270 solicitation for such contracts used in the execution of its
271 responsibilities under this act. This subsection shall stand
272 repealed on January 1, 2026.



273 (17) The provisions of this section shall stand repealed on
274 January 1, 2027.

275 **SECTION 2.** A public utility as defined in Section
276 77-3-3(d) (iv) shall not deny or refuse services to any business
277 entity solely on the basis that the entity is a licensee under the
278 Mississippi Medical Cannabis Act.

279 **SECTION 3.** Section 27-104-7, Mississippi Code of 1972, as
280 amended by Senate Bill No. 2818, 2022 Regular Session, and House
281 Bill No. 1421, 2022 Regular Session, is amended as follows:

282 27-104-7. (1) (a) There is created the Public Procurement
283 Review Board, which shall be reconstituted on January 1, 2018, and
284 shall be composed of the following members:

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

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

289 (iii) The Executive Director of the Department of
290 Finance and Administration, serving as an ex officio and nonvoting
291 member.

292 (b) The initial terms of each appointee shall be as
293 follows:

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

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



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

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

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

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

308 (c) When appointing members to the Public Procurement
309 Review Board, the Governor and Lieutenant Governor shall take into
310 consideration persons who possess at least five (5) years of
311 management experience in general business, health care or finance
312 for an organization, corporation or other public or private
313 entity. Any person, or any employee or owner of a company, who
314 receives any grants, procurements or contracts that are subject to
315 approval under this section shall not be appointed to the Public
316 Procurement Review Board. Any person, or any employee or owner of
317 a company, who is a principal of the source providing a personal
318 or professional service shall not be appointed to the Public
319 Procurement Review Board if the principal owns or controls a
320 greater than five percent (5%) interest or has an ownership value
321 of One Million Dollars (\$1,000,000.00) in the source's business,
322 whichever is smaller. No member shall be an officer or employee



323 of the State of Mississippi while serving as a voting member on
324 the Public Procurement Review Board.

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

328 (e) The members of the Public Procurement Review Board
329 shall elect a chair from among the membership, and he or she shall
330 preside over the meetings of the board. The board shall annually
331 elect a vice chair, who shall serve in the absence of the chair.
332 No business shall be transacted, including adoption of rules of
333 procedure, without the presence of a quorum of the board. Three
334 (3) members shall be a quorum. No action shall be valid unless
335 approved by a majority of the members present and voting, entered
336 upon the minutes of the board and signed by the chair. Necessary
337 clerical and administrative support for the board shall be
338 provided by the Department of Finance and Administration. Minutes
339 shall be kept of the proceedings of each meeting, copies of which
340 shall be filed on a monthly basis with the chairs of the
341 Accountability, Efficiency and Transparency Committees of the
342 Senate and House of Representatives and the chairs of the
343 Appropriations Committees of the Senate and House of
344 Representatives.

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



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

351 (b) Adopt regulations governing the approval of
352 contracts let for the construction and maintenance of state
353 buildings and other state facilities as well as related contracts
354 for architectural and engineering services.

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

359 (c) Adopt regulations governing any lease or rental
360 agreement by any state agency or department, including any state
361 agency financed entirely by federal funds, for space outside the
362 buildings under the jurisdiction of the Department of Finance and
363 Administration. These regulations shall require each agency
364 requesting to lease such space to provide the following
365 information that shall be published by the Department of Finance
366 and Administration on its website: the agency to lease the space;
367 the terms of the lease; the approximate square feet to be leased;
368 the use for the space; a description of a suitable space; the
369 general location desired for the leased space; the contact
370 information for a person from the agency; the deadline date for
371 the agency to have received a lease proposal; any other specific



372 terms or conditions of the agency; and any other information
373 deemed appropriate by the Division of Real Property Management of
374 the Department of Finance and Administration or the Public
375 Procurement Review Board. The information shall be provided
376 sufficiently in advance of the time the space is needed to allow
377 the Division of Real Property Management of the Department of
378 Finance and Administration to review and preapprove the lease
379 before the time for advertisement begins;

380 (d) Adopt, in its discretion, regulations to set aside
381 at least five percent (5%) of anticipated annual expenditures for
382 the purchase of commodities from minority businesses; however, all
383 such set-aside purchases shall comply with all purchasing
384 regulations promulgated by the department and shall be subject to
385 all bid requirements. Set-aside purchases for which competitive
386 bids are required shall be made from the lowest and best minority
387 business bidder; however, if no minority bid is available or if
388 the minority bid is more than two percent (2%) higher than the
389 lowest bid, then bids shall be accepted and awarded to the lowest
390 and best bidder. However, the provisions in this paragraph shall
391 not be construed to prohibit the rejection of a bid when only one
392 (1) bid is received. Such rejection shall be placed in the
393 minutes. For the purposes of this paragraph, the term "minority
394 business" means a business which is owned by a person who is a
395 citizen or lawful permanent resident of the United States and who
396 is:



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

399 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,
400 Central or South American, or other Spanish or Portuguese culture
401 or origin regardless of race;

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

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

407 (v) Female;

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

414 (f) Promulgate rules and regulations governing the
415 solicitation and selection of contractual services personnel,
416 including personal and professional services contracts for any
417 form of consulting, policy analysis, public relations, marketing,
418 public affairs, legislative advocacy services or any other
419 contract that the board deems appropriate for oversight, with the
420 exception of any personal service contracts entered into by any
421 agency that employs only nonstate service employees as defined in



422 Section 25-9-107(c), any personal service contracts entered into
423 for computer or information technology-related services governed
424 by the Mississippi Department of Information Technology Services,
425 any personal service contracts entered into by the individual
426 state institutions of higher learning, any personal service
427 contracts entered into by the Mississippi Department of
428 Transportation, any personal service contracts entered into by the
429 Department of Human Services through June 30, 2019, which the
430 Executive Director of the Department of Human Services determines
431 would be useful in establishing and operating the Department of
432 Child Protection Services, any personal service contracts entered
433 into by the Department of Child Protection Services through June
434 30, 2019, any contracts for entertainers and/or performers at the
435 Mississippi State Fairgrounds entered into by the Mississippi Fair
436 Commission, any contracts entered into by the Department of
437 Finance and Administration when procuring aircraft maintenance,
438 parts, equipment and/or services, any contract entered into by the
439 Department of Public Safety for service on specialized equipment
440 and/or software required for the operation at such specialized
441 equipment for use by the Office of Forensics Laboratories, * * *
442 any personal or professional service contract entered into by the
443 Mississippi Department of Health and/or the Department of Revenue
444 solely in connection with their respective responsibilities under
445 the Mississippi Medical Cannabis Act from February 2, 2022,
446 through June 30, 2023, any contract for attorney, accountant,



447 actuary auditor, architect, engineer, anatomical pathologist,
448 utility rate expert services, * * * any personal service contracts
449 approved by the Executive Director of the Department of Finance
450 and Administration and entered into by the Coordinator of Mental
451 Health Accessibility through June 30, 2022, any personal or
452 professional services contract entered into by the State
453 Department of Health in carrying out its responsibilities under
454 the ARPA Rural Water Associations Infrastructure Grant Program
455 through June 30, 2026, and any personal or professional services
456 contract entered into by the Mississippi Department of
457 Environmental Quality in carrying out its responsibilities under
458 the Mississippi Municipality and County Water Infrastructure Grant
459 Program Act of 2022, through June 30, 2026. Any such rules and
460 regulations shall provide for maintaining continuous internal
461 audit covering the activities of such agency affecting its revenue
462 and expenditures as required under Section 7-7-3(6)(d). Any rules
463 and regulation changes related to personal and professional
464 services contracts that the Public Procurement Review Board may
465 propose shall be submitted to the Chairs of the Accountability,
466 Efficiency and Transparency Committees of the Senate and House of
467 Representatives and the Chairs of the Appropriation Committees of
468 the Senate and House of Representatives at least fifteen (15) days
469 before the board votes on the proposed changes, and those rules
470 and regulation changes, if adopted, shall be promulgated in
471 accordance with the Mississippi Administrative Procedures Act;



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

476 (h) Develop mandatory standards with respect to
477 contractual services personnel that require invitations for public
478 bid, requests for proposals, record keeping and financial
479 responsibility of contractors. The Public Procurement Review
480 Board shall, unless exempted under this paragraph (h) or under
481 paragraph (i) or (o) of this subsection (2), require the agency
482 involved to submit the procurement to a competitive procurement
483 process, and may reserve the right to reject any or all resulting
484 procurements;

485 (i) Prescribe certain circumstances by which agency
486 heads may enter into contracts for personal and professional
487 services without receiving prior approval from the Public
488 Procurement Review Board. The Public Procurement Review Board may
489 establish a preapproved list of providers of various personal and
490 professional services for set prices with which state agencies may
491 contract without bidding or prior approval from the board;

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



497 private sector need not be solicited; however, these contracts
498 shall still be submitted for approval to the Public Procurement
499 Review Board.

500 (ii) Contracts between two (2) state agencies,
501 both under Public Procurement Review Board purview, shall not
502 require Public Procurement Review Board approval. However, the
503 contracts shall still be entered into the enterprise resource
504 planning system;

505 (j) Provide standards for the issuance of requests for
506 proposals, the evaluation of proposals received, consideration of
507 costs and quality of services proposed, contract negotiations, the
508 administrative monitoring of contract performance by the agency
509 and successful steps in terminating a contract;

510 (k) Present recommendations for governmental
511 privatization and to evaluate privatization proposals submitted by
512 any state agency;

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



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

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

527 (o) Develop and implement the following standards and
528 procedures for the approval of any sole source contract for
529 personal and professional services regardless of the value of the
530 procurement:

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

534 (ii) An agency that has been issued a binding,
535 valid court order mandating that a particular source or provider
536 must be used for the required service must include a copy of the
537 applicable court order in all future sole source contract reviews
538 for the particular personal or professional service referenced in
539 the court order.

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



546 addition, the publication shall include, but is not limited to,
547 the following information:

548 1. The personal or professional service
549 offered in the contract;

550 2. An explanation of why the personal or
551 professional service is the only one that can meet the needs of
552 the agency;

553 3. An explanation of why the source is the
554 only person or entity that can provide the required personal or
555 professional service;

556 4. An explanation of why the amount to be
557 expended for the personal or professional service is reasonable;
558 and

559 5. The efforts that the agency went through
560 to obtain the best possible price for the personal or professional
561 service.

562 (iv) If any person or entity objects and proposes
563 that the personal or professional service published under
564 subparagraph (iii) of this paragraph (o) is not a sole source
565 service and can be provided by another person or entity, then the
566 objecting person or entity shall notify the Public Procurement
567 Review Board and the agency that published the proposed sole
568 source contract with a detailed explanation of why the personal or
569 professional service is not a sole source service.



570 (v) 1. If the agency determines after review that
571 the personal or professional service in the proposed sole source
572 contract can be provided by another person or entity, then the
573 agency must withdraw the sole source contract publication from the
574 procurement portal website and submit the procurement of the
575 personal or professional service to an advertised competitive bid
576 or selection process.

577 2. If the agency determines after review that
578 there is only one (1) source for the required personal or
579 professional service, then the agency may appeal to the Public
580 Procurement Review Board. The agency has the burden of proving
581 that the personal or professional service is only provided by one
582 (1) source.

583 3. If the Public Procurement Review Board has
584 any reasonable doubt as to whether the personal or professional
585 service can only be provided by one (1) source, then the agency
586 must submit the procurement of the personal or professional
587 service to an advertised competitive bid or selection process. No
588 action taken by the Public Procurement Review Board in this appeal
589 process shall be valid unless approved by a majority of the
590 members of the Public Procurement Review Board present and voting.

591 (vi) The Public Procurement Review Board shall
592 prepare and submit a quarterly report to the House of
593 Representatives and Senate Accountability, Efficiency and
594 Transparency Committees that details the sole source contracts



595 presented to the Public Procurement Review Board and the reasons
596 that the Public Procurement Review Board approved or rejected each
597 contract. These quarterly reports shall also include the
598 documentation and memoranda required in subsection (4) of this
599 section. An agency that submitted a sole source contract shall be
600 prepared to explain the sole source contract to each committee by
601 December 15 of each year upon request by the committee;

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

604 (3) All submissions shall be made sufficiently in advance of
605 each monthly meeting of the Public Procurement Review Board as
606 prescribed by the Public Procurement Review Board. If the Public
607 Procurement Review Board rejects any contract submitted for review
608 or approval, the Public Procurement Review Board shall clearly set
609 out the reasons for its action, including, but not limited to, the
610 policy that the agency has violated in its submitted contract and
611 any corrective actions that the agency may take to amend the
612 contract to comply with the rules and regulations of the Public
613 Procurement Review Board.

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



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

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

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

629 (c) Explanation of why the price is considered
630 reasonable; and

631 (d) Description of the efforts that were made to
632 conduct a noncompetitive negotiation to get the best possible
633 price for the taxpayers.

634 (5) In conjunction with the State Personnel Board, the
635 Public Procurement Review Board shall develop and promulgate rules
636 and regulations to define the allowable legal relationship between
637 contract employees and the contracting departments, agencies and
638 institutions of state government under the jurisdiction of the
639 State Personnel Board, in compliance with the applicable rules and
640 regulations of the federal Internal Revenue Service (IRS) for
641 federal employment tax purposes. Under these regulations, the
642 usual common law rules are applicable to determine and require
643 that such worker is an independent contractor and not an employee,
644 requiring evidence of lawful behavioral control, lawful financial



645 control and lawful relationship of the parties. Any state
646 department, agency or institution shall only be authorized to
647 contract for personnel services in compliance with those
648 regulations.

649 (6) No member of the Public Procurement Review Board shall
650 use his or her official authority or influence to coerce, by
651 threat of discharge from employment, or otherwise, the purchase of
652 commodities, the contracting for personal or professional
653 services, or the contracting for public construction under this
654 chapter.

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

658 (8) Nothing in this section shall impair or limit the
659 authority of the Board of Trustees of the Public Employees'
660 Retirement System to enter into any personal or professional
661 services contracts directly related to their constitutional
662 obligation to manage the trust funds, including, but not limited
663 to, actuarial, custodial banks, cash management, investment
664 consultant and investment management contracts.

665 (9) Notwithstanding the exemption of personal and
666 professional services contracts entered into by the Department of
667 Human Services and personal and professional services contracts
668 entered into by the Department of Child Protection Services from
669 the provisions of this section under subsection (2)(f), before the



670 Department of Human Services or the Department of Child Protection
671 Services may enter into a personal or professional service
672 contract, the department(s) shall give notice of the proposed
673 personal or professional service contract to the Public
674 Procurement Review Board for any recommendations by the board.
675 Upon receipt of the notice, the board shall post the notice on its
676 website and on the procurement portal website established by
677 Sections 25-53-151 and 27-104-165. If the board does not respond
678 to the department(s) within seven (7) calendar days after
679 receiving the notice, the department(s) may enter the proposed
680 personal or professional service contract. If the board responds
681 to the department(s) within seven (7) calendar days, then the
682 board has seven (7) calendar days from the date of its initial
683 response to provide any additional recommendations. After the end
684 of the second seven-day period, the department(s) may enter the
685 proposed personal or professional service contract. The board is
686 not authorized to disapprove any proposed personal or professional
687 services contracts. This subsection shall stand repealed on July
688 1, 2022.

689 **SECTION 4.** This act shall take effect and be in force from
690 and after its passage.

