

By: Senator(s) Bryan

To: Accountability,
Efficiency, Transparency

SENATE BILL NO. 2810

1 AN ACT TO AMEND SECTION 27-104-7, MISSISSIPPI CODE OF 1972,
2 TO EXTEND THE EXEMPTION FROM THE PUBLIC PROCUREMENT REVIEW BOARD
3 CERTAIN CONTRACTS ENTERED INTO BY THE COORDINATOR OF MENTAL HEALTH
4 ACCESSIBILITY UNTIL 2027; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 27-104-7, Mississippi Code of 1972, is
7 amended as follows:

8 27-104-7. (1) (a) There is created the Public Procurement
9 Review Board, which shall be reconstituted on January 1, 2018, and
10 shall be composed of the following members:

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

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

15 (iii) The Executive Director of the Department of
16 Finance and Administration, serving as an ex officio and nonvoting
17 member.

18 (b) The initial terms of each appointee shall be as
19 follows:



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

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

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

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

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

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

34 (c) When appointing members to the Public Procurement
35 Review Board, the Governor and Lieutenant Governor shall take into
36 consideration persons who possess at least five (5) years of
37 management experience in general business, health care or finance
38 for an organization, corporation or other public or private
39 entity. Any person, or any employee or owner of a company, who
40 receives any grants, procurements or contracts that are subject to
41 approval under this section shall not be appointed to the Public
42 Procurement Review Board. Any person, or any employee or owner of
43 a company, who is a principal of the source providing a personal
44 or professional service shall not be appointed to the Public



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

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

54 (e) The members of the Public Procurement Review Board
55 shall elect a chair from among the membership, and he or she shall
56 preside over the meetings of the board. The board shall annually
57 elect a vice chair, who shall serve in the absence of the chair.
58 No business shall be transacted, including adoption of rules of
59 procedure, without the presence of a quorum of the board. Three
60 (3) members shall be a quorum. No action shall be valid unless
61 approved by a majority of the members present and voting, entered
62 upon the minutes of the board and signed by the chair. Necessary
63 clerical and administrative support for the board shall be
64 provided by the Department of Finance and Administration. Minutes
65 shall be kept of the proceedings of each meeting, copies of which
66 shall be filed on a monthly basis with the chairs of the
67 Accountability, Efficiency and Transparency Committees of the
68 Senate and House of Representatives and the chairs of the



69 Appropriations Committees of the Senate and House of
70 Representatives.

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

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

77 (b) Adopt regulations governing the approval of
78 contracts let for the construction and maintenance of state
79 buildings and other state facilities as well as related contracts
80 for architectural and engineering services.

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

85 (c) Adopt regulations governing any lease or rental
86 agreement by any state agency or department, including any state
87 agency financed entirely by federal funds, for space outside the
88 buildings under the jurisdiction of the Department of Finance and
89 Administration. These regulations shall require each agency
90 requesting to lease such space to provide the following
91 information that shall be published by the Department of Finance
92 and Administration on its website: the agency to lease the space;
93 the terms of the lease; the approximate square feet to be leased;



94 the use for the space; a description of a suitable space; the
95 general location desired for the leased space; the contact
96 information for a person from the agency; the deadline date for
97 the agency to have received a lease proposal; any other specific
98 terms or conditions of the agency; and any other information
99 deemed appropriate by the Division of Real Property Management of
100 the Department of Finance and Administration or the Public
101 Procurement Review Board. The information shall be provided
102 sufficiently in advance of the time the space is needed to allow
103 the Division of Real Property Management of the Department of
104 Finance and Administration to review and preapprove the lease
105 before the time for advertisement begins;

106 (d) Adopt, in its discretion, regulations to set aside
107 at least five percent (5%) of anticipated annual expenditures for
108 the purchase of commodities from minority businesses; however, all
109 such set-aside purchases shall comply with all purchasing
110 regulations promulgated by the department and shall be subject to
111 all bid requirements. Set-aside purchases for which competitive
112 bids are required shall be made from the lowest and best minority
113 business bidder; however, if no minority bid is available or if
114 the minority bid is more than two percent (2%) higher than the
115 lowest bid, then bids shall be accepted and awarded to the lowest
116 and best bidder. However, the provisions in this paragraph shall
117 not be construed to prohibit the rejection of a bid when only one
118 (1) bid is received. Such rejection shall be placed in the



119 minutes. For the purposes of this paragraph, the term "minority
120 business" means a business which is owned by a person who is a
121 citizen or lawful permanent resident of the United States and who
122 is:

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

125 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,
126 Central or South American, or other Spanish or Portuguese culture
127 or origin regardless of race;

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

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

133 (v) Female;

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

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



144 form of consulting, policy analysis, public relations, marketing,
145 public affairs, legislative advocacy services or any other
146 contract that the board deems appropriate for oversight, with the
147 exception of:

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

151 2. Any personal service contracts entered
152 into for computer or information technology-related services
153 governed by the Mississippi Department of Information Technology
154 Services;

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

157 4. Any personal service contracts entered
158 into by the Mississippi Department of Transportation;

159 5. Any personal service contracts entered
160 into by the Department of Human Services through June 30, 2019,
161 which the Executive Director of the Department of Human Services
162 determines would be useful in establishing and operating the
163 Department of Child Protection Services;

164 6. Any personal service contracts entered
165 into by the Department of Child Protection Services through June
166 30, 2019;



167 7. Any contracts for entertainers and/or
168 performers at the Mississippi State Fairgrounds entered into by
169 the Mississippi Fair Commission;

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

173 9. Any contract entered into by the
174 Department of Public Safety for service on specialized equipment
175 and/or software required for the operation of such specialized
176 equipment for use by the Office of Forensics Laboratories;

177 10. Any personal or professional service
178 contract entered into by the Mississippi Department of Health or
179 the Department of Revenue solely in connection with their
180 respective responsibilities under the Mississippi Medical Cannabis
181 Act from February 2, 2022, through June 30, 2026;

182 11. Any contract for attorney, accountant,
183 actuary auditor, architect, engineer, anatomical pathologist, or
184 utility rate expert services;

185 12. Any personal service contracts approved
186 by the Executive Director of the Department of Finance and
187 Administration and entered into by the Coordinator of Mental
188 Health Accessibility through June 30, * * * 2027;

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



192 Associations Infrastructure Grant Program through June 30, 2026;
193 and

194 14. And any personal or professional services
195 contract entered into by the Mississippi Department of
196 Environmental Quality in carrying out its responsibilities under
197 the Mississippi Municipality and County Water Infrastructure Grant
198 Program Act of 2022, through June 30, 2026.

199 Any such rules and regulations shall provide for maintaining
200 continuous internal audit covering the activities of such agency
201 affecting its revenue and expenditures as required under Section
202 7-7-3(6) (d). Any rules and regulation changes related to personal
203 and professional services contracts that the Public Procurement
204 Review Board may propose shall be submitted to the Chairs of the
205 Accountability, Efficiency and Transparency Committees of the
206 Senate and House of Representatives and the Chairs of the
207 Appropriation Committees of the Senate and House of
208 Representatives at least fifteen (15) days before the board votes
209 on the proposed changes, and those rules and regulation changes,
210 if adopted, shall be promulgated in accordance with the
211 Mississippi Administrative Procedures Act.

212 (ii) From and after July 1, 2024, the Public
213 Procurement Review Board shall promulgate rules and regulations
214 that require the Department of Finance and Administration to
215 conduct personal and professional services solicitations as
216 provided in subparagraph (i) of this paragraph for those services



217 in excess of Seventy-five Thousand Dollars (\$75,000.00) for the
218 Department of Marine Resources, the Department of Wildlife,
219 Fisheries and Parks, the Mississippi Emergency Management Agency
220 and the Mississippi Development Authority, with assistance to be
221 provided from these entities. Any powers that have been conferred
222 upon agencies in order to comply with the provisions of this
223 section for personal and professional services solicitations shall
224 be conferred upon the Department of Finance and Administration to
225 conduct personal and professional services solicitations for the
226 Department of Marine Resources, the Department of Wildlife,
227 Fisheries and Parks, the Mississippi Emergency Management Agency
228 and the Mississippi Development Authority for those services in
229 excess of Seventy-five Thousand Dollars (\$75,000.00). The
230 Department of Finance and Administration shall make any
231 submissions that are required to be made by other agencies to the
232 Public Procurement Review Board for the Department of Marine
233 Resources, the Department of Wildlife, Fisheries and Parks, the
234 Mississippi Emergency Management Agency and the Mississippi
235 Development Authority.

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

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



242 (h) Develop mandatory standards with respect to
243 contractual services personnel that require invitations for public
244 bid, requests for proposals, record keeping and financial
245 responsibility of contractors. The Public Procurement Review
246 Board shall, unless exempted under this paragraph (h) or under
247 paragraph (i) or (o) of this subsection (2), require the agency
248 involved to submit the procurement to a competitive procurement
249 process, and may reserve the right to reject any or all resulting
250 procurements;

251 (i) Prescribe certain circumstances by which agency
252 heads may enter into contracts for personal and professional
253 services without receiving prior approval from the Public
254 Procurement Review Board. The Public Procurement Review Board may
255 establish a preapproved list of providers of various personal and
256 professional services for set prices with which state agencies may
257 contract without bidding or prior approval from the board;

258 (i) Agency requirements may be fulfilled by
259 procuring services performed incident to the state's own programs.
260 The agency head shall determine in writing whether the price
261 represents a fair market value for the services. When the
262 procurements are made from other governmental entities, the
263 private sector need not be solicited; however, these contracts
264 shall still be submitted for approval to the Public Procurement
265 Review Board.



266 (ii) Contracts between two (2) state agencies,
267 both under Public Procurement Review Board purview, shall not
268 require Public Procurement Review Board approval. However, the
269 contracts shall still be entered into the enterprise resource
270 planning system;

271 (j) Provide standards for the issuance of requests for
272 proposals, the evaluation of proposals received, consideration of
273 costs and quality of services proposed, contract negotiations, the
274 administrative monitoring of contract performance by the agency
275 and successful steps in terminating a contract;

276 (k) Present recommendations for governmental
277 privatization and to evaluate privatization proposals submitted by
278 any state agency;

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

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

289 (n) Prepare an annual report to the Legislature
290 concerning the issuance of personal and professional services



291 contracts during the previous year, collecting any necessary
292 information from state agencies in making such report;

293 (o) Develop and implement the following standards and
294 procedures for the approval of any sole source contract for
295 personal and professional services regardless of the value of the
296 procurement:

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

300 (ii) An agency that has been issued a binding,
301 valid court order mandating that a particular source or provider
302 must be used for the required service must include a copy of the
303 applicable court order in all future sole source contract reviews
304 for the particular personal or professional service referenced in
305 the court order.

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

314 1. The personal or professional service
315 offered in the contract;



316 2. An explanation of why the personal or
317 professional service is the only one that can meet the needs of
318 the agency;

319 3. An explanation of why the source is the
320 only person or entity that can provide the required personal or
321 professional service;

322 4. An explanation of why the amount to be
323 expended for the personal or professional service is reasonable;
324 and

325 5. The efforts that the agency went through
326 to obtain the best possible price for the personal or professional
327 service.

328 (iv) If any person or entity objects and proposes
329 that the personal or professional service published under
330 subparagraph (iii) of this paragraph (o) is not a sole source
331 service and can be provided by another person or entity, then the
332 objecting person or entity shall notify the Public Procurement
333 Review Board and the agency that published the proposed sole
334 source contract with a detailed explanation of why the personal or
335 professional service is not a sole source service.

336 (v) 1. If the agency determines after review that
337 the personal or professional service in the proposed sole source
338 contract can be provided by another person or entity, then the
339 agency must withdraw the sole source contract publication from the
340 procurement portal website and submit the procurement of the



341 personal or professional service to an advertised competitive bid
342 or selection process.

343 2. If the agency determines after review that
344 there is only one (1) source for the required personal or
345 professional service, then the agency may appeal to the Public
346 Procurement Review Board. The agency has the burden of proving
347 that the personal or professional service is only provided by one
348 (1) source.

349 3. If the Public Procurement Review Board has
350 any reasonable doubt as to whether the personal or professional
351 service can only be provided by one (1) source, then the agency
352 must submit the procurement of the personal or professional
353 service to an advertised competitive bid or selection process. No
354 action taken by the Public Procurement Review Board in this appeal
355 process shall be valid unless approved by a majority of the
356 members of the Public Procurement Review Board present and voting.

357 (vi) The Public Procurement Review Board shall
358 prepare and submit a quarterly report to the House of
359 Representatives and Senate Accountability, Efficiency and
360 Transparency Committees that details the sole source contracts
361 presented to the Public Procurement Review Board and the reasons
362 that the Public Procurement Review Board approved or rejected each
363 contract. These quarterly reports shall also include the
364 documentation and memoranda required in subsection (4) of this
365 section. An agency that submitted a sole source contract shall be



366 prepared to explain the sole source contract to each committee by
367 December 15 of each year upon request by the committee;

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

370 (3) All submissions shall be made sufficiently in advance of
371 each monthly meeting of the Public Procurement Review Board as
372 prescribed by the Public Procurement Review Board. If the Public
373 Procurement Review Board rejects any contract submitted for review
374 or approval, the Public Procurement Review Board shall clearly set
375 out the reasons for its action, including, but not limited to, the
376 policy that the agency has violated in its submitted contract and
377 any corrective actions that the agency may take to amend the
378 contract to comply with the rules and regulations of the Public
379 Procurement Review Board.

380 (4) All sole source contracts for personal and professional
381 services awarded by state agencies, other than those exempted
382 under Section 27-104-7(2)(f) and (8), whether approved by an
383 agency head or the Public Procurement Review Board, shall contain
384 in the procurement file a written determination for the approval,
385 using a request form furnished by the Public Procurement Review
386 Board. The written determination shall document the basis for the
387 determination, including any market analysis conducted in order to
388 ensure that the service required was practicably available from
389 only one (1) source. A memorandum shall accompany the request
390 form and address the following four (4) points:



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

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

395 (c) Explanation of why the price is considered
396 reasonable; and

397 (d) Description of the efforts that were made to
398 conduct a noncompetitive negotiation to get the best possible
399 price for the taxpayers.

400 (5) In conjunction with the State Personnel Board, the
401 Public Procurement Review Board shall develop and promulgate rules
402 and regulations to define the allowable legal relationship between
403 contract employees and the contracting departments, agencies and
404 institutions of state government under the jurisdiction of the
405 State Personnel Board, in compliance with the applicable rules and
406 regulations of the federal Internal Revenue Service (IRS) for
407 federal employment tax purposes. Under these regulations, the
408 usual common law rules are applicable to determine and require
409 that such worker is an independent contractor and not an employee,
410 requiring evidence of lawful behavioral control, lawful financial
411 control and lawful relationship of the parties. Any state
412 department, agency or institution shall only be authorized to
413 contract for personnel services in compliance with those
414 regulations.



415 (6) No member of the Public Procurement Review Board shall
416 use his or her official authority or influence to coerce, by
417 threat of discharge from employment, or otherwise, the purchase of
418 commodities, the contracting for personal or professional
419 services, or the contracting for public construction under this
420 chapter.

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

424 (8) Nothing in this section shall impair or limit the
425 authority of the Board of Trustees of the Public Employees'
426 Retirement System to enter into any personal or professional
427 services contracts directly related to their constitutional
428 obligation to manage the trust funds, including, but not limited
429 to, actuarial, custodial banks, cash management, investment
430 consultant and investment management contracts. Nothing in this
431 section shall impair or limit the authority of the State Treasurer
432 to enter into any personal or professional services contracts
433 involving the management of trust funds, including, but not
434 limited to, actuarial, custodial banks, cash management,
435 investment consultant and investment management contracts.

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



440 **SECTION 2.** This act shall take effect and be in force from
441 and after July 1, 2024.

