

By: Senator(s) DeLano

To: Environment Prot, Cons
and Water Res;
Accountability, Efficiency,
Transparency

SENATE BILL NO. 2649

1 AN ACT TO AMEND SECTION 49-2-13, MISSISSIPPI CODE OF 1972, TO
2 ALLOW THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL
3 QUALITY TO ENTER INTO CONTRACTS FOR THE PURPOSE OF OBTAINING
4 ASSISTANCE WITH THE REVIEW, EVALUATION, AND PROCESSING OF PERMIT
5 AND CERTIFICATION APPLICATIONS; TO AMEND SECTION 27-104-7,
6 MISSISSIPPI CODE OF 1972, TO GRANT THE DEPARTMENT OF ENVIRONMENTAL
7 QUALITY AN EXCEPTION TO PROCUREMENT REVIEW PROCESSES FOR SUCH
8 CONTRACTS; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 49-2-13, Mississippi Code of 1972, is
11 amended as follows:

12 49-2-13. The executive director shall have the following
13 powers and duties:

14 (a) To administer the policies of the commission within
15 the authority granted by the commission;

16 (b) To supervise and direct all administrative and
17 technical activities of the department;

18 (c) To organize the administrative units of the
19 department in accordance with the plan adopted by the commission
20 and, with commission approval, alter such organizational plan and



21 reassign responsibilities as he may deem necessary to carry out
22 the policies of the commission;

23 (d) To coordinate the activities of the various offices
24 of the department;

25 (e) To employ, subject to the approval of the
26 commission, qualified professional personnel in the subject matter
27 or fields of each office, and such other technical and clerical
28 staff as may be required for the operation of the department;

29 (f) To recommend to the commission such studies and
30 investigations as he may deem appropriate, and to carry out the
31 approved recommendations in conjunction with the various offices;

32 (g) To merge and coordinate functions and duties where
33 possible to eliminate the possibility of two (2) separate
34 organizational entities performing the same or similar functions,
35 including, but not limited to, functions of audit, inspection,
36 collection, personnel, motor vehicles, accounting, data
37 processing, payroll and any other such administrative, procedural
38 or enforcement function;

39 (h) To coordinate all studies in the State of
40 Mississippi concerned with the supply, development, use and
41 conservation of natural resources within the jurisdiction of the
42 department;

43 (i) To prepare and deliver to the Legislature and the
44 Governor on or before January 1 of each year, and at such other
45 times as may be required by the Legislature or Governor, a full



46 report of the work of the department and the offices thereof,
47 including a detailed statement of expenditures of the department
48 and any recommendations the commission may have;

49 (j) To issue, modify or revoke any and all orders under
50 authority granted by the commission which include, but are not
51 limited to those which (i) prohibit, control or abate discharges
52 of contaminants and wastes into the air and waters of the state;
53 (ii) require the construction of new disposal systems or
54 air-cleaning devices or any parts thereof, or the modification,
55 extension or alteration of existing disposal systems or
56 air-cleaning devices or any parts thereof, or the adoption of
57 other remedial measures to prevent, control or abate air and water
58 pollution or to cause the proper management of solid wastes; (iii)
59 impose penalties pursuant to Section 17-17-29 and Section 49-17-43
60 which have been agreed upon with alleged violators; and (iv)
61 require compliance with the conditions of any permit issued by the
62 Permit Board created in Section 49-17-28 and all regulations of
63 the commission; * * *

64 (k) With the approval of the commission, to enter into
65 contracts, grants and cooperative agreements with any federal or
66 state agency or subdivision thereof, or any public or private
67 institution located inside or outside the State of Mississippi, or
68 any person, corporation or association in connection with carrying
69 out the provisions of this chapter, provided the agreements do not



70 have a financial cost in excess of the amounts appropriated for
71 such purposes by the Legislature * * *; and

72 (1) With the approval of the commission, to enter into
73 a contract(s) with any person or any public or private corporate
74 entity to assist with the review, evaluation and processing of
75 permit application(s) and/or certification application(s). Any
76 person or entity requesting additional assistance for review,
77 evaluation, and processing of an application for permit(s) or
78 certification(s) must agree to pay all additional costs associated
79 with such review, evaluation, and processing.

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

82 27-104-7. (1) (a) There is created the Public Procurement
83 Review Board, which shall be reconstituted on January 1, 2018, and
84 shall be composed of the following members:

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

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

89 (iii) The Executive Director of the Department of
90 Finance and Administration, serving as an ex officio and nonvoting
91 member.

92 (b) The initial terms of each appointee shall be as
93 follows:



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

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

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

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

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

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

108 (c) When appointing members to the Public Procurement
109 Review Board, the Governor and Lieutenant Governor shall take into
110 consideration persons who possess at least five (5) years of
111 management experience in general business, health care or finance
112 for an organization, corporation or other public or private
113 entity. Any person, or any employee or owner of a company, who
114 receives any grants, procurements or contracts that are subject to
115 approval under this section shall not be appointed to the Public
116 Procurement Review Board. Any person, or any employee or owner of
117 a company, who is a principal of the source providing a personal
118 or professional service shall not be appointed to the Public



119 Procurement Review Board if the principal owns or controls a
120 greater than five percent (5%) interest or has an ownership value
121 of One Million Dollars (\$1,000,000.00) in the source's business,
122 whichever is smaller. No member shall be an officer or employee
123 of the State of Mississippi while serving as a voting member on
124 the Public Procurement Review Board.

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

128 (e) The members of the Public Procurement Review Board
129 shall elect a chair from among the membership, and he or she shall
130 preside over the meetings of the board. The board shall annually
131 elect a vice chair, who shall serve in the absence of the chair.
132 No business shall be transacted, including adoption of rules of
133 procedure, without the presence of a quorum of the board. Three
134 (3) members shall be a quorum. No action shall be valid unless
135 approved by a majority of the members present and voting, entered
136 upon the minutes of the board and signed by the chair. Necessary
137 clerical and administrative support for the board shall be
138 provided by the Department of Finance and Administration. Minutes
139 shall be kept of the proceedings of each meeting, copies of which
140 shall be filed on a monthly basis with the chairs of the
141 Accountability, Efficiency and Transparency Committees of the
142 Senate and House of Representatives and the chairs of the



143 Appropriations Committees of the Senate and House of
144 Representatives.

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

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

151 (b) Adopt regulations governing the approval of
152 contracts let for the construction and maintenance of state
153 buildings and other state facilities as well as related contracts
154 for architectural and engineering services.

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

159 (c) Adopt regulations governing any lease or rental
160 agreement by any state agency or department, including any state
161 agency financed entirely by federal funds, for space outside the
162 buildings under the jurisdiction of the Department of Finance and
163 Administration. These regulations shall require each agency
164 requesting to lease such space to provide the following
165 information that shall be published by the Department of Finance
166 and Administration on its website: the agency to lease the space;
167 the terms of the lease; the approximate square feet to be leased;



168 the use for the space; a description of a suitable space; the
169 general location desired for the leased space; the contact
170 information for a person from the agency; the deadline date for
171 the agency to have received a lease proposal; any other specific
172 terms or conditions of the agency; and any other information
173 deemed appropriate by the Division of Real Property Management of
174 the Department of Finance and Administration or the Public
175 Procurement Review Board. The information shall be provided
176 sufficiently in advance of the time the space is needed to allow
177 the Division of Real Property Management of the Department of
178 Finance and Administration to review and preapprove the lease
179 before the time for advertisement begins;

180 (d) Adopt, in its discretion, regulations to set aside
181 at least five percent (5%) of anticipated annual expenditures for
182 the purchase of commodities from minority businesses; however, all
183 such set-aside purchases shall comply with all purchasing
184 regulations promulgated by the department and shall be subject to
185 all bid requirements. Set-aside purchases for which competitive
186 bids are required shall be made from the lowest and best minority
187 business bidder; however, if no minority bid is available or if
188 the minority bid is more than two percent (2%) higher than the
189 lowest bid, then bids shall be accepted and awarded to the lowest
190 and best bidder. However, the provisions in this paragraph shall
191 not be construed to prohibit the rejection of a bid when only one
192 (1) bid is received. Such rejection shall be placed in the



193 minutes. For the purposes of this paragraph, the term "minority
194 business" means a business which is owned by a person who is a
195 citizen or lawful permanent resident of the United States and who
196 is:

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

199 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,
200 Central or South American, or other Spanish or Portuguese culture
201 or origin regardless of race;

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

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

207 (v) Female;

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

214 (f) (i) Except as otherwise provided in subparagraph
215 (ii) of this paragraph, promulgate rules and regulations governing
216 the solicitation and selection of contractual services personnel,
217 including personal and professional services contracts for any



218 form of consulting, policy analysis, public relations, marketing,
219 public affairs, legislative advocacy services or any other
220 contract that the board deems appropriate for oversight, with the
221 exception of:

222 1. Any personal service contracts entered
223 into by any agency that employs only nonstate service employees as
224 defined in Section 25-9-107(c);

225 2. Any personal service contracts entered
226 into for computer or information technology-related services
227 governed by the Mississippi Department of Information Technology
228 Services;

229 3. Any personal service contracts entered
230 into by the individual state institutions of higher learning;

231 4. Any personal service contracts entered
232 into by the Mississippi Department of Transportation;

233 5. Any personal service contracts entered
234 into by the Department of Human Services through June 30, 2019,
235 which the Executive Director of the Department of Human Services
236 determines would be useful in establishing and operating the
237 Department of Child Protection Services;

238 6. Any personal service contracts entered
239 into by the Department of Child Protection Services through June
240 30, 2019;



241 7. Any contracts for entertainers and/or
242 performers at the Mississippi State Fairgrounds entered into by
243 the Mississippi Fair Commission;

244 8. Any contracts entered into by the
245 Department of Finance and Administration when procuring aircraft
246 maintenance, parts, equipment and/or services;

247 9. Any contract entered into by the
248 Department of Public Safety for service on specialized equipment
249 and/or software required for the operation of such specialized
250 equipment for use by the Office of Forensics Laboratories;

251 10. Any personal or professional service
252 contract entered into by the Mississippi Department of Health or
253 the Department of Revenue solely in connection with their
254 respective responsibilities under the Mississippi Medical Cannabis
255 Act from February 2, 2022, through June 30, 2026;

256 11. Any contract for attorney, accountant,
257 actuary auditor, architect, engineer, anatomical pathologist, or
258 utility rate expert services;

259 12. Any personal service contracts approved
260 by the Executive Director of the Department of Finance and
261 Administration and entered into by the Coordinator of Mental
262 Health Accessibility through June 30, 2022;

263 13. Any personal or professional services
264 contract entered into by the State Department of Health in
265 carrying out its responsibilities under the ARPA Rural Water



266 Associations Infrastructure Grant Program through June 30,
267 2026; * * *

268 14. And any personal or professional services
269 contract entered into by the Mississippi Department of
270 Environmental Quality in carrying out its responsibilities under
271 the Mississippi Municipality and County Water Infrastructure Grant
272 Program Act of 2022, through June 30, 2026 * * *; and

273 15. Any personal or professional services
274 contract entered into by the Mississippi Department of
275 Environmental Quality in carrying out its responsibilities under
276 Section 49-2-13(1).

277 Any such rules and regulations shall provide for maintaining
278 continuous internal audit covering the activities of such agency
279 affecting its revenue and expenditures as required under Section
280 7-7-3(6) (d). Any rules and regulation changes related to personal
281 and professional services contracts that the Public Procurement
282 Review Board may propose shall be submitted to the Chairs of the
283 Accountability, Efficiency and Transparency Committees of the
284 Senate and House of Representatives and the Chairs of the
285 Appropriation Committees of the Senate and House of
286 Representatives at least fifteen (15) days before the board votes
287 on the proposed changes, and those rules and regulation changes,
288 if adopted, shall be promulgated in accordance with the
289 Mississippi Administrative Procedures Act.



290 (ii) From and after July 1, 2024, the Public
291 Procurement Review Board shall promulgate rules and regulations
292 that require the Department of Finance and Administration to
293 conduct personal and professional services solicitations as
294 provided in subparagraph (i) of this paragraph for those services
295 in excess of Seventy-five Thousand Dollars (\$75,000.00) for the
296 Department of Marine Resources, the Department of Wildlife,
297 Fisheries and Parks, the Mississippi Emergency Management Agency
298 and the Mississippi Development Authority, with assistance to be
299 provided from these entities. Any powers that have been conferred
300 upon agencies in order to comply with the provisions of this
301 section for personal and professional services solicitations shall
302 be conferred upon the Department of Finance and Administration to
303 conduct personal and professional services solicitations for the
304 Department of Marine Resources, the Department of Wildlife,
305 Fisheries and Parks, the Mississippi Emergency Management Agency
306 and the Mississippi Development Authority for those services in
307 excess of Seventy-five Thousand Dollars (\$75,000.00). The
308 Department of Finance and Administration shall make any
309 submissions that are required to be made by other agencies to the
310 Public Procurement Review Board for the Department of Marine
311 Resources, the Department of Wildlife, Fisheries and Parks, the
312 Mississippi Emergency Management Agency and the Mississippi
313 Development Authority.



314 The provisions of this subparagraph (ii) shall stand repealed
315 on June 30, 2027;

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

320 (h) Develop mandatory standards with respect to
321 contractual services personnel that require invitations for public
322 bid, requests for proposals, record keeping and financial
323 responsibility of contractors. The Public Procurement Review
324 Board shall, unless exempted under this paragraph (h) or under
325 paragraph (i) or (o) of this subsection (2), require the agency
326 involved to submit the procurement to a competitive procurement
327 process, and may reserve the right to reject any or all resulting
328 procurements;

329 (i) Prescribe certain circumstances by which agency
330 heads may enter into contracts for personal and professional
331 services without receiving prior approval from the Public
332 Procurement Review Board. The Public Procurement Review Board may
333 establish a preapproved list of providers of various personal and
334 professional services for set prices with which state agencies may
335 contract without bidding or prior approval from the board;

336 (i) Agency requirements may be fulfilled by
337 procuring services performed incident to the state's own programs.
338 The agency head shall determine in writing whether the price



339 represents a fair market value for the services. When the
340 procurements are made from other governmental entities, the
341 private sector need not be solicited; however, these contracts
342 shall still be submitted for approval to the Public Procurement
343 Review Board.

344 (ii) Contracts between two (2) state agencies,
345 both under Public Procurement Review Board purview, shall not
346 require Public Procurement Review Board approval. However, the
347 contracts shall still be entered into the enterprise resource
348 planning system;

349 (j) Provide standards for the issuance of requests for
350 proposals, the evaluation of proposals received, consideration of
351 costs and quality of services proposed, contract negotiations, the
352 administrative monitoring of contract performance by the agency
353 and successful steps in terminating a contract;

354 (k) Present recommendations for governmental
355 privatization and to evaluate privatization proposals submitted by
356 any state agency;

357 (l) Authorize personal and professional service
358 contracts to be effective for more than one (1) year provided a
359 funding condition is included in any such multiple year contract,
360 except the State Board of Education, which shall have the
361 authority to enter into contractual agreements for student
362 assessment for a period up to ten (10) years. The State Board of



363 Education shall procure these services in accordance with the
364 Public Procurement Review Board procurement regulations;

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

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

371 (o) Develop and implement the following standards and
372 procedures for the approval of any sole source contract for
373 personal and professional services regardless of the value of the
374 procurement:

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

378 (ii) An agency that has been issued a binding,
379 valid court order mandating that a particular source or provider
380 must be used for the required service must include a copy of the
381 applicable court order in all future sole source contract reviews
382 for the particular personal or professional service referenced in
383 the court order.

384 (iii) Any agency alleging to have a sole source
385 for any personal or professional service, other than those
386 exempted under paragraph (f) of this subsection (2) and subsection
387 (8), shall publish on the procurement portal website established



388 by Sections 25-53-151 and 27-104-165, for at least fourteen (14)
389 days, the terms of the proposed contract for those services. In
390 addition, the publication shall include, but is not limited to,
391 the following information:

392 1. The personal or professional service
393 offered in the contract;

394 2. An explanation of why the personal or
395 professional service is the only one that can meet the needs of
396 the agency;

397 3. An explanation of why the source is the
398 only person or entity that can provide the required personal or
399 professional service;

400 4. An explanation of why the amount to be
401 expended for the personal or professional service is reasonable;
402 and

403 5. The efforts that the agency went through
404 to obtain the best possible price for the personal or professional
405 service.

406 (iv) If any person or entity objects and proposes
407 that the personal or professional service published under
408 subparagraph (iii) of this paragraph (o) is not a sole source
409 service and can be provided by another person or entity, then the
410 objecting person or entity shall notify the Public Procurement
411 Review Board and the agency that published the proposed sole



412 source contract with a detailed explanation of why the personal or
413 professional service is not a sole source service.

414 (v) 1. If the agency determines after review that
415 the personal or professional service in the proposed sole source
416 contract can be provided by another person or entity, then the
417 agency must withdraw the sole source contract publication from the
418 procurement portal website and submit the procurement of the
419 personal or professional service to an advertised competitive bid
420 or selection process.

421 2. If the agency determines after review that
422 there is only one (1) source for the required personal or
423 professional service, then the agency may appeal to the Public
424 Procurement Review Board. The agency has the burden of proving
425 that the personal or professional service is only provided by one
426 (1) source.

427 3. If the Public Procurement Review Board has
428 any reasonable doubt as to whether the personal or professional
429 service can only be provided by one (1) source, then the agency
430 must submit the procurement of the personal or professional
431 service to an advertised competitive bid or selection process. No
432 action taken by the Public Procurement Review Board in this appeal
433 process shall be valid unless approved by a majority of the
434 members of the Public Procurement Review Board present and voting.

435 (vi) The Public Procurement Review Board shall
436 prepare and submit a quarterly report to the House of



437 Representatives and Senate Accountability, Efficiency and
438 Transparency Committees that details the sole source contracts
439 presented to the Public Procurement Review Board and the reasons
440 that the Public Procurement Review Board approved or rejected each
441 contract. These quarterly reports shall also include the
442 documentation and memoranda required in subsection (4) of this
443 section. An agency that submitted a sole source contract shall be
444 prepared to explain the sole source contract to each committee by
445 December 15 of each year upon request by the committee;

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

448 (3) All submissions shall be made sufficiently in advance of
449 each monthly meeting of the Public Procurement Review Board as
450 prescribed by the Public Procurement Review Board. If the Public
451 Procurement Review Board rejects any contract submitted for review
452 or approval, the Public Procurement Review Board shall clearly set
453 out the reasons for its action, including, but not limited to, the
454 policy that the agency has violated in its submitted contract and
455 any corrective actions that the agency may take to amend the
456 contract to comply with the rules and regulations of the Public
457 Procurement Review Board.

458 (4) All sole source contracts for personal and professional
459 services awarded by state agencies, other than those exempted
460 under Section 27-104-7(2)(f) and (8), whether approved by an
461 agency head or the Public Procurement Review Board, shall contain



462 in the procurement file a written determination for the approval,
463 using a request form furnished by the Public Procurement Review
464 Board. The written determination shall document the basis for the
465 determination, including any market analysis conducted in order to
466 ensure that the service required was practicably available from
467 only one (1) source. A memorandum shall accompany the request
468 form and address the following four (4) points:

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

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

473 (c) Explanation of why the price is considered
474 reasonable; and

475 (d) Description of the efforts that were made to
476 conduct a noncompetitive negotiation to get the best possible
477 price for the taxpayers.

478 (5) In conjunction with the State Personnel Board, the
479 Public Procurement Review Board shall develop and promulgate rules
480 and regulations to define the allowable legal relationship between
481 contract employees and the contracting departments, agencies and
482 institutions of state government under the jurisdiction of the
483 State Personnel Board, in compliance with the applicable rules and
484 regulations of the federal Internal Revenue Service (IRS) for
485 federal employment tax purposes. Under these regulations, the
486 usual common law rules are applicable to determine and require



487 that such worker is an independent contractor and not an employee,
488 requiring evidence of lawful behavioral control, lawful financial
489 control and lawful relationship of the parties. Any state
490 department, agency or institution shall only be authorized to
491 contract for personnel services in compliance with those
492 regulations.

493 (6) No member of the Public Procurement Review Board shall
494 use his or her official authority or influence to coerce, by
495 threat of discharge from employment, or otherwise, the purchase of
496 commodities, the contracting for personal or professional
497 services, or the contracting for public construction under this
498 chapter.

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

502 (8) Nothing in this section shall impair or limit the
503 authority of the Board of Trustees of the Public Employees'
504 Retirement System to enter into any personal or professional
505 services contracts directly related to their constitutional
506 obligation to manage the trust funds, including, but not limited
507 to, actuarial, custodial banks, cash management, investment
508 consultant and investment management contracts. Nothing in this
509 section shall impair or limit the authority of the State Treasurer
510 to enter into any personal or professional services contracts
511 involving the management of trust funds, including, but not



512 limited to, actuarial, custodial banks, cash management,
513 investment consultant and investment management contracts.

514 (9) Through December 31, 2024, the provisions of this
515 section related to rental agreements or leasing of real property
516 for the purpose of conducting agency business shall not apply to
517 the Office of Workforce Development created in Section 37-153-7.

518 **SECTION 3.** This act shall take effect and be in force from
519 and after July 1, 2024.

