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Chapter No. 369
19/HR43/R1821CS
CST / LL

HOUSE BILL NO. 1204

Originated in House _____ Clerk

HOUSE BILL NO. 1204

AN ACT TO AMEND SECTION 25-61-5, MISSISSIPPI CODE OF 1972, TO REVISE THE MISSISSIPPI PUBLIC RECORDS ACT TO AUTHORIZE PUBLIC BODIES TO CONTINUE TO EXECUTE A CONTRACT IF A COURT HAS NOT RULED ON A PROTECTIVE ORDER WITHIN NINETY DAYS OF FILING; TO PROVIDE THAT THE CONTRACT MAY STILL BE PROTESTED AFTER EXECUTION; TO BRING FORWARD SECTION 25-61-9, MISSISSIPPI CODE OF 1972, FOR THE PURPOSE OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 25-61-5, Mississippi Code of 1972, is amended as follows:

25-61-5. (1) (a) Except as otherwise provided by Sections 25-61-9 and 25-61-11, all public records are hereby declared to be public property, and any person shall have the right to inspect, copy or mechanically reproduce or obtain a reproduction of any public record of a public body in accordance with reasonable written procedures adopted by the public body concerning the cost, time, place and method of access, and public notice of the procedures shall be given by the public body, or, if a public body has not adopted written procedures, the right to inspect, copy or mechanically reproduce or obtain a reproduction of a public record

of the public body shall be provided within one (1) working day after a written request for a public record is made. No public body shall adopt procedures which will authorize the public body to produce or deny production of a public record later than seven (7) working days from the date of the receipt of the request for the production of the record.

(b) If a public body is unable to produce a public record by the seventh working day after the request is made, the public body must provide a written explanation to the person making the request stating that the record requested will be produced and specifying with particularity why the records cannot be produced within the seven-day period. Unless there is mutual agreement of the parties, or the information requested is part of ongoing negotiations related to a request for competitive sealed proposals, in no event shall the date for the public body's production of the requested records be any later than fourteen (14) working days from the receipt by the public body of the original request. Production of competitive sealed proposals in accordance with requests made pursuant to this section shall be no later than seven (7) working days after the notice of intent to award is issued to the winning proposer. Persons making a request for production of competitive sealed proposals after the notice of intent to award is issued by the public body shall have a reasonable amount of time, but in no event less than seven (7) working days after the production of the competitive sealed

proposals, to protest the procurement or intended award prior to contract execution. However, in any instance where a person has filed for a protective order for a competitive sealed proposal and the court has not ruled on the protective order within ninety (90) days of filing, then the public body may proceed with awarding the contract without production of competitive sealed proposals and the contract may be protested after execution.

(2) If any public record contains material which is not exempted under this chapter, the public agency shall redact the exempted material and make the nonexempted material available for examination. Such public agency shall be entitled to charge a reasonable fee for the redaction of any exempted material, not to exceed the agency's actual cost.

(3) Denial by a public body of a request for access to or copies of public records under this chapter shall be in writing and shall contain a statement of the specific exemption relied upon by the public body for the denial. Each public body shall maintain a file of all denials of requests for public records. Public bodies shall be required to preserve such denials on file for not less than three (3) years from the date such denials are made. This file shall be made available for inspection or copying, or both, during regular office hours to any person upon written request.

(4) This section shall stand repealed on July 1, 2021.

SECTION 2. Section 25-61-9, Mississippi Code of 1972, is brought forward as follows:

25-61-9. (1) Records furnished to public bodies by third parties which contain trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction under this chapter until notice to third parties has been given, but the records shall be released no later than twenty-one (21) days from the date the third parties are given notice by the public body unless the third parties have filed in chancery court a petition seeking a protective order on or before the expiration of the twenty-one-day time period. Any party seeking the protective order shall give notice to the party requesting the information in accordance with the Mississippi Rules of Civil Procedure.

(2) If any public record which is held to be exempt from disclosure pursuant to this chapter contains material which is not exempt pursuant to this chapter, the public body shall separate the exempt material and make the nonexempt material available for examination or copying, or both, as provided for in this chapter.

(3) Trade secrets and confidential commercial and financial information of a proprietary nature developed by a college, university or public hospital under contract with a firm, business, partnership, association, corporation, individual or other like entity shall not be subject to inspection, examination, copying or reproduction under this chapter.

(4) Misappropriation of a trade secret shall be governed by the provisions of the Mississippi Uniform Trade Secrets Act, Sections 75-26-1 through 75-26-19.

(5) A waste minimization plan and any updates developed by generators and facility operators under the Mississippi Comprehensive Multimedia Waste Minimization Act of 1990 shall be retained at the facility and shall not be subject to inspection, examination, copying or reproduction under this chapter.

(6) Data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in Section 75-26-3, and data processing software produced by a public body which is sensitive must not be subject to inspection, copying or reproduction under this chapter.

As used in this subsection, "sensitive" means only those portions of data processing software, including the specifications and documentation, used to:

(a) Collect, process, store, and retrieve information which is exempt under this chapter.

(b) Control and direct access authorizations and security measures for automated systems.

(c) Collect, process, store, and retrieve information, disclosure of which would require a significant intrusion into the business of the public body.

(7) For all procurement contracts awarded by state agencies, the provisions of the contract which contain the commodities purchased or the personal or professional services provided, the unit prices contained within the procurement contracts, the overall price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information under this section, and shall be available for examination, copying or reproduction as provided for in this chapter. Any party seeking a protective order for a procurement contract awarded by state agencies shall give notice to and provide the reasons for the protective order to the party requesting the information in accordance with the Mississippi Rules of Civil Procedure. The notice and reasons for the protective order must be posted on the Mississippi procurement portal for a minimum of seven (7) days before filing the petition seeking the protective order in chancery court. Any party seeking a protective order in violation of this subsection may be barred by a state agency from submitting bids, proposals or qualifications for procurement for a period not to exceed five (5) years.

SECTION 3. This act shall take effect and be in force from and after July 1, 2019.

PASSED BY THE HOUSE OF REPRESENTATIVES
February 13, 2019

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 12, 2019

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

GOVERNOR

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