

By: Senator(s) Bryan

To: Public Health and
Welfare; Accountability,
Efficiency, Transparency

SENATE BILL NO. 2021
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 41-20-3, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT THE COORDINATOR OF MENTAL HEALTH ACCESSIBILITY SHALL
3 BE HOUSED WITHIN THE DEPARTMENT OF FINANCE AND ADMINISTRATION; TO
4 PROVIDE THAT ALL EXPENSES OF THE COORDINATOR SHALL BE PAID OUT OF
5 FUNDS APPROPRIATED TO THE DEPARTMENT OF FINANCE AND
6 ADMINISTRATION; TO AMEND SECTION 41-20-7, MISSISSIPPI CODE OF
7 1972, TO PROVIDE THAT THE COORDINATOR MAY HIRE STAFF SUBJECT TO
8 THE APPROVAL OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF
9 FINANCE AND ADMINISTRATION; TO AMEND SECTION 27-104-7, MISSISSIPPI
10 CODE OF 1972, TO EXEMPT ANY PERSONAL SERVICE CONTRACTS ENTERED
11 INTO BY THE COORDINATOR OF MENTAL HEALTH ACCESSIBILITY THROUGH
12 JUNE 30, 2022, FROM THE RULES AND REGULATIONS OF THE PERSONAL
13 SERVICE CONTRACT REVIEW BOARD; AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** Section 41-20-3, Mississippi Code of 1972, is
16 amended as follows:

17 41-20-3. (1) There is created within the Department of
18 Finance and Administration a position to be known as the
19 Coordinator of Mental Health Accessibility. The coordinator shall
20 be appointed by the Executive Director of the Department of
21 Finance and Administration and shall serve at the will and
22 pleasure of the executive director. The executive director shall
23 appoint the coordinator within thirty (30) days from July 8, 2020.



(2) The coordinator must have a master's degree, doctoral degree or juris doctorate from an accredited institution of higher learning and have not less than five (5) years of professional experience.

(3) The coordinator shall be housed at the * * * Department of Finance and Administration. All of the expenses of the coordinator, including the coordinator's salary and the salaries of any staff of the coordinator, shall be paid out of funds appropriated to the * * * Department of Finance and Administration.

SECTION 2. Section 41-20-7, Mississippi Code of 1972, is amended as follows:

41-20-7. In fulfilling the responsibilities of this chapter, the coordinator may, subject to federal law:

(a) Hire staff needed for the performance of his or her duties under this chapter, subject to the approval of the * * * Executive Director of the Department of Finance and Administration and provided that funds are specifically appropriated for that purpose. * * *

(b) Enter any part of the mental health system, including any facility or building used to provide mental health services.

(c) Interview, on a confidential basis or otherwise, persons and employees in the mental health system.



(d) Access services, documents, records, programs and materials as necessary to assess the status of the mental health system.

(e) Recommend changes to any portion of the mental health system either in the coordinator's status reports or to the board(s) of supervisors or regional commissions or to the State Department of Mental Health or as otherwise determined to be necessary by the coordinator.

(f) Develop and implement a plan to provide access to mental health services in any county or geographic area within a county, where services are determined to be inadequate, if required by Section 41-20-9.

(g) Communicate with any governmental entity as is necessary to fulfill the coordinator's duties under this chapter.

(h) Perform any other actions as the coordinator deems necessary to fulfill the coordinator's duties under this chapter.

SECTION 3. Section 27-104-7, Mississippi Code of 1972, is amended as follows:

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

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

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



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

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

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

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

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

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

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

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

(c) When appointing members to the Public Procurement Review Board, the Governor and Lieutenant Governor shall take into consideration persons who possess at least five (5) years of management experience in general business, health care or finance for an organization, corporation or other public or private entity. Any person, or any employee or owner of a company, who



receives any grants, procurements or contracts that are subject to approval under this section shall not be appointed to the Public Procurement Review Board. Any person, or any employee or owner of a company, who is a principal of the source providing a personal or professional service shall not be appointed to the Public Procurement Review Board if the principal owns or controls a greater than five percent (5%) interest or has an ownership value of One Million Dollars (\$1,000,000.00) in the source's business, whichever is smaller. No member shall be an officer or employee of the State of Mississippi while serving as a voting member on the Public Procurement Review Board.

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

(e) The members of the Public Procurement Review Board shall elect a chair from among the membership, and he or she shall preside over the meetings of the board. The board shall annually elect a vice chair, who shall serve in the absence of the chair. No business shall be transacted, including adoption of rules of procedure, without the presence of a quorum of the board. Three (3) members shall be a quorum. No action shall be valid unless approved by a majority of the members present and voting, entered upon the minutes of the board and signed by the chair. Necessary clerical and administrative support for the board shall be provided by the Department of Finance and Administration. Minutes



shall be kept of the proceedings of each meeting, copies of which shall be filed on a monthly basis with the chairs of the Accountability, Efficiency and Transparency Committees of the Senate and House of Representatives and the chairs of the Appropriations Committees of the Senate and House of Representatives.

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

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

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

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

(c) Adopt regulations governing any lease or rental agreement by any state agency or department, including any state agency financed entirely by federal funds, for space outside the buildings under the jurisdiction of the Department of Finance and Administration. These regulations shall require each agency



requesting to lease such space to provide the following information that shall be published by the Department of Finance and Administration on its website: the agency to lease the space; the terms of the lease; the approximate square feet to be leased; the use for the space; a description of a suitable space; the general location desired for the leased space; the contact information for a person from the agency; the deadline date for the agency to have received a lease proposal; any other specific terms or conditions of the agency; and any other information deemed appropriate by the Division of Real Property Management of the Department of Finance and Administration or the Public Procurement Review Board. The information shall be provided sufficiently in advance of the time the space is needed to allow the Division of Real Property Management of the Department of Finance and Administration to review and preapprove the lease before the time for advertisement begins;

(d) Adopt, in its discretion, regulations to set aside at least five percent (5%) of anticipated annual expenditures for the purchase of commodities from minority businesses; however, all such set-aside purchases shall comply with all purchasing regulations promulgated by the department and shall be subject to all bid requirements. Set-aside purchases for which competitive bids are required shall be made from the lowest and best minority business bidder; however, if no minority bid is available or if the minority bid is more than two percent (2%) higher than the



lowest bid, then bids shall be accepted and awarded to the lowest and best bidder. However, the provisions in this paragraph shall not be construed to prohibit the rejection of a bid when only one (1) bid is received. Such rejection shall be placed in the minutes. For the purposes of this paragraph, the term "minority business" means a business which is owned by a person who is a citizen or lawful permanent resident of the United States and who is:

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

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

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

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

(v) Female;

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



198 (f) Promulgate rules and regulations governing the
199 solicitation and selection of contractual services personnel
200 including personal and professional services contracts for any
201 form of consulting, policy analysis, public relations, marketing,
202 public affairs, legislative advocacy services or any other
203 contract that the board deems appropriate for oversight, with the
204 exception of any personal service contracts entered into by any
205 agency that employs only nonstate service employees as defined in
206 Section 25-9-107(c), any personal service contracts entered into
207 for computer or information technology-related services governed
208 by the Mississippi Department of Information Technology Services,
209 any personal service contracts entered into by the individual
210 state institutions of higher learning, any personal service
211 contracts entered into by the Mississippi Department of
212 Transportation, any personal service contracts entered into by the
213 Department of Human Services through June 30, 2019, which the
214 Executive Director of the Department of Human Services determines
215 would be useful in establishing and operating the Department of
216 Child Protection Services, any personal service contracts entered
217 into by the Department of Child Protection Services through June
218 30, 2019, any contracts for entertainers and/or performers at the
219 Mississippi State Fairgrounds entered into by the Mississippi Fair
220 Commission, any contracts entered into by the Department of
221 Finance and Administration when procuring aircraft maintenance,
222 parts, equipment and/or services, and any contract for attorney,



223 accountant, actuary auditor, architect, engineer, * * * utility
224 rate expert services, and any personal service contracts approved
225 by the Executive Director of the Department of Finance and
226 Administration and entered into by the Coordinator of Mental
227 Health Accessibility through June 30, 2022. Any such rules and
228 regulations shall provide for maintaining continuous internal
229 audit covering the activities of such agency affecting its revenue
230 and expenditures as required under Section 7-7-3(6)(d). Any rules
231 and regulation changes related to personal and professional
232 services contracts that the Public Procurement Review Board may
233 propose shall be submitted to the Chairs of the Accountability,
234 Efficiency and Transparency Committees of the Senate and House of
235 Representatives and the Chairs of the Appropriation Committees of
236 the Senate and House of Representatives at least fifteen (15) days
237 before the board votes on the proposed changes, and those rules
238 and regulation changes, if adopted, shall be promulgated in
239 accordance with the Mississippi Administrative Procedures Act;

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

244 (h) Develop mandatory standards with respect to
245 contractual services personnel that require invitations for public
246 bid, requests for proposals, record keeping and financial
247 responsibility of contractors. The Public Procurement Review



Board shall, unless exempted under this paragraph (h) or under paragraph (i) or (o) of this subsection (2), require the agency involved to submit the procurement to a competitive procurement process, and may reserve the right to reject any or all resulting procurements;

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

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

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



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

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

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

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

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

(o) Develop and implement the following standards and procedures for the approval of any sole source contract for



personal and professional services regardless of the value of the procurement:

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

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

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

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

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



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

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

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

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

338 (v) 1. If the agency determines after review that
339 the personal or professional service in the proposed sole source
340 contract can be provided by another person or entity, then the
341 agency must withdraw the sole source contract publication from the
342 procurement portal website and submit the procurement of the
343 personal or professional service to an advertised competitive bid
344 or selection process.



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

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

359 (vi) The Public Procurement Review Board shall
360 prepare and submit a quarterly report to the House of
361 Representatives and Senate Accountability, Efficiency and
362 Transparency Committees that details the sole source contracts
363 presented to the Public Procurement Review Board and the reasons
364 that the Public Procurement Review Board approved or rejected each
365 contract. These quarterly reports shall also include the
366 documentation and memoranda required in subsection (4) of this
367 section. An agency that submitted a sole source contract shall be
368 prepared to explain the sole source contract to each committee by
369 December 15 of each year upon request by the committee.



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

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

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

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



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

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

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

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

(6) No member of the Public Procurement Review Board shall use his or her official authority or influence to coerce, by threat of discharge from employment, or otherwise, the purchase of



commodities, the contracting for personal or professional services, or the contracting for public construction under this chapter.

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

(8) Nothing in this section shall impair or limit the authority of the Board of Trustees of the Public Employees' Retirement System to enter into any personal or professional services contracts directly related to their constitutional obligation to manage the trust funds, including, but not limited to, actuarial, custodial banks, cash management, investment consultant and investment management contracts.

(9) Notwithstanding the exemption of personal and professional services contracts entered into by the Department of Human Services and personal and professional services contracts entered into by the Department of Child Protection Services from the provisions of this section under subsection (2)(f), before the Department of Human Services or the Department of Child Protection Services may enter into a personal or professional service contract, the department(s) shall give notice of the proposed personal or professional service contract to the Public Procurement Review Board for any recommendations by the board. Upon receipt of the notice, the board shall post the notice on its website and on the procurement portal website established by



445 Sections 25-53-151 and 27-104-165. If the board does not respond
446 to the department(s) within seven (7) calendar days after
447 receiving the notice, the department(s) may enter the proposed
448 personal or professional service contract. If the board responds
449 to the department(s) within seven (7) calendar days, then the
450 board has seven (7) calendar days from the date of its initial
451 response to provide any additional recommendations. After the end
452 of the second seven-day period, the department(s) may enter the
453 proposed personal or professional service contract. The board is
454 not authorized to disapprove any proposed personal or professional
455 services contracts. This subsection shall stand repealed on July
456 1, 2022.

457 **SECTION 4.** This act shall take effect and be in force from
458 and after its passage.

