

By: Senator(s) Chassaniol

To: Finance

SENATE BILL NO. 2887  
(As Sent to Governor)

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, AS  
9 AMENDED BY HOUSE BILL NO. 249, 2023 REGULAR SESSION, AND HOUSE  
10 BILL NO. 540, 2023 REGULAR SESSION, TO SPECIFY THAT CERTAIN PUBLIC  
11 PROCUREMENT REVIEW BOARD PROVISIONS DO NOT IMPAIR OR LIMIT THE  
12 AUTHORITY OF THE STATE TREASURER TO ENTER INTO ANY PERSONAL OR  
13 PROFESSIONAL SERVICES CONTRACTS INVOLVING THE MANAGEMENT OF TRUST  
14 FUNDS, AN AUTHORITY COMPARABLE TO THAT GRANTED TO THE BOARD OF  
15 TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; TO REMOVE A  
16 SUBSECTION THAT REPEALED ON JULY 1, 2022; AND FOR RELATED  
17 PURPOSES.

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

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

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



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

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

43 (a) Funds shall be allocated equally among all  
44 qualified state depositories which do not have demand accounts in  
45 excess of One Hundred Fifty Thousand Dollars (\$150,000.00) until  
46 each qualified depository willing to accept the same shall have on  
47 deposit or in security repurchase agreements or in other  
48 securities authorized in paragraph (d) of this section at interest  
49 the sum of Three Hundred Thousand Dollars (\$300,000.00). For the



50 purposes of this subsection, no branch bank or branch office shall  
51 be counted as a separate depository.

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

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

70 (d) To the extent that the State Treasurer shall find  
71 that general and special funds cannot be invested pursuant to  
72 paragraphs (a), (b) and (c) of this section for the stated  
73 maturity up to one (1) year, the Treasurer may invest such funds,



74 together with any other funds required for current operation, as  
75 determined pursuant to this section, in the following:

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

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

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



99 government instrumentality or United States government-sponsored  
100 enterprise contained in a list promulgated by the State Treasurer.

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

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

115 1. Investments in such instruments shall be  
116 denominated in United States currency;

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

120 3. The amount of funds invested in such bonds  
121 at any time shall not exceed Twenty Million Dollars  
122 (\$20,000,000.00).



123                   (vi) Corporate bonds and taxable municipal bonds;  
124 or corporate short-term obligations of corporations or of wholly  
125 owned subsidiaries of corporations, whose short-term obligations  
126 are rated A-1 or better by Standard and Poor's, rated P-1 or  
127 better by Moody's Investment Service, F-1 or better by Fitch  
128 Ratings, Ltd., or the equivalent of these ratings if assigned by  
129 another United States Securities and Exchange Commission  
130 designated Nationally Recognized Statistical Rating Organization.

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



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

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

169 (g) Any interest-bearing deposits or certificates of  
170 deposit shall not exceed at any time the amount insured by the  
171 Federal Deposit Insurance Corporation in any one (1) banking  
172 institution, the Federal Savings and Loan Insurance Corporation in



173 any one (1) savings and loan association, or other deposit  
174 insurance corporation approved by the State Treasurer, unless the  
175 uninsured portion is collateralized by the pledge of securities in  
176 the manner provided by Section 27-105-5.

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

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

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





197           The State Treasurer and the Executive Director of the  
198 Department of Finance and Administration shall make monthly  
199 reports to the Legislative Budget Office containing a full and  
200 complete statement of all funds invested by virtue of the  
201 provisions of this section and the revenues derived therefrom and  
202 the expenses incurred therewith, together with all such other  
203 information as may seem to each of them as being pertinent to  
204 inform fully the Mississippi Legislature with reference thereto.

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

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

219           **SECTION 2.** Section 27-104-7, Mississippi Code of 1972, as  
220 amended by House Bill No. 249, 2023 Regular Session, and House  
221 Bill No. 540, 2023 Regular Session, is amended as follows:



222 27-104-7. (1) (a) There is created the Public Procurement  
223 Review Board, which shall be reconstituted on January 1, 2018, and  
224 shall be composed of the following members:

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

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

229 (iii) The Executive Director of the Department of  
230 Finance and Administration, serving as an ex officio and nonvoting  
231 member.

232 (b) The initial terms of each appointee shall be as  
233 follows:

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

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

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

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

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

244 After the expiration of the initial terms, all appointed  
245 members' terms shall be for a period of four (4) years from the



246 expiration date of the previous term, and until such time as the  
247 member's successor is duly appointed and qualified.

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

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

268 (e) The members of the Public Procurement Review Board  
269 shall elect a chair from among the membership, and he or she shall  
270 preside over the meetings of the board. The board shall annually



271 elect a vice chair, who shall serve in the absence of the chair.  
272 No business shall be transacted, including adoption of rules of  
273 procedure, without the presence of a quorum of the board. Three  
274 (3) members shall be a quorum. No action shall be valid unless  
275 approved by a majority of the members present and voting, entered  
276 upon the minutes of the board and signed by the chair. Necessary  
277 clerical and administrative support for the board shall be  
278 provided by the Department of Finance and Administration. Minutes  
279 shall be kept of the proceedings of each meeting, copies of which  
280 shall be filed on a monthly basis with the chairs of the  
281 Accountability, Efficiency and Transparency Committees of the  
282 Senate and House of Representatives and the chairs of the  
283 Appropriations Committees of the Senate and House of  
284 Representatives.

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

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

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



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

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



320 (d) Adopt, in its discretion, regulations to set aside  
321 at least five percent (5%) of anticipated annual expenditures for  
322 the purchase of commodities from minority businesses; however, all  
323 such set-aside purchases shall comply with all purchasing  
324 regulations promulgated by the department and shall be subject to  
325 all bid requirements. Set-aside purchases for which competitive  
326 bids are required shall be made from the lowest and best minority  
327 business bidder; however, if no minority bid is available or if  
328 the minority bid is more than two percent (2%) higher than the  
329 lowest bid, then bids shall be accepted and awarded to the lowest  
330 and best bidder. However, the provisions in this paragraph shall  
331 not be construed to prohibit the rejection of a bid when only one  
332 (1) bid is received. Such rejection shall be placed in the  
333 minutes. For the purposes of this paragraph, the term "minority  
334 business" means a business which is owned by a person who is a  
335 citizen or lawful permanent resident of the United States and who  
336 is:

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

339 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,  
340 Central or South American, or other Spanish or Portuguese culture  
341 or origin regardless of race;

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



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

347 (v) Female;

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

354 (f) Except as otherwise provided in subparagraph (xv)  
355 of this paragraph, promulgate rules and regulations governing the  
356 solicitation and selection of contractual services personnel,  
357 including personal and professional services contracts for any  
358 form of consulting, policy analysis, public relations, marketing,  
359 public affairs, legislative advocacy services or any other  
360 contract that the board deems appropriate for oversight, with the  
361 exception of:

362 (i) Any personal service contracts entered into by  
363 any agency that employs only nonstate service employees as defined  
364 in Section 25-9-107(c);

365 (ii) Any personal service contracts entered into  
366 for computer or information technology-related services governed  
367 by the Mississippi Department of Information Technology Services;

368 (iii) Any personal service contracts entered into  
369 by the individual state institutions of higher learning;



370 (iv) Any personal service contracts entered into  
371 by the Mississippi Department of Transportation;

372 (v) Any personal service contracts entered into by  
373 the Department of Human Services through June 30, 2019, which the  
374 Executive Director of the Department of Human Services determines  
375 would be useful in establishing and operating the Department of  
376 Child Protection Services;

377 (vi) Any personal service contracts entered into  
378 by the Department of Child Protection Services through June 30,  
379 2019;

380 (vii) Any contracts for entertainers and/or  
381 performers at the Mississippi State Fairgrounds entered into by  
382 the Mississippi Fair Commission;

383 (viii) Any contracts entered into by the  
384 Department of Finance and Administration when procuring aircraft  
385 maintenance, parts, equipment and/or services;

386 (ix) Any contract entered into by the Department  
387 of Public Safety for service on specialized equipment and/or  
388 software required for the operation at such specialized equipment  
389 for use by the Office of Forensics Laboratories;

390 (x) Any personal or professional service contract  
391 entered into by the Mississippi Department of Health or the  
392 Department of Revenue solely in connection with their respective  
393 responsibilities under the Mississippi Medical Cannabis Act from  
394 February 2, 2022, through June 30, 2026;





395 (xi) Any contract for attorney, accountant,  
396 actuary auditor, architect, engineer, anatomical pathologist, or  
397 utility rate expert services;

398 (xii) Any personal service contracts approved by  
399 the Executive Director of the Department of Finance and  
400 Administration and entered into by the Coordinator of Mental  
401 Health Accessibility through June 30, 2022;

402 (xiii) Any personal or professional services  
403 contract entered into by the State Department of Health in  
404 carrying out its responsibilities under the ARPA Rural Water  
405 Associations Infrastructure Grant Program through June 30, 2026;

406 (xiv) Any personal or professional services  
407 contract entered into by the Mississippi Department of  
408 Environmental Quality in carrying out its responsibilities under  
409 the Mississippi Municipality and County Water Infrastructure Grant  
410 Program Act of 2022, through June 30, 2026.

411 Any such rules and regulations shall provide for maintaining  
412 continuous internal audit covering the activities of such agency  
413 affecting its revenue and expenditures as required under Section  
414 7-7-3(6) (d). Any rules and regulation changes related to personal  
415 and professional services contracts that the Public Procurement  
416 Review Board may propose shall be submitted to the Chairs of the  
417 Accountability, Efficiency and Transparency Committees of the  
418 Senate and House of Representatives and the Chairs of the  
419 Appropriation Committees of the Senate and House of



420 Representatives at least fifteen (15) days before the board votes  
421 on the proposed changes, and those rules and regulation changes,  
422 if adopted, shall be promulgated in accordance with the  
423 Mississippi Administrative Procedures Act; and

424                   (xv) From and after July 1, 2024, the Public  
425 Procurement Review Board shall promulgate rules and regulations  
426 that require the Department of Finance and Administration to  
427 conduct personal and professional services solicitations as  
428 provided in subparagraph (i) of this paragraph for those services  
429 in excess of Seventy-five Thousand Dollars (\$75,000.00) for the  
430 Department of Marine Resources, the Department of Wildlife,  
431 Fisheries and Parks, the Mississippi Emergency Management Agency  
432 and the Mississippi Development Authority, with assistance to be  
433 provided from these entities. Any powers that have been conferred  
434 upon agencies in order to comply with the provisions of this  
435 section for personal and professional services solicitations shall  
436 be conferred upon the Department of Finance and Administration to  
437 conduct personal and professional services solicitations for the  
438 Department of Marine Resources, the Department of Wildlife,  
439 Fisheries and Parks, the Mississippi Emergency Management Agency  
440 and the Mississippi Development Authority for those services in  
441 excess of Seventy-five Thousand Dollars (\$75,000.00). The  
442 Department of Finance and Administration shall make any  
443 submissions that are required to be made by other agencies to the  
444 Public Procurement Review Board for the Department of Marine



445 Resources, the Department of Wildlife, Fisheries and Parks, the  
446 Mississippi Emergency Management Agency and the Mississippi  
447 Development Authority.

448 The provisions of this subparagraph (xv) shall stand repealed  
449 on June 30, 2027.

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

454 (h) Develop mandatory standards with respect to  
455 contractual services personnel that require invitations for public  
456 bid, requests for proposals, record keeping and financial  
457 responsibility of contractors. The Public Procurement Review  
458 Board shall, unless exempted under this paragraph (h) or under  
459 paragraph (i) or (o) of this subsection (2), require the agency  
460 involved to submit the procurement to a competitive procurement  
461 process, and may reserve the right to reject any or all resulting  
462 procurements;

463 (i) Prescribe certain circumstances by which agency  
464 heads may enter into contracts for personal and professional  
465 services without receiving prior approval from the Public  
466 Procurement Review Board. The Public Procurement Review Board may  
467 establish a preapproved list of providers of various personal and  
468 professional services for set prices with which state agencies may  
469 contract without bidding or prior approval from the board;



470                   (i) Agency requirements may be fulfilled by  
471 procuring services performed incident to the state's own programs.  
472 The agency head shall determine in writing whether the price  
473 represents a fair market value for the services. When the  
474 procurements are made from other governmental entities, the  
475 private sector need not be solicited; however, these contracts  
476 shall still be submitted for approval to the Public Procurement  
477 Review Board.

478                   (ii) Contracts between two (2) state agencies,  
479 both under Public Procurement Review Board purview, shall not  
480 require Public Procurement Review Board approval. However, the  
481 contracts shall still be entered into the enterprise resource  
482 planning system;

483                   (j) Provide standards for the issuance of requests for  
484 proposals, the evaluation of proposals received, consideration of  
485 costs and quality of services proposed, contract negotiations, the  
486 administrative monitoring of contract performance by the agency  
487 and successful steps in terminating a contract;

488                   (k) Present recommendations for governmental  
489 privatization and to evaluate privatization proposals submitted by  
490 any state agency;

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



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

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

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

505 (o) Develop and implement the following standards and  
506 procedures for the approval of any sole source contract for  
507 personal and professional services regardless of the value of the  
508 procurement:

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

512 (ii) An agency that has been issued a binding,  
513 valid court order mandating that a particular source or provider  
514 must be used for the required service must include a copy of the  
515 applicable court order in all future sole source contract reviews  
516 for the particular personal or professional service referenced in  
517 the court order.

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



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

526                   1. The personal or professional service  
527 offered in the contract;

528                   2. An explanation of why the personal or  
529 professional service is the only one that can meet the needs of  
530 the agency;

531                   3. An explanation of why the source is the  
532 only person or entity that can provide the required personal or  
533 professional service;

534                   4. An explanation of why the amount to be  
535 expended for the personal or professional service is reasonable;  
536 and

537                   5. The efforts that the agency went through  
538 to obtain the best possible price for the personal or professional  
539 service.

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



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

548 (v) 1. If the agency determines after review that  
549 the personal or professional service in the proposed sole source  
550 contract can be provided by another person or entity, then the  
551 agency must withdraw the sole source contract publication from the  
552 procurement portal website and submit the procurement of the  
553 personal or professional service to an advertised competitive bid  
554 or selection process.

555 2. If the agency determines after review that  
556 there is only one (1) source for the required personal or  
557 professional service, then the agency may appeal to the Public  
558 Procurement Review Board. The agency has the burden of proving  
559 that the personal or professional service is only provided by one  
560 (1) source.

561 3. If the Public Procurement Review Board has  
562 any reasonable doubt as to whether the personal or professional  
563 service can only be provided by one (1) source, then the agency  
564 must submit the procurement of the personal or professional  
565 service to an advertised competitive bid or selection process. No  
566 action taken by the Public Procurement Review Board in this appeal  
567 process shall be valid unless approved by a majority of the  
568 members of the Public Procurement Review Board present and voting.



569                   (vi) The Public Procurement Review Board shall  
570 prepare and submit a quarterly report to the House of  
571 Representatives and Senate Accountability, Efficiency and  
572 Transparency Committees that details the sole source contracts  
573 presented to the Public Procurement Review Board and the reasons  
574 that the Public Procurement Review Board approved or rejected each  
575 contract. These quarterly reports shall also include the  
576 documentation and memoranda required in subsection (4) of this  
577 section. An agency that submitted a sole source contract shall be  
578 prepared to explain the sole source contract to each committee by  
579 December 15 of each year upon request by the committee;

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

582                   (3) All submissions shall be made sufficiently in advance of  
583 each monthly meeting of the Public Procurement Review Board as  
584 prescribed by the Public Procurement Review Board. If the Public  
585 Procurement Review Board rejects any contract submitted for review  
586 or approval, the Public Procurement Review Board shall clearly set  
587 out the reasons for its action, including, but not limited to, the  
588 policy that the agency has violated in its submitted contract and  
589 any corrective actions that the agency may take to amend the  
590 contract to comply with the rules and regulations of the Public  
591 Procurement Review Board.

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





594 under Section 27-104-7(2) (f) and (8), whether approved by an  
595 agency head or the Public Procurement Review Board, shall contain  
596 in the procurement file a written determination for the approval,  
597 using a request form furnished by the Public Procurement Review  
598 Board. The written determination shall document the basis for the  
599 determination, including any market analysis conducted in order to  
600 ensure that the service required was practicably available from  
601 only one (1) source. A memorandum shall accompany the request  
602 form and address the following four (4) points:

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

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

607 (c) Explanation of why the price is considered  
608 reasonable; and

609 (d) Description of the efforts that were made to  
610 conduct a noncompetitive negotiation to get the best possible  
611 price for the taxpayers.

612 (5) In conjunction with the State Personnel Board, the  
613 Public Procurement Review Board shall develop and promulgate rules  
614 and regulations to define the allowable legal relationship between  
615 contract employees and the contracting departments, agencies and  
616 institutions of state government under the jurisdiction of the  
617 State Personnel Board, in compliance with the applicable rules and  
618 regulations of the federal Internal Revenue Service (IRS) for



619 federal employment tax purposes. Under these regulations, the  
620 usual common law rules are applicable to determine and require  
621 that such worker is an independent contractor and not an employee,  
622 requiring evidence of lawful behavioral control, lawful financial  
623 control and lawful relationship of the parties. Any state  
624 department, agency or institution shall only be authorized to  
625 contract for personnel services in compliance with those  
626 regulations.

627 (6) No member of the Public Procurement Review Board shall  
628 use his or her official authority or influence to coerce, by  
629 threat of discharge from employment, or otherwise, the purchase of  
630 commodities, the contracting for personal or professional  
631 services, or the contracting for public construction under this  
632 chapter.

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

636 (8) Nothing in this section shall impair or limit the  
637 authority of the Board of Trustees of the Public Employees'  
638 Retirement System to enter into any personal or professional  
639 services contracts directly related to their constitutional  
640 obligation to manage the trust funds, including, but not limited  
641 to, actuarial, custodial banks, cash management, investment  
642 consultant and investment management contracts. Nor shall this  
643 section impair or limit the authority of the State Treasurer to



644 enter into any personal or professional services contracts  
645 involving the management of trust funds, including, but not  
646 limited to, actuarial, custodial banks, cash management,  
647 investment consultant and investment management contracts.

648 \* \* \*

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

