

By: Senator(s) Flowers, Brown

To: Accountability,  
Efficiency, Transparency

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2736

1 AN ACT TO CREATE NEW SECTION 25-9-120.1, MISSISSIPPI CODE OF  
2 1972, TO PROHIBIT STATE AGENCIES FROM USING RADIO AND TELEVISION  
3 ADVERTISING TO PROMOTE AGENCY PROGRAMS, EXCEPT IN CERTAIN  
4 INSTANCES; TO AMEND SECTION 25-9-120, MISSISSIPPI CODE OF 1972, TO  
5 REQUIRE THE BIDDING OF AGENCY ADVERTISING CONTRACTS, AND TO  
6 PROVIDE A PROCEDURE FOR BIDDING CONTRACTS FOR TELEVISION AND RADIO  
7 ADVERTISING WHEN PROCURED WITH FEDERAL FUNDS; AND FOR RELATED  
8 PURPOSES.

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

10 **SECTION 1.** The following shall be codified as Section  
11 25-9-120.1, Mississippi Code of 1972:

12 25-9-120.1. (1) No state agency, as defined in Section  
13 25-9-107(d), shall expend any appropriated funds for the purpose  
14 of advertising any program of the agency on radio or television.  
15 For purposes of this section, "advertising" shall mean the  
16 purchase of promotional time the purpose of which is to promote  
17 agency programs and activities. Any contract entered into between  
18 an agency and a radio or television broadcaster, or any agent  
19 hired by the agency, to buy radio or television time for  
20 advertising shall be void and unenforceable.

21 (2) The Department of Finance and Administration shall not  
22 issue any warrant to pay for any radio or television advertising  
23 described herein.

24 (3) The provision of this section shall not apply in cases  
25 wherein the agency has received grants from the United States  
26 government the terms of which require that the grant recipient use  
27 radio or television advertising to assist in accomplishing the  
28 purposes of the grant. Any agency wishing to procure advertising  
29 for such purposes must comply with the provisions of Section



30 25-9-120. Any agency using federal funds to procure radio or  
31 television advertising shall, upon requesting the issuance of a  
32 warrant through the Department of Finance and Administration to  
33 pay for such services, provide the Department of Finance and  
34 Administration with all necessary documentation supporting the  
35 purchase, including any federal requirement that the agency use  
36 radio or television advertising, and all procedures followed to  
37 comply with a competitive procurement.

38 (4) This section shall not be applicable to any agency that  
39 obtains public service announcements from radio and television  
40 broadcasters at no cost to the agency and shall not apply to  
41 agency use of services offered by the Mississippi Authority for  
42 Education Television.

43 (5) This section shall not apply to any state institution of  
44 higher learning or any community and junior college.

45 **SECTION 2.** Section 25-9-120, Mississippi Code of 1972, is  
46 amended as follows:

47 25-9-120. (1) Contract personnel, whether classified as  
48 contract workers or independent contractors shall not be deemed  
49 state service or nonstate service employees of the State of  
50 Mississippi, and shall not be eligible to participate in the  
51 Public Employees' Retirement System, or the State and School  
52 Employees Health Insurance Plan, nor be allowed credit for  
53 personal and sick leave and other leave benefits as employees of  
54 the State of Mississippi, notwithstanding Sections 25-3-91 through  
55 25-3-101; 25-9-101 through 25-9-151; 25-11-1 through 25-11-126;  
56 25-11-128 through 25-11-131; 25-15-1 through 25-15-23 and for the  
57 purpose set forth herein. Contract workers, i.e., contract  
58 personnel who do not meet the criteria of independent contractors,  
59 shall be subject to the provisions of Section 25-11-127.

60 (2) There is hereby created the Personal Service Contract  
61 Review Board, which shall be composed of the State Personnel  
62 Director, the Executive Director of the Department of Finance and



63 Administration, or his designee, the Commissioner of Corrections,  
64 or his designee, the Executive Director of the Mississippi  
65 Department of Wildlife, Fisheries and Parks, or his designee, and  
66 the Executive Director of the Department of Environmental Quality,  
67 or his designee. The State Personnel Director shall be chairman  
68 and shall preside over the meetings of the board. The board shall  
69 annually elect a vice chairman, who shall serve in the absence of  
70 the chairman. No business shall be transacted, including adoption  
71 of rules of procedure, without the presence of a quorum of the  
72 board. Three (3) members shall be a quorum. No action shall be  
73 valid unless approved by the chairman and two (2) other of those  
74 members present and voting, entered upon the minutes of the board  
75 and signed by the chairman. Necessary clerical and administrative  
76 support for the board shall be provided by the State Personnel  
77 Board. Minutes shall be kept of the proceedings of each meeting,  
78 copies of which shall be filed on a monthly basis with the  
79 Legislative Budget Office.

80 (3) The Personal Service Contract Review Board shall have  
81 the following powers and responsibilities:

82 (a) Promulgate rules and regulations governing the  
83 solicitation and selection of contractual services personnel  
84 including personal and professional services contracts for any  
85 form of consulting, policy analysis, public relations, marketing,  
86 public affairs, legislative advocacy services or any other  
87 contract that the board deems appropriate for oversight, with the  
88 exception of any personal service contracts entered into for  
89 computer or information technology-related services governed by  
90 the Mississippi Department of Information Technology  
91 Services, \* \* \* and any contract for attorney, accountant,  
92 auditor, physician, dentist, architect, engineer, veterinarian and  
93 utility rate expert services. Any such rules and regulations  
94 shall provide for maintaining continuous internal audit covering  
95 the activities of such agency affecting its revenue and



96 expenditures as required under Section 7-7-3(6)(d), Mississippi  
97 Code of 1972;

98 (b) Approve all personal and professional services  
99 contracts involving the expenditures of funds in excess of One  
100 Hundred Thousand Dollars (\$100,000.00);

101 (c) Develop standards with respect to contractual  
102 services personnel which require invitations for public bid,  
103 requests for proposals, record keeping and financial  
104 responsibility of contractors. The Personal Service Contract  
105 Review Board may, in its discretion, require the agency involved  
106 to advertise such contract for public bid, and may reserve the  
107 right to reject any or all bids;

108 (d) Prescribe certain circumstances whereby agency  
109 heads may enter into contracts for personal and professional  
110 services without receiving prior approval from the Personal  
111 Service Contract Review Board. The Personal Service Contract  
112 Review Board may establish a preapproved list of providers of  
113 various personal and professional services for set prices with  
114 which state agencies may contract without bidding or prior  
115 approval from the board;

116 (e) To provide standards for the issuance of requests  
117 for proposals, the evaluation of proposals received, consideration  
118 of costs and quality of services proposed, contract negotiations,  
119 the administrative monitoring of contract performance by the  
120 agency and successful steps in terminating a contract;

121 (f) To present recommendations for governmental  
122 privatization and to evaluate privatization proposals submitted by  
123 any state agency;

124 (g) To authorize personal and professional service  
125 contracts to be effective for more than one (1) year provided a  
126 funding condition is included in any such multiple year contract,  
127 except the State Board of Education, which shall have the  
128 authority to enter into contractual agreements for student



129 assessment for a period up to ten (10) years. The State Board of  
130 Education shall procure these services in accordance with the  
131 Personal Service Contract Review Board procurement regulations;

132 (h) To request the State Auditor to conduct a  
133 performance audit on any personal or professional service  
134 contract;

135 (i) Prepare an annual report to the Legislature  
136 concerning the issuance of personal service contracts during the  
137 previous year, collecting any necessary information from state  
138 agencies in making such report;

139 (j) (i) Promulgate rules and regulations for the  
140 procurement of advertising by state agencies. For purposes of  
141 this paragraph, the term "advertising" shall include state agency  
142 purchases of promotional space or time with appropriated funds  
143 from newspapers, radio and television advertising described in  
144 Section 1(3) of this act, billboards, pamphlets, brochures,  
145 flyers, professional publications, magazines, yellow pages and  
146 telephone directories, Internet or other similar media, the  
147 purpose of which is to promote a program or other activity of an  
148 agency.

149 (ii) For purposes of this paragraph, advertising  
150 shall not include classified advertisements purchased in  
151 newspapers or other media announcing employment opportunities or  
152 the placement of legal notices in newspapers of general  
153 circulation.

154 (iii) Regulations promulgated under this paragraph  
155 shall be applicable to all advertising purchases made by state  
156 agencies without regard to the value of the purchase. The board  
157 shall review all proposed state agency advertising contracts prior  
158 to their becoming effective to ensure compliance with board  
159 regulations and this paragraph.



160                   (iv) This paragraph shall not apply to any state  
161 institution of higher learning or any community and junior  
162 college.

163           (4) No member of the Personal Service Contract Review Board  
164 shall use his official authority or influence to coerce, by threat  
165 of discharge from employment, or otherwise, the purchase of  
166 commodities or the contracting for personal or professional  
167 services under this section.

168           **SECTION 3.** This act shall take effect and be in force from  
169 and after July 1, 2012.

