

By: Senator(s) Chassaniol

To: Finance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2887

1 AN ACT TO AMEND SECTION 27-105-33, MISSISSIPPI CODE OF 1972,
2 TO MODIFY CERTAIN PROVISIONS CONCERNING THE DEPOSIT AND INVESTMENT
3 OF EXCESS STATE FUNDS BY THE STATE TREASURER; TO REVISE THE
4 REQUIREMENT THAT AT LEAST 80% OF THE TOTAL DOLLAR AMOUNT IN ALL
5 REPURCHASE AGREEMENTS AT ANY ONE TIME SHALL BE PURSUANT TO
6 CONTRACTS WITH QUALIFIED STATE DEPOSITORIES; TO PROVIDE THE OPTION
7 OF INVESTING IN CERTAIN CORPORATE BONDS AND TAXABLE MUNICIPAL
8 BONDS; TO AMEND SECTION 27-104-7, MISSISSIPPI CODE OF 1972, TO
9 SPECIFY THAT CERTAIN PUBLIC PROCUREMENT REVIEW BOARD PROVISIONS DO
10 NOT IMPAIR OR LIMIT THE AUTHORITY OF THE STATE TREASURER TO ENTER
11 INTO ANY PERSONAL OR PROFESSIONAL SERVICES CONTRACTS INVOLVING THE
12 MANAGEMENT OF TRUST FUNDS, AN AUTHORITY COMPARABLE TO THAT GRANTED
13 TO THE BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT
14 SYSTEM; TO REMOVE A SUBSECTION THAT REPEALED ON JULY 1, 2022; AND
15 FOR RELATED PURPOSES.

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

17 **SECTION 1.** Section 27-105-33, Mississippi Code of 1972, is
18 amended as follows:

19 27-105-33. It shall be the duty of the State Treasurer and
20 the Executive Director of the Department of Finance and
21 Administration on or about the tenth day of each month, and in
22 their discretion at any other time, to analyze carefully the
23 amount of cash in the General Fund of the state and in all special
24 funds credited to any special purpose designated by the State



25 Legislature or held to meet the budgets or appropriations for
26 maintenance, improvements and services of the several
27 institutions, boards, departments, commissions, agencies, persons
28 or entities of the state, and to determine in their opinion when
29 the cash in such funds is in excess of the amount required to meet
30 the current needs and demands of no more than seven (7) business
31 days on such funds and report their findings to the Governor. It
32 shall be the duty of the State Treasurer to provide a cash flow
33 model for forecasting revenues and expenditures on a bimonthly
34 basis and providing technical assistance for its operation. The
35 Department of Finance and Administration shall use the cash flow
36 model furnished by the State Treasurer, in analyzing the amount of
37 funds on deposit and available for investment.

38 The State Treasurer is hereby authorized, empowered and
39 directed to invest all such excess general and special funds of
40 the state in the following manner:

41 (a) Funds shall be allocated equally among all
42 qualified state depositories which do not have demand accounts in
43 excess of One Hundred Fifty Thousand Dollars (\$150,000.00) until
44 each qualified depository willing to accept the same shall have on
45 deposit or in security repurchase agreements or in other
46 securities authorized in paragraph (d) of this section at interest
47 the sum of Three Hundred Thousand Dollars (\$300,000.00). For the
48 purposes of this subsection, no branch bank or branch office shall
49 be counted as a separate depository.



50 (b) The balance, if any, of such excess general and
51 special funds shall be offered to qualified depositories of the
52 state on a pro rata basis as provided in Section 27-105-9. For
53 the purposes of this subsection, the pro rata share of each
54 depository shall be reduced by the amount of the average daily
55 collected earning balance of demand deposits maintained by the
56 State Treasurer pursuant to Section 27-105-9 during the preceding
57 calendar year, and such reduction shall be allocated pro rata
58 among other eligible depositories.

59 (c) Funds offered pursuant to paragraphs (a) and (b)
60 above shall be invested for periods of up to one (1) year, and
61 shall bear interest at an interest rate no less than that
62 numerically equal to the bond equivalent yield on direct
63 obligations of the United States Treasury of comparable maturity,
64 as determined by the State Treasurer. In determining such rate,
65 the State Treasurer shall consider the Legislature's desire to
66 distribute funds equitably throughout the state to the maximum
67 extent possible.

68 (d) To the extent that the State Treasurer shall find
69 that general and special funds cannot be invested pursuant to
70 paragraphs (a), (b) and (c) of this section for the stated
71 maturity up to one (1) year, the Treasurer may invest such funds,
72 together with any other funds required for current operation, as
73 determined pursuant to this section, in the following:



74 (i) Time certificates of deposit or
75 interest-bearing accounts with qualified state depositories. For
76 those funds determined under prudent judgment of the State
77 Treasurer to be made available for investment in time certificates
78 of deposit, the rate of interest paid by the depositories shall be
79 determined by rules and regulations adopted and promulgated by the
80 State Treasurer which may include competitive bids. At the time
81 of investment, the interest rate on such certificates of deposit
82 under the provisions of this subparagraph shall be a rate not less
83 than the bond equivalent yield on direct obligations of the United
84 States Treasury with a similar length of maturity.

85 (ii) Direct United States Treasury obligations,
86 the principal and interest of which are fully guaranteed by the
87 government of the United States.

88 (iii) United States government agency, United
89 States government instrumentality or United States
90 government-sponsored enterprise obligations, the principal and
91 interest of which are fully guaranteed by the government of the
92 United States, such as the Government National Mortgage
93 Association; or United States governmental agency, United States
94 government instrumentality or United States government-sponsored
95 enterprise obligations, the principal and interest of which are
96 guaranteed by any United States government agency, United States
97 government instrumentality or United States government-sponsored
98 enterprise contained in a list promulgated by the State Treasurer.



99 (iv) Direct security repurchase agreements and
100 reverse direct security repurchase agreements of any federal book
101 entry of only those securities enumerated in subparagraphs (ii)
102 and (iii) above. "Direct security repurchase agreement" means an
103 agreement under which the state buys, holds for a specified time,
104 and then sells back those securities and obligations enumerated in
105 subparagraphs (ii) and (iii) above. "Reverse direct securities
106 repurchase agreement" means an agreement under which the state
107 sells and after a specified time buys back any of the securities
108 and obligations enumerated in subparagraphs (ii) and (iii)
109 above. * * * A qualified public depository shall be given
110 preference for such agreements when possible.

111 (v) Bonds issued, assumed or guaranteed by the
112 Country of Israel, provided that:

113 1. Investments in such instruments shall be
114 denominated in United States currency;

115 2. Such bonds must be of investment grade as
116 rated by at least one (1) nationally recognized statistical rating
117 agency; and

118 3. The amount of funds invested in such bonds
119 at any time shall not exceed Twenty Million Dollars
120 (\$20,000,000.00).

121 (vi) Corporate bonds and taxable municipal bonds;
122 or corporate short-term obligations of corporations or of wholly
123 owned subsidiaries of corporations, whose short-term obligations



124 are rated A-1 or better by Standard and Poor's, rated P-1 or
125 better by Moody's Investment Service, F-1 or better by Fitch
126 Ratings, Ltd., or the equivalent of these ratings if assigned by
127 another United States Securities and Exchange Commission
128 designated Nationally Recognized Statistical Rating Organization.

129 (e) For the purposes of this section, direct
130 obligations issued by the United States of America shall be deemed
131 to include securities of, or other interests in, any open-end or
132 closed-end management type investment company or investment trust
133 registered under the provisions of 15 USCS Section 80(a)-1 et
134 seq., provided that the portfolio of such investment company or
135 investment trust is limited to direct obligations issued by the
136 United States of America, United States government agencies,
137 United States government instrumentalities or United States
138 government-sponsored enterprises, and to repurchase agreements
139 fully collateralized by direct obligations of the United States of
140 America, United States government agencies, United States
141 government instrumentalities or United States government-sponsored
142 enterprises, and the investment company or investment trust takes
143 delivery of such collateral for the repurchase agreement, either
144 directly or through an authorized custodian. The State Treasurer
145 and the Executive Director of the Department of Finance and
146 Administration shall review and approve the investment companies
147 and investment trusts in which funds invested under paragraph (d)
148 of this section may be invested. The total dollar amount of funds



149 invested in all open-end and closed-end management type investment
150 companies and investment trusts at any one time shall not exceed
151 twenty percent (20%) of the total dollar amount of funds invested
152 under paragraph (d) of this section.

153 (f) Investments authorized by subparagraphs (ii) and
154 (iii) of paragraph (d) shall mature on such date or dates as
155 determined by the State Treasurer in the exercise of prudent
156 judgment to generate a favorable return to the state and will
157 allow the monies to be available for use at such time as the
158 monies will be needed for state purposes. However, the maturity
159 of securities purchased as enumerated in subparagraphs (ii) and
160 (iii) shall not exceed ten (10) years from date of purchase.
161 Special funds shall be considered those funds created
162 constitutionally, statutorily or administratively which are not
163 considered general funds. All funds invested for a period of
164 thirty (30) days or longer under paragraph (d) shall bear a rate
165 at least equal to the current established rate under paragraph (c)
166 of this section.

167 (g) Any interest-bearing deposits or certificates of
168 deposit shall not exceed at any time the amount insured by the
169 Federal Deposit Insurance Corporation in any one (1) banking
170 institution, the Federal Savings and Loan Insurance Corporation in
171 any one (1) savings and loan association, or other deposit
172 insurance corporation approved by the State Treasurer, unless the



173 uninsured portion is collateralized by the pledge of securities in
174 the manner provided by Section 27-105-5.

175 (h) Unless otherwise provided, income from investments
176 authorized by the provisions of this subsection shall be credited
177 to the State General Fund.

178 (i) Not more than Five Hundred Thousand Dollars
179 (\$500,000.00) of funds may be invested with foreign financial
180 institutions, and the State Treasurer may enter into price
181 contracts for the purchase or exchange of foreign currency or
182 other arrangements for currency exchange in an amount not to
183 exceed Five Hundred Thousand Dollars (\$500,000.00) upon specific
184 direction of the Department of Economic and Community Development.
185 The State Treasurer shall promulgate all rules and regulations for
186 applications, qualifications and any other necessary matters for
187 foreign financial institutions.

188 Any liquidating agent of a depository in liquidation,
189 voluntary or involuntary, shall redeem from the state any bonds
190 and securities which have been pledged to secure state funds and
191 such redemption shall be at the par value or market value thereof,
192 whichever is greater; otherwise, The liquidating agent or receiver
193 may pay off the state in full for its deposits and retrieve the
194 pledged securities without regard to par or market value.

195 The State Treasurer and the Executive Director of the
196 Department of Finance and Administration shall make monthly
197 reports to the Legislative Budget Office containing a full and



198 complete statement of all funds invested by virtue of the
199 provisions of this section and the revenues derived therefrom and
200 the expenses incurred therewith, together with all such other
201 information as may seem to each of them as being pertinent to
202 inform fully the Mississippi Legislature with reference thereto.

203 The State Treasurer shall not deposit any funds on demand
204 deposit with any authorized depository, unless such depository has
205 contracted for interest-bearing accounts or time certificates of
206 deposit.

207 Notwithstanding the foregoing, any financial institution not
208 meeting the prescribed ratio requirement set forth in Section
209 27-105-5 whose accounts are insured by the Federal Deposit
210 Insurance Corporation, or any successor to that insurance
211 corporation, may receive state funds in an amount not exceeding
212 the amount which is insured by such insurance corporations and may
213 qualify as a state depository to the extent of such insurance for
214 this purpose only. The paid-in and earned capital funds of such
215 financial institution shall not be included in the computations
216 specified in Section 27-105-9(a) and (b).

217 **SECTION 2.** Section 27-104-7, Mississippi Code of 1972, is
218 amended as follows:

219 27-104-7. (1) (a) There is created the Public Procurement
220 Review Board, which shall be reconstituted on January 1, 2018, and
221 shall be composed of the following members:



222 (i) Three (3) individuals appointed by the
223 Governor with the advice and consent of the Senate;
224 (ii) Two (2) individuals appointed by the
225 Lieutenant Governor with the advice and consent of the Senate; and
226 (iii) The Executive Director of the Department of
227 Finance and Administration, serving as an ex officio and nonvoting
228 member.

229 (b) The initial terms of each appointee shall be as
230 follows:

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

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

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

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

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

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

245 (c) When appointing members to the Public Procurement
246 Review Board, the Governor and Lieutenant Governor shall take into



247 consideration persons who possess at least five (5) years of
248 management experience in general business, health care or finance
249 for an organization, corporation or other public or private
250 entity. Any person, or any employee or owner of a company, who
251 receives any grants, procurements or contracts that are subject to
252 approval under this section shall not be appointed to the Public
253 Procurement Review Board. Any person, or any employee or owner of
254 a company, who is a principal of the source providing a personal
255 or professional service shall not be appointed to the Public
256 Procurement Review Board if the principal owns or controls a
257 greater than five percent (5%) interest or has an ownership value
258 of One Million Dollars (\$1,000,000.00) in the source's business,
259 whichever is smaller. No member shall be an officer or employee
260 of the State of Mississippi while serving as a voting member on
261 the Public Procurement Review Board.

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

265 (e) The members of the Public Procurement Review Board
266 shall elect a chair from among the membership, and he or she shall
267 preside over the meetings of the board. The board shall annually
268 elect a vice chair, who shall serve in the absence of the chair.
269 No business shall be transacted, including adoption of rules of
270 procedure, without the presence of a quorum of the board. Three
271 (3) members shall be a quorum. No action shall be valid unless



272 approved by a majority of the members present and voting, entered
273 upon the minutes of the board and signed by the chair. Necessary
274 clerical and administrative support for the board shall be
275 provided by the Department of Finance and Administration. Minutes
276 shall be kept of the proceedings of each meeting, copies of which
277 shall be filed on a monthly basis with the chairs of the
278 Accountability, Efficiency and Transparency Committees of the
279 Senate and House of Representatives and the chairs of the
280 Appropriations Committees of the Senate and House of
281 Representatives.

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

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

288 (b) Adopt regulations governing the approval of
289 contracts let for the construction and maintenance of state
290 buildings and other state facilities as well as related contracts
291 for architectural and engineering services.

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



296 (c) Adopt regulations governing any lease or rental
297 agreement by any state agency or department, including any state
298 agency financed entirely by federal funds, for space outside the
299 buildings under the jurisdiction of the Department of Finance and
300 Administration. These regulations shall require each agency
301 requesting to lease such space to provide the following
302 information that shall be published by the Department of Finance
303 and Administration on its website: the agency to lease the space;
304 the terms of the lease; the approximate square feet to be leased;
305 the use for the space; a description of a suitable space; the
306 general location desired for the leased space; the contact
307 information for a person from the agency; the deadline date for
308 the agency to have received a lease proposal; any other specific
309 terms or conditions of the agency; and any other information
310 deemed appropriate by the Division of Real Property Management of
311 the Department of Finance and Administration or the Public
312 Procurement Review Board. The information shall be provided
313 sufficiently in advance of the time the space is needed to allow
314 the Division of Real Property Management of the Department of
315 Finance and Administration to review and preapprove the lease
316 before the time for advertisement begins;

317 (d) Adopt, in its discretion, regulations to set aside
318 at least five percent (5%) of anticipated annual expenditures for
319 the purchase of commodities from minority businesses; however, all
320 such set-aside purchases shall comply with all purchasing



321 regulations promulgated by the department and shall be subject to
322 all bid requirements. Set-aside purchases for which competitive
323 bids are required shall be made from the lowest and best minority
324 business bidder; however, if no minority bid is available or if
325 the minority bid is more than two percent (2%) higher than the
326 lowest bid, then bids shall be accepted and awarded to the lowest
327 and best bidder. However, the provisions in this paragraph shall
328 not be construed to prohibit the rejection of a bid when only one
329 (1) bid is received. Such rejection shall be placed in the
330 minutes. For the purposes of this paragraph, the term "minority
331 business" means a business which is owned by a person who is a
332 citizen or lawful permanent resident of the United States and who
333 is:

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

336 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,
337 Central or South American, or other Spanish or Portuguese culture
338 or origin regardless of race;

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

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

344 (v) Female;



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

351 (f) Promulgate rules and regulations governing the
352 solicitation and selection of contractual services personnel,
353 including personal and professional services contracts for any
354 form of consulting, policy analysis, public relations, marketing,
355 public affairs, legislative advocacy services or any other
356 contract that the board deems appropriate for oversight, with the
357 exception of any personal service contracts entered into by any
358 agency that employs only nonstate service employees as defined in
359 Section 25-9-107(c), any personal service contracts entered into
360 for computer or information technology-related services governed
361 by the Mississippi Department of Information Technology Services,
362 any personal service contracts entered into by the individual
363 state institutions of higher learning, any personal service
364 contracts entered into by the Mississippi Department of
365 Transportation, any personal service contracts entered into by the
366 Department of Human Services through June 30, 2019, which the
367 Executive Director of the Department of Human Services determines
368 would be useful in establishing and operating the Department of
369 Child Protection Services, any personal service contracts entered



370 into by the Department of Child Protection Services through June
371 30, 2019, any contracts for entertainers and/or performers at the
372 Mississippi State Fairgrounds entered into by the Mississippi Fair
373 Commission, any contracts entered into by the Department of
374 Finance and Administration when procuring aircraft maintenance,
375 parts, equipment and/or services, any contract entered into by the
376 Department of Public Safety for service on specialized equipment
377 and/or software required for the operation at such specialized
378 equipment for use by the Office of Forensics Laboratories, any
379 personal or professional service contract entered into by the
380 Mississippi Department of Health and/or the Department of Revenue
381 solely in connection with their respective responsibilities under
382 the Mississippi Medical Cannabis Act from February 2, 2022,
383 through June 30, 2023, any contract for attorney, accountant,
384 actuary auditor, architect, engineer, anatomical pathologist,
385 utility rate expert services, any personal service contracts
386 approved by the Executive Director of the Department of Finance
387 and Administration and entered into by the Coordinator of Mental
388 Health Accessibility through June 30, 2022, any personal or
389 professional services contract entered into by the State
390 Department of Health in carrying out its responsibilities under
391 the ARPA Rural Water Associations Infrastructure Grant Program
392 through June 30, 2026, and any personal or professional services
393 contract entered into by the Mississippi Department of
394 Environmental Quality in carrying out its responsibilities under



395 the Mississippi Municipality and County Water Infrastructure Grant
396 Program Act of 2022, through June 30, 2026. Any such rules and
397 regulations shall provide for maintaining continuous internal
398 audit covering the activities of such agency affecting its revenue
399 and expenditures as required under Section 7-7-3(6)(d). Any rules
400 and regulation changes related to personal and professional
401 services contracts that the Public Procurement Review Board may
402 propose shall be submitted to the Chairs of the Accountability,
403 Efficiency and Transparency Committees of the Senate and House of
404 Representatives and the Chairs of the Appropriation Committees of
405 the Senate and House of Representatives at least fifteen (15) days
406 before the board votes on the proposed changes, and those rules
407 and regulation changes, if adopted, shall be promulgated in
408 accordance with the Mississippi Administrative Procedures Act;

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

413 (h) Develop mandatory standards with respect to
414 contractual services personnel that require invitations for public
415 bid, requests for proposals, record keeping and financial
416 responsibility of contractors. The Public Procurement Review
417 Board shall, unless exempted under this paragraph (h) or under
418 paragraph (i) or (o) of this subsection (2), require the agency
419 involved to submit the procurement to a competitive procurement



420 process, and may reserve the right to reject any or all resulting
421 procurements;

422 (i) Prescribe certain circumstances by which agency
423 heads may enter into contracts for personal and professional
424 services without receiving prior approval from the Public
425 Procurement Review Board. The Public Procurement Review Board may
426 establish a preapproved list of providers of various personal and
427 professional services for set prices with which state agencies may
428 contract without bidding or prior approval from the board;

429 (i) Agency requirements may be fulfilled by
430 procuring services performed incident to the state's own programs.
431 The agency head shall determine in writing whether the price
432 represents a fair market value for the services. When the
433 procurements are made from other governmental entities, the
434 private sector need not be solicited; however, these contracts
435 shall still be submitted for approval to the Public Procurement
436 Review Board.

437 (ii) Contracts between two (2) state agencies,
438 both under Public Procurement Review Board purview, shall not
439 require Public Procurement Review Board approval. However, the
440 contracts shall still be entered into the enterprise resource
441 planning system;

442 (j) Provide standards for the issuance of requests for
443 proposals, the evaluation of proposals received, consideration of
444 costs and quality of services proposed, contract negotiations, the



445 administrative monitoring of contract performance by the agency
446 and successful steps in terminating a contract;

447 (k) Present recommendations for governmental
448 privatization and to evaluate privatization proposals submitted by
449 any state agency;

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

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

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

464 (o) Develop and implement the following standards and
465 procedures for the approval of any sole source contract for
466 personal and professional services regardless of the value of the
467 procurement:



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

471 (ii) An agency that has been issued a binding,
472 valid court order mandating that a particular source or provider
473 must be used for the required service must include a copy of the
474 applicable court order in all future sole source contract reviews
475 for the particular personal or professional service referenced in
476 the court order.

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

485 1. The personal or professional service
486 offered in the contract;

487 2. An explanation of why the personal or
488 professional service is the only one that can meet the needs of
489 the agency;

490 3. An explanation of why the source is the
491 only person or entity that can provide the required personal or
492 professional service;



493 4. An explanation of why the amount to be
494 expended for the personal or professional service is reasonable;
495 and

496 5. The efforts that the agency went through
497 to obtain the best possible price for the personal or professional
498 service.

499 (iv) If any person or entity objects and proposes
500 that the personal or professional service published under
501 subparagraph (iii) of this paragraph (o) is not a sole source
502 service and can be provided by another person or entity, then the
503 objecting person or entity shall notify the Public Procurement
504 Review Board and the agency that published the proposed sole
505 source contract with a detailed explanation of why the personal or
506 professional service is not a sole source service.

507 (v) 1. If the agency determines after review that
508 the personal or professional service in the proposed sole source
509 contract can be provided by another person or entity, then the
510 agency must withdraw the sole source contract publication from the
511 procurement portal website and submit the procurement of the
512 personal or professional service to an advertised competitive bid
513 or selection process.

514 2. If the agency determines after review that
515 there is only one (1) source for the required personal or
516 professional service, then the agency may appeal to the Public
517 Procurement Review Board. The agency has the burden of proving



518 that the personal or professional service is only provided by one
519 (1) source.

520 3. If the Public Procurement Review Board has
521 any reasonable doubt as to whether the personal or professional
522 service can only be provided by one (1) source, then the agency
523 must submit the procurement of the personal or professional
524 service to an advertised competitive bid or selection process. No
525 action taken by the Public Procurement Review Board in this appeal
526 process shall be valid unless approved by a majority of the
527 members of the Public Procurement Review Board present and voting.

528 (vi) The Public Procurement Review Board shall
529 prepare and submit a quarterly report to the House of
530 Representatives and Senate Accountability, Efficiency and
531 Transparency Committees that details the sole source contracts
532 presented to the Public Procurement Review Board and the reasons
533 that the Public Procurement Review Board approved or rejected each
534 contract. These quarterly reports shall also include the
535 documentation and memoranda required in subsection (4) of this
536 section. An agency that submitted a sole source contract shall be
537 prepared to explain the sole source contract to each committee by
538 December 15 of each year upon request by the committee;

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

541 (3) All submissions shall be made sufficiently in advance of
542 each monthly meeting of the Public Procurement Review Board as



543 prescribed by the Public Procurement Review Board. If the Public
544 Procurement Review Board rejects any contract submitted for review
545 or approval, the Public Procurement Review Board shall clearly set
546 out the reasons for its action, including, but not limited to, the
547 policy that the agency has violated in its submitted contract and
548 any corrective actions that the agency may take to amend the
549 contract to comply with the rules and regulations of the Public
550 Procurement Review Board.

551 (4) All sole source contracts for personal and professional
552 services awarded by state agencies, other than those exempted
553 under Section 27-104-7(2)(f) and (8), whether approved by an
554 agency head or the Public Procurement Review Board, shall contain
555 in the procurement file a written determination for the approval,
556 using a request form furnished by the Public Procurement Review
557 Board. The written determination shall document the basis for the
558 determination, including any market analysis conducted in order to
559 ensure that the service required was practicably available from
560 only one (1) source. A memorandum shall accompany the request
561 form and address the following four (4) points:

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

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

566 (c) Explanation of why the price is considered
567 reasonable; and



568 (d) Description of the efforts that were made to
569 conduct a noncompetitive negotiation to get the best possible
570 price for the taxpayers.

571 (5) In conjunction with the State Personnel Board, the
572 Public Procurement Review Board shall develop and promulgate rules
573 and regulations to define the allowable legal relationship between
574 contract employees and the contracting departments, agencies and
575 institutions of state government under the jurisdiction of the
576 State Personnel Board, in compliance with the applicable rules and
577 regulations of the federal Internal Revenue Service (IRS) for
578 federal employment tax purposes. Under these regulations, the
579 usual common law rules are applicable to determine and require
580 that such worker is an independent contractor and not an employee,
581 requiring evidence of lawful behavioral control, lawful financial
582 control and lawful relationship of the parties. Any state
583 department, agency or institution shall only be authorized to
584 contract for personnel services in compliance with those
585 regulations.

586 (6) No member of the Public Procurement Review Board shall
587 use his or her official authority or influence to coerce, by
588 threat of discharge from employment, or otherwise, the purchase of
589 commodities, the contracting for personal or professional
590 services, or the contracting for public construction under this
591 chapter.



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

595 (8) Nothing in this section shall impair or limit the
596 authority of the Board of Trustees of the Public Employees'
597 Retirement System to enter into any personal or professional
598 services contracts directly related to their constitutional
599 obligation to manage the trust funds, including, but not limited
600 to, actuarial, custodial banks, cash management, investment
601 consultant and investment management contracts. Nor shall this
602 section impair or limit the authority of the State Treasurer to
603 enter into any personal or professional services contracts
604 involving the management of trust funds, including, but not
605 limited to, actuarial, custodial banks, cash management,
606 investment consultant and investment management contracts.

607 * * *

608 **SECTION 3.** This act shall take effect and be in force from
609 and after its passage.

