

By: Senator(s) DeLano

To: Technology; Judiciary,  
Division A

SENATE BILL NO. 2729

1 AN ACT TO AMEND SECTION 25-53-21, MISSISSIPPI CODE OF 1972,  
2 TO CLARIFY LIMITATION OF LIABILITY REQUIREMENTS FOR INFORMATION  
3 TECHNOLOGY CONTRACTS; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 25-53-21, Mississippi Code of 1972, is  
6 amended as follows:

7 25-53-21. The executive director shall have the following  
8 duties, responsibilities and authority:

9 (a) He shall conduct continuing studies of all  
10 information technology activities carried out by all agencies of  
11 the state and shall develop a long-range plan for the efficient  
12 and economical performance of such activities in state government.  
13 Such plan shall be submitted to the authority for its approval  
14 and, having been approved by the authority, shall be implemented  
15 by the executive director and all state agencies. Such plan shall  
16 be continuously reviewed and modifications thereof shall be  
17 proposed to the authority by the executive director as  
18 developments in information technology techniques and changes in



19 the structure, activities, and functions of state government may  
20 require.

21 (b) He shall review the purchasing practices of all  
22 state agencies in the area of the purchasing of supplies for  
23 information technology and make recommendations to the authority  
24 and to the Public Procurement Review Board for the institution of  
25 purchasing procedures which will insure the most economical  
26 procurement of such supplies commensurate with the efficient  
27 operation of all departments and agencies of state government.

28 (c) He shall see that all reports required of all  
29 agencies are promptly and accurately made in accordance with the  
30 rules and regulations adopted by the authority. Either in person  
31 or through his authorized agents, he shall make such inspections  
32 of information technology operations being conducted by any of the  
33 agencies of the state as may be necessary for the performance of  
34 his duties.

35 (d) He shall suggest and cause to be brought about  
36 cooperation between the several state agencies in order to provide  
37 efficiency in information technology operation. He shall,  
38 together with the heads of the agencies involved, reduce to  
39 writing and execute cooperative plans for the acquisition and  
40 operation of information technology equipment, and any such plan  
41 so adopted shall be carried out in accordance with the provisions  
42 of such plan unless the same shall be amended by the joint action  
43 of the executive director and the heads of agencies involved. The



44 executive director shall report to the authority the details of  
45 any plan so adopted and all amendments or modifications thereof,  
46 and shall otherwise report to the authority and to the Public  
47 Procurement Review Board any failure on the part of any agency to  
48 carry out the provisions of such plan. In the event the head of  
49 any agency involved or the executive director shall propose  
50 amendments to a plan so adopted and such amendment is disapproved  
51 by the head of another agency involved or the executive director,  
52 an appeal may be taken to the authority which may, after full  
53 consideration thereof, order the adoption of the proposed  
54 amendment or any modification thereof. The executive director  
55 shall make decisions on all questions of the division of the cost  
56 of information technology operations among the several agencies,  
57 but his findings shall be subject to the approval or modification  
58 by the authority on appeal to it.

59 (e) He shall review all contracts for acquisition of  
60 computer and/or telecommunications equipment or services now or  
61 hereafter in force and may require the renegotiation, termination,  
62 amendment or execution of any such contracts in proper form and in  
63 accordance with the policies and rules and regulations and subject  
64 to the direction of the authority. \* \* \* The executive director  
65 may negotiate a limitation on the liability to the state of  
66 prospective contractors \* \* \* in accordance with the following:



67 (i) Unless authorized under this section, no  
68 contract shall limit a contractor's liability to the state in an  
69 amount less than the total contract amount;

70 (ii) The executive director may authorize a  
71 limitation of liability amount of less than the total contract  
72 amount if the executive director determines that the limitation of  
73 liability amount is necessary to prevent harm to the state from  
74 failing to obtain the goods or services sought or from obtaining  
75 the goods or services at a higher price;

76 (iii) Any such limitation of liability as set  
77 forth in sections (i) and (ii) must be approved by the state  
78 entity for whom the acquisition is being made; and

79 (iv) Such limits of liability with the state shall  
80 not apply to:

81 1. Liability for intellectual property,  
82 including indemnification obligations for infringement of  
83 third-party intellectual property rights;

84 2. Claims covered by any specific provision  
85 in a contract with the state providing for liquidated damages; and

86 3. Claims for criminal acts, fraudulent  
87 conduct, acts or omissions resulting in personal bodily injury,  
88 death or physical damage to tangible personal property or real  
89 property, intentional torts, gross negligence, willful misconduct  
90 and acts of bad faith.



91 (f) He shall act as the purchasing and contracting  
92 agent for the State of Mississippi in the negotiation and  
93 execution of all contracts for the acquisition of computer  
94 equipment or services. He shall receive, review, and promptly  
95 approve or disapprove all requests of agencies of the state for  
96 the acquisition of computer equipment or services, which are  
97 submitted in accordance with rules and regulations of the  
98 authority. In the event that any such request is disapproved, he  
99 shall immediately notify the requesting agency and the members of  
100 the authority in writing of such disapproval, stating his reasons  
101 therefor. The disapproval of any request by the executive  
102 director of the authority may be appealed to the authority or to  
103 the Public Procurement Review Board, respectively, in such manner  
104 as may be authorized by such reasonable rules and regulations  
105 hereby authorized to be adopted by the authority and by the Public  
106 Procurement Review Board to govern the same. The executive  
107 director shall report the approval of all such requests to the  
108 authority in such manner as may be directed by the authority, and  
109 shall execute any such contracts only after complying with rules  
110 and regulations which may be adopted by the authority in relation  
111 thereto. Any contracts for personal or professional services  
112 entered into by the executive director shall be exempted from the  
113 requirements of Section 25-9-120(3) relating to submission of such  
114 contract to the State Personal Service Contract Review Board.



115 (g) He shall suggest and cause to be brought about  
116 cooperation between the several state agencies, departments and  
117 institutions in order that work may be done by one agency for  
118 another agency, and equipment in one agency may be made available  
119 to another agency, and suggest and cause to be brought about such  
120 improvements as may be necessary in joint or cooperative  
121 information technology operations.

122 (h) He shall be designated as the "Chief Information  
123 Confidentiality Officer" after being duly sworn to the oath of  
124 this office by the chairman of the authority and shall be  
125 responsible for administering the oath to other qualified officers  
126 he may designate.

127 (i) He shall appoint employees of the Mississippi  
128 Department of Information Technology Services, or at his  
129 discretion, employees of other state agencies and institutions  
130 that are responsible for handling or processing data for any  
131 agency or institution other than that for which they are employed,  
132 to a position of information custodial care that shall be known as  
133 "Information Confidentiality Officer." The selection and swearing  
134 of all officers shall be reported to the authority at the next  
135 regular meeting and names, affirmation dates and employment dates  
136 shall be recorded in the permanent minutes of the authority.

137 **SECTION 2.** This act shall take effect and be in force from  
138 and after July 1, 2023.

