

By: Senator(s) Parker

To: Accountability,
Efficiency, Transparency

SENATE BILL NO. 2802

1 AN ACT TO BRING FORWARD SECTION 27-104-7, MISSISSIPPI CODE OF
2 1972, WHICH CREATES THE PUBLIC PROCUREMENT REVIEW BOARD, FOR
3 POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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



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

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

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

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

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

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



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

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



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

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

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

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

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

132 (v) Female;

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

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



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

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

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

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

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

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

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



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

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

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

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

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

184 12. Any personal service contracts approved
185 by the Executive Director of the Department of Finance and
186 Administration and entered into by the Coordinator of Mental
187 Health Accessibility through June 30, 2022;

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



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

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

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

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



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

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

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



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

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

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



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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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

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



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

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

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

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



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

