

**Joint Legislative Committee on Performance
Evaluation and Expenditure Review (PEER)**

Report to
the Mississippi Legislature



A Review of State Agencies' Use of Contract Workers

PEER reviewed agencies' expenditures for contract workers for fiscal years 2003 through 2005 to determine which state agencies use contract workers, the costs of such workers, and the type of oversight the state exercises over contract workers.

Concerning state agencies' utilization of contract workers, PEER found the following:

- From FY 2003 through FY 2005, fifty state agencies included in the state accounting system used contract workers. Gross wages for these workers totaled \$30.5 million in FY 2005.
- During FY 2005, eight state agencies accounted for 84% of contract worker gross wages, with each of these agencies exceeding \$1 million.
- Total gross wages for contract workers increased by \$16.2 million (113%) from FY 2003 to FY 2005.

Concerning oversight of contract workers and associated expenses, other than the requirement to have contracts exceeding \$100,000 approved by the Personal Service Contract Review Board, state agencies are subject to few limits or controls on their use of contract workers. Several categories of contracts are exempt from the board's purview. During FY 2005, the board approved contracts for only 3% of the total contract worker gross wages paid by state agencies, or \$853,698 of the total \$30.5 million in gross wages.

PEER: The Mississippi Legislature's Oversight Agency

The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A joint committee, the PEER Committee is composed of seven members of the House of Representatives appointed by the Speaker and seven members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms with one Senator and one Representative appointed from each of the U. S. Congressional Districts. Committee officers are elected by the membership with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of four Representatives and four Senators voting in the affirmative.

Mississippi's constitution gives the Legislature broad power to conduct examinations and investigations. PEER is authorized by law to review any public entity, including contractors supported in whole or in part by public funds, and to address any issues that may require legislative action. PEER has statutory access to all state and local records and has subpoena power to compel testimony or the production of documents.

PEER provides a variety of services to the Legislature, including program evaluations, economy and efficiency reviews, financial audits, limited scope evaluations, fiscal notes, special investigations, briefings to individual legislators, testimony, and other governmental research and assistance. The Committee identifies inefficiency or ineffectiveness or a failure to accomplish legislative objectives, and makes recommendations for redefinition, redirection, redistribution and/or restructuring of Mississippi government. As directed by and subject to the prior approval of the PEER Committee, the Committee's professional staff executes audit and evaluation projects obtaining information and developing options for consideration by the Committee. The PEER Committee releases reports to the Legislature, Governor, Lieutenant Governor, and the agency examined.

The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

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December 15, 2005

Honorable Haley Barbour, Governor
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Honorable Billy McCoy, Speaker of the House
Members of the Mississippi State Legislature

On December 15, 2005, the PEER Committee authorized release of the report entitled **A Review of State Agencies' Use of Contract Workers.**

A handwritten signature in cursive script that reads "Dirk D. Dedeaux".

Representative Dirk Dedeaux, Chair

This report does not recommend increased funding or additional staff.

Table of Contents

Letter of Transmittal	i
List of Exhibits	v
Executive Summary	vii
Introduction	1
Authority	1
Purpose and Scope	1
Method	2
Background	3
State Laws Governing State Agencies' Use of Contract Workers	3
How a State Agency Hires and Pays Contract Workers.....	4
State Agencies' Utilization of Contract Workers	6
Oversight of Contract Workers and Associated Expenditures	10
Recommendations	18
Appendix A: List of State Agencies in the State Accounting System with No Contract Worker Expenditures during Fiscal Years 2003 through 2005	19
Appendix B: Contract Worker Gross Wages, by Agency and Fiscal Year (FY 2003 through FY 2005).....	20

List of Exhibits

1. FY 2005 Contract Worker Gross Wages,
by State Agency Expending Over \$1 Million..... 7
2. Growth in Contract Worker Total Gross Wages, FY 2003 through FY 2005 8
3. Agencies with the Greatest Increases in Total Gross Wages for Contract Workers
from FY 2003 through FY 2005 9

A Review of State Agencies' Use of Contract Workers

Executive Summary

Introduction

The PEER Committee conducted this review in response to concerns about the degree of oversight that exists regarding state agencies' use of contract workers. PEER conducted the review pursuant to the authority granted by MISS. CODE ANN. Section 5-3-57 et seq. (1972).

In conducting this review, PEER reviewed agencies' expenditures for contract workers for fiscal years 2003 through 2005. Specifically, PEER sought to determine which state agencies use contract workers and the costs of such workers. The review also focused on the type of oversight the state exercises over contract workers.

Background

MISS. CODE ANN. Section 25-9-120 (1972) contains the only references to "contract workers" in state law. This section creates the Personal Service Contract Review Board and limits the state benefits to which contract personnel (i.e., contract workers and independent contractors) are entitled. Subsection (1) of MISS. CODE ANN. Section 25-9-120 (1972) describes contract workers as "contract personnel who do not meet the criteria of independent contractors." The Internal Revenue Service establishes the guidelines for determining whether an individual is an independent contractor or an employee.

State agencies typically use contract workers to perform part-time, seasonal, and time-limited work. Agencies also report using contract workers to provide health-related services in tight labor market professions, such as nursing and licensed clinical psychology.

State Agencies' Utilization of Contract Workers

From FY 2003 through FY 2005, fifty state agencies included in the state accounting system used contract workers. Gross wages for these workers totaled \$30.5 million in FY 2005.

From FY 2003 through FY 2005, fifty state agencies included in the state accounting system used contract workers. Gross wages for these workers totaled \$30,461,048 in FY 2005. The Exhibit, page ix, shows total contract worker gross wages, by state agency, for fiscal years 2003, 2004, and 2005.

During FY 2005, eight state agencies accounted for 84% of contract worker gross wages, with each of these agencies exceeding \$1 million.

Eight state agencies exceeded \$1 million each on contract worker gross wages in FY 2005, accounting for 84% of total contract worker gross wages.

In FY 2005, the Department of Health expended the most on contract worker gross wages (approximately \$6.5 million), chiefly on nurses, clerical staff, and other health-related workers. The Military Department expended the second highest amount on contract worker gross wages in FY 2005 (approximately \$5.9 million), followed by the Veterans' Affairs Board (approximately \$5.85 million). The Military Department primarily hired contract workers to fill in for deployed personnel, while the majority of contract workers hired by the Veterans' Affairs Board in FY 2005 were health care professionals who worked in the state veterans' homes.

Total gross wages for contract workers increased by \$16.2 million (113%) from FY 2003 to FY 2005.

Total gross wages for contract workers increased significantly from FY 2003 through FY 2005, from \$14.3 million to \$30.5 million, a total increase of 113%.

The five agencies with the greatest increases in total gross wages for contract workers during the period of PEER's review had a combined increase of \$15.9 million, accounting for 93% of the total increase of approximately \$17.1 million.

Exhibit: Contract Worker Gross Wages by Agency and Fiscal Year (FY 2003 through FY 2005)

Agency Name	FY2003	FY2004	FY2005	Increase
				(Decrease) from FY2003 - FY 2005
Agricultural Aviation, Board of	\$ 1,196.25	\$ 742.50	\$ 0.00	\$ (1,196.25)
Agriculture and Commerce, Department of	101,849.32	121,948.23	138,746.12	36,896.80
Archives & History, Department of	50,695.52	89,274.44	117,742.64	67,047.12
Arts Commission	0.00	10,489.14	1,022.94	1,022.94
Athletic Commission	0.00	0.00	3,325.00	3,325.00
Attorney General, Office of the	439,646.92	550,915.55	410,932.18	(28,714.74)
Auditor, Office of the State	0.00	4,160.00	7,680.00	7,680.00
Capital Post - Conviction Counsel, Office of	18,090.00	32,643.75	40,558.20	22,468.20
Community & Junior Colleges, Board for	9,544.00	54,559.09	36,566.10	27,022.10
Corrections, Department of	100,837.75	90,500.37	106,331.85	5,494.10
Development Authority	505,284.29	330,707.67	386,555.51	(118,728.78)
Education, Department of	1,152,952.37	1,729,136.10	1,304,523.92	151,571.55
Educational Television, Authority for	275,038.82	212,026.45	92,256.00	(182,782.82)
Emergency Management Agency	55,690.05	5,672.76	38,364.23	(1,325.82)
Engineers & Land Surveyors, Board of Professional	0.00	4,775.00	4,475.00	4,475.00
Environmental Quality, Department of	674,249.38	783,693.36	694,046.72	19,797.34
Fair Commission	232,959.87	271,174.18	328,971.17	96,011.30
Finance and Administration, Department of	440,622.56	378,030.38	370,380.96	(70,241.60)
Fire Academy	66,414.30	50,172.50	120,846.65	54,432.35
Forestry Commission	10,627.50	14,659.51	8,130.96	(2,496.54)
Funeral Service, Board of	5,654.20	2,747.20	2,656.00	(2,998.20)
Gaming Commission	6,091.91	5,377.11	6,540.37	448.46
Governor, Office of the - Support	71,066.25	83,302.63	93,543.24	22,476.99
Health, Department of	0.00	0.00	6,452,034.70	6,452,034.70
Human Services, Department of	303.00	0.00	0.00	(303.00)
Information Technology Services, Department of	346,813.74	323,910.42	185,489.34	(161,324.40)
Insurance Department	0.00	23,197.50	0.00	0.00
Legislature	24,242.00	5,331.54	1,167.05	(23,074.95)
Marine Resources, Department of	86,039.81	71,690.55	70,873.11	(15,166.70)
Medicaid, Division of	448,628.77	716,797.08	1,294,065.44	845,436.67
Medical Licensure, Board of	0.00	12,112.08	14,278.92	14,278.92
Mental Health, Department of	812,000.60	1,292,874.18	1,202,573.54	390,572.94
Military Department	1,623,704.46	3,057,618.95	5,904,390.34	4,280,685.88
Oil & Gas Board	0.00	0.00	6,504.39	6,504.39
Personnel Board	50,679.61	42,043.80	67,434.50	16,754.89
Physical Therapy, Board of	0.00	0.00	270.00	270.00
Public Accountancy, Board of	16,147.37	13,270.41	8,696.00	(7,451.37)
Public Employees' Retirement System	16,631.33	17,943.71	17,273.26	641.93
Public Safety, Department of	571,475.86	898,697.83	395,907.65	(175,568.21)
Real Estate Appraiser Licensing & Certification Bd.	0.00	0.00	1,595.39	1,595.39
Real Estate Commission	0.00	7,817.50	17,147.50	17,147.50
Rehabilitation Services, Department of	1,703,546.62	1,727,269.41	1,878,942.62	175,396.00
Secretary of State, Office of the	118,811.70	197,445.77	193,487.85	74,676.15
Supreme Court Services	25,472.28	33,425.08	28,272.32	2,800.04
Transportation, Department of	960,960.04	1,310,130.08	1,673,064.41	712,104.37
Treasurer, Office of the State	113,176.93	82,178.62	63,282.00	(49,894.93)
Veterans Affairs Board	2,253,520.74	4,701,179.28	5,852,172.30	3,598,651.56
Veterans Memorial Stadium Commission	47,727.40	56,374.16	14,647.48	(33,079.92)
Veterinary Medicine, Board of	36,564.90	37,884.03	41,953.64	5,388.74
Wildlife, Fisheries and Parks, Department of	794,285.36	770,823.73	761,328.15	(32,957.21)
TOTAL	\$ 14,269,243.78	\$ 20,226,723.63	\$ 30,461,047.66	\$ 16,191,803.88

SOURCE: Department of Finance and Administration and PEER analysis.

Oversight of Contract Workers and Associated Expenses

Other than the requirement to have contracts exceeding \$100,000 approved by the Personal Service Contract Review Board, state agencies are subject to few limits or controls on their use of contract workers.

Through the State Personnel Board's administration of the state personnel system and the Legislature's annual appropriation process, there are controls over the number, qualifications, and salaries of employees in legislatively authorized positions. Conversely, there are few limits or controls over state agencies' use of contract workers.

Basically, the only limitations are expenditure amounts included in an agency's contractual services line item established through the appropriations process and the Personal Service Contract Review Board's oversight of contracts that exceed \$100,000. For contracts totaling less than \$100,000, there are no external oversight controls regarding whether an agency has a documented need to employ a contract worker, the type of and qualifications of the worker hired, the amount paid to the worker, or the length of time the worker will be employed.

State law requires that the Personal Service Contract Review Board set rules and regulations for solicitation and selection of personal service contracts with the state. The board's responsibility for contracts of \$100,000 or less is limited to setting these rules and regulations; state law requires that the board approve all contracts exceeding \$100,000. Several categories of contracts are exempt from the board's purview.

MISS. CODE ANN. § 25-9-120 (2) (1972) creates the Personal Service Contract Review Board to promulgate rules and regulations governing the solicitation and selection of contractual services personnel and to approve all personal and professional services contracts involving the expenditure of funds exceeding \$100,000. The board also has responsibility for developing standards with respect to contracting and documentation of such contracts.

Specifically, with regard to the solicitation and selection of contractual services personnel, the board requires that agencies adopt operational procedures for entering into personal services contracts of \$50,000 or less. For contracts greater than \$50,000 but not exceeding \$100,000, agencies shall at a minimum, solicit three written responses, which shall be made a part of the procurement file. For contracts exceeding \$100,000, agencies shall procure such contracts through the use of

competitive sealed bidding or proposals. The board's rules and regulations include specific requirements regarding public notice, bid opening, and bid acceptance and evaluation.

MISS. CODE ANN. § 25-9-120 (3) (a) (1972) exempts from the purview of the Personal Service Contract Review Board computer- or information-technology-related services governed by the Department of Information Technology Services; personal service contracts entered into by the Department of Transportation; or, any contract for attorney, accountant, auditor, physician, dentist, architect, engineer, veterinarian, or utility rate expert services.

During FY 2005, the Personal Service Contract Review Board approved contracts for only 3% of the total contract worker gross wages paid by state agencies, or \$853,698 of the total \$30.5 million in gross wages.

During FY 2005, the Personal Service Contract Review Board approved requests from eight state agencies for twenty-one contract workers with a total annual value of \$853,698. The total contract worker gross wages during FY 2005 amounted to \$30.5 million and the value of the contracts required to be approved by the board amounted to only 3% of the total value for FY 2005. Individual state agencies were responsible for establishing their own accountability controls and overseeing the remaining contract worker contracts (representing 97% of the total contract worker gross wages during FY 2005).

Although required by state law to verify state agencies' compliance with the review board's rules and regulations, the Department of Finance and Administration has not implemented pre-audit steps for such determination.

Senate Bill 2958 (1997 Regular Session), which created the Personal Service Contract Review Board, amended MISS. CODE ANN. § 7-7-3 (6) (d) (1972) to require the Department of Finance and Administration to "verify compliance with the regulations of the State Personal Service Contract Review Board regarding the execution of any personal service or professional service contracts pursuant to Section 25-9-120 (3)." Other than a computer edit to determine at what point a contract exceeds a cumulative value of \$100,000 and must be approved by the Personal Service Contract Review Board, the Department of Finance and Administration has not implemented pre-audit controls to verify state agencies' compliance with the board's rules and regulations.

Although state law requires appointing authorities (such as state agencies) and the retirees to notify the Public Employees' Retirement System upon a retiree's reemployment as a contract worker, PERS does not perform a cross-check with state payroll data to determine a retiree's compliance with state retirement laws.

Upon retirement from state employment, retirees may become reemployed with a state agency as a contract worker. As defined in MISS. CODE ANN. Section 25-11-127 (4) (1972), a retired state employee may become reemployed as a part-time or contract worker and continue to draw retirement benefits while reemployed, subject to statutory salary limitations. However, because the PERS database is separate from and independent of the State Payroll and Human Resource System (SPAHRS), the retirement system does not have a cross-check of retirees who become reemployed by a state agency and fail to complete reemployment forms, as required by state law and PERS board regulations.

PEER reconciled SPAHRS contract worker data with PERS information for FY 2005 and determined that there were 337 retirees who became reemployed by state agencies during that fiscal year. Of that number, 182 (54% of the 337 retiree contract workers) retirees (and the state agencies that reemployed them) either did not file appropriate paperwork at all with PERS or did not have FY 2005 paperwork on file—i.e., some retirees had submitted the proper paperwork in previous fiscal years but had not done so within five days of reemployment within FY 2005, as required by state law. Also, sixteen retirees reemployed as contract workers had exceeded income limitations listed in MISS. CODE ANN. Section 25-11-127 (4) (1972).

Recommendations

1. The Legislature should amend MISS. CODE ANN. Section 27-103-129 (1972) to require state agencies to report in their annual budget requests to the Legislature the following information for the most recently completed fiscal year for each contract worker: name of contract worker, specific type of services provided, hourly rate (or other basis of compensation if different than an hourly rate), and total gross wages paid.
2. Pursuant to MISS. CODE ANN. Section 7-7-3 (6) (1972), the Department of Finance and Administration should ensure that the State Payroll and Human Resources System (SPAHRS) contains pre-audit controls to ensure state agencies' compliance with rules and regulations of the

Personal Service Contract Review Board. For example, DFA could require state agencies to list the names of contractors from whom they obtain quotes and the amounts of such quotes.

3. The Public Employees' Retirement System and Department of Finance and Administration should cross-match retiree and payroll data on a regular basis to identify retirees who have been reemployed by state agencies (as both contract workers and in legislatively authorized positions) to ensure their compliance with statutory income limitations.

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A Review of State Agencies' Use of Contract Workers

Introduction

Authority

The PEER Committee conducted this review in response to concerns about the degree of oversight that exists regarding state agencies' use of contract workers. PEER conducted the review pursuant to the authority granted by MISS. CODE ANN. Section 5-3-57 et seq. (1972).

Purpose and Scope

Purpose

PEER reviewed state agencies' expenditures on contract workers for fiscal years 2003 through 2005, focusing on answering the following questions:

- To what extent do state agencies use contract workers?
- Which state agencies use contract workers and at what cost?
- Have state agencies' expenditures for contract workers increased or decreased in recent years?
- What type of oversight does the state exercise over contract workers?

Scope

This review only includes state agencies whose financial records are maintained in the state accounting system. The state institutions of higher learning and individual community and junior colleges do not participate in the system and are therefore not included in this review; however, the Board for Community and Junior Colleges is included in the system and in PEER's review.

The focus of this review is on contract workers hired directly by state agencies. The review does not include the employment of any persons into legislatively authorized positions, workers performing services for state agencies hired through staffing agencies, nor does it include individuals meeting the Internal Revenue Service's definition of an independent contractor (refer to page 3).

Finally, while this report captures the majority of state agencies' expenditures on contract workers (i.e., gross wages¹), it does not capture total expenditures. This analysis does not include state agencies' expenditures on federal employment taxes [Social Security, Medicare, and unemployment] or workers' compensation insurance premiums resulting from the employment of contract workers because of the difficulty in obtaining accurate data.

Method

In conducting this review, PEER:

- reviewed state laws regarding the statewide personnel system, the State Personal Service Contract Review Board, and other relevant state laws;
- reviewed the State Personal Service Contract Review Board Procurement Procedures manual;
- reviewed the Mississippi State Personnel Board Policy and Procedures Manual;
- interviewed human resources and contract management staff from various state agencies;
- interviewed personnel of the Mississippi State Personnel Board;
- interviewed personnel of the Department of Finance and Administration; and,
- analyzed contract worker expenditure data reported in the state accounting system for Fiscal Years 2003 through 2005.

¹ *Gross wages* are the total compensation paid to contract workers. From these gross wages, employing agencies deduct federal and state mandated withholdings (i.e., Social security, Medicare, and federal and state income taxes).

Background

State Laws Governing State Agencies' Use of Contract Workers

According to state law, contract workers are not eligible for the retirement, health, or leave benefits of state employees.

MISS. CODE ANN. Section 25-9-120 (1972) contains the only references to “contract workers” in state law. This section creates the Personal Service Contract Review Board (see discussion of the board on page 11) and limits the state benefits to which contract personnel (i.e., contract workers and independent contractors) are entitled.

Specifically, subsection (1) states that contract personnel are not eligible to participate in the Public Employees' Retirement System or the state employee health plan and are not allowed credit for personal and sick leave and other leave benefits as employees of the State of Mississippi. Subsection (1) further states that contract workers are subject to the provisions of MISS. CODE ANN. Section 25-11-127 (1972) governing state agencies' reemployment of persons retired from the Public Employees' Retirement System (refer to discussion beginning on page 15). Also, state law includes coverage of contract workers (but not independent contractors) in its unemployment compensation and workers' compensation employee benefit programs.

Subsection (1) of MISS. CODE ANN. Section 25-9-120 (1972) describes contract workers as “contract personnel who do not meet the criteria of independent contractors.” The Internal Revenue Service establishes the guidelines for determining whether an individual is an independent contractor or an employee. The distinction is important for federal tax purposes because the employer is generally responsible for withholding federal income taxes and withholding and paying Social Security and Medicare taxes and paying unemployment taxes on wages paid to employees, while independent contractors are responsible for paying their own income and self-employment taxes.

Basically, under the Internal Revenue Service's guidelines, if a contract worker performs services subject to the direction and control of an employer, as to both what must be done and how it must be done, that worker falls under the Internal Revenue Service's definition of an employee. Generally, this element of control is absent in cases in which a state agency hires an independent contractor. More often than not, independent contractors perform their services away from the work site of the

agency and are free to determine the means and methods used for completing the work.

State agencies typically use contract workers to perform part-time, seasonal, or time-limited work or to fill positions in tight labor market professions.

State agencies typically use contract workers to perform part-time, seasonal, and time-limited work (including internships). Agencies also report using contract workers to provide health-related services in tight labor market professions, such as nursing and licensed clinical psychology.

How a State Agency Hires and Pays Contract Workers

When an agency determines that it has a job that needs to be performed by a contract worker rather than a state service employee, the agency may procure the contract worker by one of the following methods (as promulgated by the Personal Service Contract Review Board; see page 11):

- competitive sealed bid;
- competitive sealed proposal;
- “small purchases” (through the use of informal quotations or agency procurement policies);
- sole source procurement; or,
- emergency procurement.

After identifying the job to be done and the specific contract worker to perform the job, agency personnel enter the relevant information into the State Personnel and Human Resource System (SPAHRs) managed by the Mississippi Management Reporting System (MMRS), a division of the Department of Finance and Administration. Relevant information for each contract position and worker includes the following.

- demographic information on the contract worker;
- contract service type (e.g., interior design, warehouse work) and specific job title;
- approval route (e.g., approval by the Personal Service Contract Review Board or the Department of Information Technology Services);
- contract number (SPAHRs automatically generates a unique number for contracts entered into the payroll system);

- payroll information for the contract worker (e.g., withholding information). Also, SPAHRS automatically generates a worker identification number [WIN] for the contract worker;
- description of the contractual services to be performed (e.g., location, program, purpose);
- justification of request (e.g., assessment of current personnel resources); and,
- qualifications that make the contractor the best suited to perform the task.

While the system provides the opportunity to enter the above descriptive information in detail, the system does not require that the information be entered in detail in order to proceed to the next step. For example, an agency can mark “other” for contract service type and can type meaningless letters in the description field (e.g., xyz) and the system would allow the process to proceed.

Although agency personnel establish contract worker contracts for a single fiscal year at a time, state agencies have the option of renewing a contract for succeeding years and rehiring the contract worker.

Although agency personnel establish contract worker contracts for a single fiscal year at a time, state agencies have the option of renewing a contract for succeeding years and rehiring the contract worker using the same worker identification number.

During the contract period, agency personnel enter into timecards contained in SPAHRS the actual number of hours worked (or units of work if different than hours) by a particular contract worker during a pay period. Each contract worker receives a state warrant two weeks later after work is completed—i.e., payment in arrears. SPAHRS contains edit checks to ensure that a contract worker’s cumulative compensation from the contract does not exceed the total amount entered into the system at the time the agency created the contract.

State Agencies' Utilization of Contract Workers

To what extent do state agencies use contract workers?

From FY 2003 through FY 2005, fifty state agencies included in the state accounting system used contract workers. Gross wages for these workers totaled \$30.5 million in FY 2005.

From FY 2003 through FY 2005, fifty state agencies included in the state accounting system used contract workers. Gross wages for these workers totaled \$30,461,048 in FY 2005. The remaining twenty-seven agencies included in the system made no expenditures on contract workers during the period of PEER's review (refer to a listing of these agencies in Appendix A on page 19).

In FY 2005, 84% of contract worker gross wages were paid with special funds, while the remaining 16% were paid with general funds.

According to the Department of Finance and Administration, 84% of contract worker gross wages in FY 2005 were paid with special funds, while the remaining 16% were paid with general funds. By individual contract worker, FY 2005 gross wages ranged from \$2 to \$194,823 and averaged \$6,562. Appendix B, page 20, shows total contract worker gross wages, by state agency, for fiscal years 2003, 2004, and 2005.

PEER obtained the amount of gross wages for contract workers by state fiscal year from the Department of Finance and Administration. As previously noted, this analysis does not include federal employment taxes [Social Security, Medicare, and unemployment] or workers' compensation insurance premiums paid by state agencies on contract workers because of the difficulty in obtaining accurate data for all contract workers.

Which state agencies use contract workers and at what cost?

During FY 2005, eight state agencies accounted for 84% of contract worker gross wages, with each of these agencies exceeding \$1 million. As noted previously, gross wages do not reflect the total cost of contract workers to state government.

As shown in Exhibit 1 on page 7, contract worker gross wages in FY 2005 exceeded \$1 million in eight agencies. These agencies accounted for 84% of total contract worker gross wages.

In FY 2005, the Department of Health expended approximately \$6.5 million on contract worker gross wages.

As the exhibit shows, in FY 2005, the Department of Health expended the most on contract worker gross wages (approximately \$6.5 million), chiefly on nurses, clerical staff, and other health-related workers. The Military Department expended the second highest amount on contract worker gross wages in FY 2005 (approximately \$5.9 million), followed by the Veterans' Affairs Board (approximately \$5.85 million). The Military Department primarily hired contract workers to fill in for deployed personnel, while the majority of contract workers hired by the Veterans' Affairs Board in FY 2005 were health care professionals who worked in the state veterans' homes.

Exhibit 1: FY 2005 Contract Worker Gross Wages, by State Agency Expending Over \$1 Million

Agency	FY 2005 Contract Worker Gross Wages
Health, Department of	\$6,452,034.70
Military Department	5,904,390.34
Veterans Affairs Board	5,852,172.30
Rehabilitation Services, Department of	1,878,942.62
Transportation, Department of	1,673,064.41
Education, Department of	1,304,523.92
Medicaid, Division of	1,294,065.44
Mental Health, Department of	1,202,573.54
Total	\$25,561,767.27

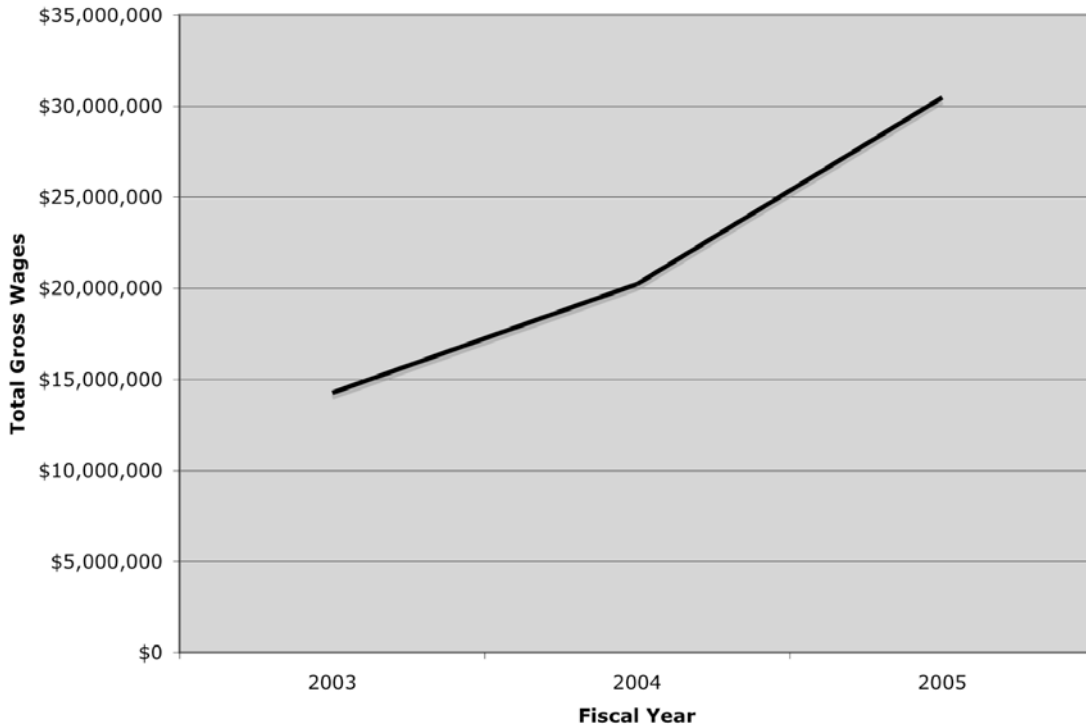
SOURCE: Department of Finance and Administration.

Have state agencies' expenditures for contract workers increased or decreased in recent years?

Total gross wages for contract workers increased by \$16.2 million (113%) from FY 2003 to FY 2005.

As shown in Exhibit 2 on page 8, total gross wages for contract workers increased significantly from FY 2003 through FY 2005, from \$14.3 million to \$30.5 million, a total increase of 113%. From FY 2003 to FY 2004, total contract worker gross wages increased by 42% to \$20,226,724. Total contract worker gross wages increased by 51% from FY 2004 to FY 2005.

Exhibit 2: Growth in Contract Worker Total Gross Wages, FY 2003 through FY 2005



SOURCE: Department of Finance and Administration.

As shown in Appendix B on page 20, from FY 2003 through FY 2005, thirty-two agencies had an increase in total gross wages for contract workers totaling \$17.1 million, while seventeen agencies had a decline totaling \$923,305 and one agency had no change. As shown in Exhibit 3, page 9, the five agencies with the greatest increases in total gross wages for contract workers during the period of PEER's review had a combined increase of \$15.9 million, accounting for 93% of the total increase of approximately \$17.1 million. These five agencies were among the eight agencies with the highest total contract worker gross wages for FY 2005 (refer to Exhibit 1 on page 7).

Exhibit 3: Agencies with the Greatest Increases in Total Gross Wages for Contract Workers from FY 2003 through FY 2005

Agency	Amount of Increase in Total Gross Wages for Contract Workers from FY 2003 to FY 2005
Health, Department of	\$6,452,034.70
Military Department	4,280,685.88
Veterans Affairs Board	3,598,651.56
Medicaid, Division of	845,436.67
Transportation, Department of	712,104.37
Total	\$15,888,913.18

SOURCE: PEER analysis of data from the Department of Finance and Administration.

The Department of Health had the largest increase, from no expenditures on contract workers in FY 2003 to approximately \$6.5 million in FY 2005. According to the department, the majority of these workers filled clerical, medical aide, lactation consultant/specialist, counseling, and nursing positions.

The Department of Health had the largest increase in gross wages for contract workers from FY 2003 to FY 2005--from no expenditures on contract workers in FY 2003 to approximately \$6.5 million in FY 2005.

According to the Military Department, its approximate \$4.3 million increase in total contract worker gross wages was primarily due to the filling of positions at Camp Shelby temporarily vacated by full-time employees who were deployed with their respective National Guard units. The department also reported that security needs have increased since Camp Shelby was designated as a mobilization center. The Department of Homeland Security's requirements call for security guards at all Camp Shelby gates twenty-four hours per day, seven days per week.

The Veterans' Affairs Board's increase of approximately \$3.6 million was primarily due to the hiring of contract workers at the state's veterans' homes.

Oversight of Contract Workers and Associated Expenditures

What type of oversight does the state exercise over contract workers?

Other than the requirement to have contracts exceeding \$100,000 approved by the Personal Service Contract Review Board, state agencies are subject to few limits or controls on their use of contract workers.

Through the State Personnel Board's administration of the state personnel system and the Legislature's annual appropriation process, there are controls over the number, qualifications, and salaries of employees in legislatively authorized positions. Conversely, there are few limits or controls over state agencies' use of contract workers. Basically, the only limitations are expenditure amounts included in an agency's contractual services line item established through the appropriations process and the Personal Service Contract Review Board's oversight of contracts that exceed \$100,000. For contracts totaling less than \$100,000, there are no external oversight controls regarding whether an agency has a documented need to employ a contract worker, the type of and qualifications of the worker hired, the amount paid to the worker, or the length of time the worker will be employed.

The recent significant growth in the use of contract workers (113% growth in contract worker gross wages from FY 2003 to FY 2005) indicates that there is a need for more independent oversight of the process.

While PEER recognizes that there are legitimate reasons for agencies to employ contract workers, such as part-time, seasonal, and time-limited work, the recent significant growth in the use of contract workers (113% growth in contract worker gross wages from FY 2003 to FY 2005) indicates that there is a need for more independent oversight of the process. Some state agencies' reliance on contract workers rather than on employees in legislatively authorized positions gives rise to an "off the books" personnel system that has few of the statutory and accountability controls contained in the State Personnel Board's personnel system.

Because state agencies are not required to include in their annual budget requests detailed information regarding their use of contract workers, the Legislature has no means to assess the financial and programmatic impact of such workers. Even though total contract worker gross wages in FY 2005 amounted to only 5% of the total contractual services expenditures for FY 2005, an approximately \$30.5 million investment in personnel is significant, given the lack of controls over state agencies' use of contract workers. Also, without detailed

information regarding contract workers, the Legislature cannot determine the state's total workforce, a portion of which is composed of contract workers.

State law requires that the Personal Service Contract Review Board set rules and regulations for solicitation and selection of personal service contracts with the state. The board's responsibility for contracts of \$100,000 or less is limited to setting these rules and regulations; state law requires that the board approve all contracts exceeding \$100,000. Several categories of contracts are exempt from the board's purview.

MISS. CODE ANN. § 25-9-120 (2) (1972) creates the Personal Service Contract Review Board, composed of the State Personnel Director, the Executive Director of the Department of Finance and Administration (or his designee), the Commissioner of Corrections (or his designee), the Executive Director of the Department of Wildlife, Fisheries, and Parks (or his designee), and the Executive Director of the Department of Environmental Quality (or his designee). State law states that the board shall have the following powers and responsibilities:

- promulgate rules and regulations governing the solicitation and selection of contractual services personnel;
- approve all personal and professional services contracts involving the expenditure of funds in excess of \$100,000;
- develop standards with respect to contractual services personnel that require invitations for public bid, requests for proposals, record keeping, and financial responsibility of contractors;
- prescribe certain circumstances whereby agency heads may enter into contracts for personal and professional services without receiving prior approval from the board;
- 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;
- present recommendations for governmental privatization and evaluate privatization proposals submitted by any state agency;
- authorize contracts to be effective for more than one year provided a funding condition is included in any such multiple year contract;
- request the State Auditor to conduct a performance audit on any personal services contract; and,

- prepare an annual report to the Legislature on contracts issued the previous year.

Establishment of the Contract Review Board's Rules and Regulations

As required by state law, the Personal Service Contract Review Board has established rules and regulations for the solicitation and selection of contractual services personnel.

The Personal Service Contract Review Board's rules and regulations contain information on source selection and contract formation, contract administration, legal and contractual remedies, and ethics in contracting.

After its creation in 1997, the Personal Service Contract Review Board began developing rules and regulations for the solicitation and selection of contractual services personnel. The board formally adopted its rules and regulations on January 26, 1998, and disseminated them to state agencies on January 30. The board revised its current rules and regulations on July 1, 2003.

In addition to a summary of relevant state laws, the rules and regulations contain information on source selection and contract formation, contract administration, legal and contractual remedies, and ethics in contracting for personal and professional services. The rules and regulations also contain appendices with sample requests for proposals, contracts, and other related forms.

Dollar Limits Requiring Approval of the Contract Review Board

The board's responsibility for contracts of \$100,000 or less is limited to setting rules and regulations; state law requires that the board approve all contracts exceeding \$100,000.

Specifically, with regard to the solicitation and selection of contractual services personnel, the board has established the following requirements.

- *Contracts of \$50,000 or less:* Agencies shall adopt operational procedures for entering into personal services contracts of \$50,000 or less. Such operational procedures shall provide for obtaining adequate and reasonable competition and making records to account properly for funds and to facilitate auditing of the transaction. The board does not review contracts for less than \$50,000.
- *Contracts greater than \$50,000 but not exceeding \$100,000:* Agencies shall, at a minimum, solicit three written responses, which shall be made a part of the procurement file. The written responses

shall, at a minimum, include the following information: statement of price; terms of the agreement; description of services offered by the contractor; and name, address, and telephone number of the offeror. In the event that the agency does not obtain three responses, the agency shall include a memorandum to the procurement file explaining why this was not accomplished. The board does not review contracts for greater than \$50,000 but less than \$100,000.

- *Contracts exceeding \$100,000:* Agencies shall procure personal services contracts with a value exceeding \$100,000 through the use of competitive sealed bidding or proposals. The board's rules and regulations include specific requirements regarding public notice, bid opening, and bid acceptance and evaluation. The board and its staff must review and approve personal services contracts exceeding \$100,000. (The Personal Service Contract Review Board has interpreted state law to mean a cumulative value in excess of \$100,000. For example, an agency could enter into a contract with an individual to provide a service for a total of \$50,000 for one fiscal year. Such a contract would not be subject to the approval of the review board. Should the agency choose to renew the contract for an additional fiscal year for \$51,000, resulting in a two-year contract for \$101,000, the contract would be subject to the approval of the review board.)

On June 25, 1999, the Attorney General opined that state agencies must adhere to the rules and regulations of the Personal Service Contract Review Board when entering into personal services contracts.

The board's rules and regulations also provide for sole-source and emergency procurement without competition when a need for such exists. Agencies using such method must document in writing the circumstances surrounding the selection of a personal services contractor through a non-competitive process.

On June 25, 1999, the Attorney General opined that state agencies must adhere to the rules and regulations of the Personal Service Contract Review Board when entering into personal services contracts.

Certain Contracts Exempted From Approval of the Contract Review Board

State law exempts certain contracts from the purview of the Personal Service Contract Review Board.

MISS. CODE ANN. § 25-9-120 (3) (a) (1972) exempts from the purview of the Personal Service Contract Review Board the following types of contracts:

- computer- or information-technology-related services governed by the Department of Information Technology Services;
- personal service contracts entered into by the Department of Transportation; or,
- any contract for attorney, accountant, auditor, physician, dentist, architect, engineer, veterinarian, or utility rate expert services.

During FY 2005, the Contract Review Board approved contracts for only 3% of the total contract worker gross wages paid by state agencies, or \$853,698 of the total \$30.5 million in gross wages.

Individual state agencies were responsible for establishing their own accountability controls and overseeing the contract worker contracts representing 97% of the total contract worker gross wages during FY 2005.

As stated on page 12, only personal and professional services contracts involving the expenditure of funds in excess of \$100,000 must be approved by the Contract Review Board. During FY 2005, the Contract Review Board approved requests from eight state agencies for twenty-one contract workers with a total annual value of \$853,698. (All of these contract workers had contracts covering multiple years with total values in excess of \$100,000.)

The total contract worker gross wages during FY 2005 amounted to \$30.5 million and the value of the contracts required to be approved by the Contract Review Board amounted to only 3% of the total value for FY 2005. Individual state agencies were responsible for establishing their own accountability controls and overseeing the remaining contract worker contracts (representing 97% of the total contract worker gross wages during FY 2005).

Although required by state law to verify state agencies' compliance with the review board's rules and regulations, the Department of Finance and Administration has not implemented pre-audit steps for such determination.

Senate Bill 2958 (1997 Regular Session), which created the Personal Service Contract Review Board, amended MISS. CODE ANN. § 7-7-3 (6) (d) (1972) to require the Department of Finance and Administration to “verify compliance with the regulations of the State Personal Service Contract Review Board regarding the execution of any personal service or professional service contracts pursuant to Section 25-9-120 (3).”

Other than a computer edit to determine at what point a contract exceeds a cumulative value of \$100,000 and must be approved by the Personal Service Contract Review Board, the Department of Finance and Administration (DFA) has not implemented pre-audit controls to verify state agencies' compliance with the board's rules and regulations.

Although the SPAHRS system requires state agencies to enter descriptive information, state accounting procedures do not require them to enter the names of contractors from which they received written quotations for contracts with a value greater than \$50,000 and less than \$100,000.

As described on page 4, state agencies must enter certain descriptive information, such as services to be provided, justification for the contract, and qualifications of the contractor, into the State Payroll and Human Resources System (SPAHRS) to create a contract. DFA staff state that they do not review such information and do not have a basis for determining whether a contract should exist. Although the SPAHRS system requires state agencies to enter descriptive information, state accounting procedures do not require them to enter the names of contractors from which they received written quotations for contracts with a value greater than \$50,000 and less than \$100,000. Should DFA require such information, department staff could at least determine whether a state agency complied with that particular provision of the review board's rules and regulations. DFA staff contend that the department would require additional personnel to review each personal services contract for compliance with the review board's rules and regulations.

Although state law requires appointing authorities (such as state agencies) and the retirees to notify the Public Employees' Retirement System upon a retiree's reemployment as a contract worker, PERS does not perform a cross-check with state payroll data to determine a retiree's compliance with state retirement laws.

Upon retirement from state employment, retirees may become reemployed with a state agency as a contract worker. As defined in MISS. CODE ANN. Section 25-11-127 (4) (1972), a retired state employee may become reemployed as a part-time or contract worker and continue

to draw retirement benefits while reemployed under the following conditions:

(a) For a period of time not to exceed one-half (1/2) of the normal working days for the position in any fiscal year during which the retiree will receive no more than one-half (1/2) of the salary in effect for the position at the time of employment, or

(b) For a period of time in any fiscal year sufficient in length to permit a retiree to earn not in excess of twenty-five percent (25%) of retiree's average compensation.

This section also instructs retirees and state agencies that plan on reemploying them to notify the executive director (of PERS) within five days of “the facts upon which the employment is being made.” PERS utilizes Form 4B, Certification/Acknowledgment of Reemployment of Retiree, to collect such information. The form also requires state agencies to notify PERS within five days of the worker’s termination of reemployment. The PERS Board of Trustees adopted Regulation 34 to govern the provisions for reemployment of PERS service retirees who are reemployed after service retirement.

PEER reconciled SPAHRS contract worker data with PERS information for FY 2005 and determined that sixteen retirees reemployed as contract workers in FY 2005 had exceeded income limitations listed in state law.

Because the PERS database is separate from and independent of the State Payroll and Human Resource System (SPAHRS), the retirement system does not have a cross-check of retirees who become reemployed by a state agency and fail to complete Form 4B, as required by state law and the PERS board regulation. After reconciling the SPAHRS contract worker data with PERS information, PEER determined that there were 337 retirees who became reemployed by state agencies as contract workers during FY 2005². Of that number, 182 (54% of the 337 retiree contract workers) retirees (and the state agencies that reemployed them) either did not file a Form 4B at all with PERS or did not have an FY 2005 form on file—i.e., some retirees had submitted a Form 4B in previous fiscal years but had not done so within five days of reemployment within FY 2005, as required by state law. Also, PEER’s reconciliation determined that sixteen retirees reemployed as contract workers had exceeded income limitations listed in MISS. CODE ANN. Section 25-11-127 (4) (1972). PERS has notified the retirees of their exceeding the income limitation and is working with the retirees to resolve this issue.

² This review does not include retirees who are reemployed by agencies into legislatively authorized positions.

Currently, PERS depends on state agencies and service retirees to self-report a retiree's reemployment status.

Without an independent method of cross-checking PERS retiree data with SPAHRS payroll data, PERS is dependent on state agencies and service retirees to self-report a retiree's reemployment status. As evidenced by the majority (54%) of retirees who did not report their reemployment status as contract workers during FY 2005, PERS should not depend on self-reported data as a means of determining a retiree's compliance with state law and related statutory income limitations.

Recommendations

1. The Legislature should amend MISS. CODE ANN. Section 27-103-129 (1972) to require state agencies to report in their annual budget requests to the Legislature the following information for the most recently completed fiscal year for each contract worker: name of contract worker, specific type of services provided, hourly rate (or other basis of compensation if different than an hourly rate), and total gross wages paid.
2. Pursuant to MISS. CODE ANN. Section 7-7-3 (6) (1972), the Department of Finance and Administration should ensure that the State Payroll and Human Resources System (SPAHRs) contains pre-audit controls to ensure state agencies' compliance with rules and regulations of the Personal Service Contract Review Board. For example, DFA could require state agencies to list the names of contractors from whom they obtain quotes and the amounts of such quotes.
3. The Public Employees' Retirement System and Department of Finance and Administration should cross-match retiree and payroll data on a regular basis to identify retirees who have been reemployed by state agencies (as both contract workers and in legislatively authorized positions) to ensure their compliance with statutory income limitations.

Appendix A: List of State Agencies in the State Accounting System with No Contract Worker Expenditures during Fiscal Years 2003 through 2005

ANIMAL HEALTH, BOARD OF
ARCHITECTURE, BOARD OF, AND LANDSCAPE ARCHITECTURE ADVISORY
COMMITTEE
AUCTIONEER COMMISSION
BANKING AND CONSUMER FINANCE, DEPARTMENT OF
BARBER EXAMINERS, BOARD OF
CHIROPRACTIC EXAMINERS, BOARD OF
CONTRACTORS, BOARD OF
COSMETOLOGY, BOARD OF
DENTAL EXAMINERS, BOARD OF
EMPLOYMENT SECURITY, DEPARTMENT OF
ETHICS COMMISSION
FOREST INVENTORY, MISSISSPPI INSTITUTE FOR
GEOLOGISTS, BOARD OF REGISTERED
GRAND GULF MILITARY MONUMENT COMMISSION
JUDICIAL PERFORMANCE, COMMISSION ON
LIBRARY COMMISSION
MOTOR VEHICLE COMMISSION
NURSING, BOARD OF
NURSING HOME ADMINISTRATORS, BOARD OF
PHARMACY, BOARD OF
PUBLIC SERVICE COMMISSION
PUBLIC UTILITIES STAFF
SOCIAL WORKERS AND MARRIAGE AND FAMILY THERAPISTS, BOARD OF
SOIL AND WATER CONSERVATION COMMISSION
TAX COMMISSION
VETERANS' HOME PURCHASE BOARD
WORKERS' COMPENSATION COMMISSION

SOURCE: PEER analysis of information from the Department of Finance and Administration.

Appendix B: Contract Worker Gross Wages by Agency and Fiscal Year (FY 2003 through FY 2005)

Agency Name	FY2003	FY2004	FY2005	Increase
				(Decrease) from FY2003 - FY 2005
Agricultural Aviation, Board of	\$ 1,196.25	\$ 742.50	\$0.00	\$ (1,196.25)
Agriculture and Commerce, Department of	101,849.32	121,948.23	138,746.12	36,896.80
Archives & History, Department of	50,695.52	89,274.44	117,742.64	67,047.12
Arts Commission	0.00	10,489.14	1,022.94	1,022.94
Athletic Commission	0.00	0.00	3,325.00	3,325.00
Attorney General, Office of the	439,646.92	550,915.55	410,932.18	(28,714.74)
Auditor, Office of the State	0.00	4,160.00	7,680.00	7,680.00
Capital Post - Conviction Counsel, Office of	18,090.00	32,643.75	40,558.20	22,468.20
Community & Junior Colleges, Board for	9,544.00	54,559.09	36,566.10	27,022.10
Corrections, Department of	100,837.75	90,500.37	106,331.85	5,494.10
Development Authority	505,284.29	330,707.67	386,555.51	(118,728.78)
Education, Department of	1,152,952.37	1,729,136.10	1,304,523.92	151,571.55
Educational Television, Authority for	275,038.82	212,026.45	92,256.00	(182,782.82)
Emergency Management Agency	55,690.05	5,672.76	38,364.23	(17,325.82)
Engineers & Land Surveyors, Board of Professional	0.00	4,775.00	4,475.00	4,475.00
Environmental Quality, Department of	674,249.38	783,693.36	694,046.72	19,797.34
Fair Commission	232,959.87	271,174.18	328,971.17	96,011.30
Finance and Administration, Department of	440,622.56	378,030.38	370,380.96	(70,241.60)
Fire Academy	66,414.30	50,172.50	120,846.65	54,432.35
Forestry Commission	10,627.50	14,659.51	8,130.96	(2,496.54)
Funeral Service, Board of	5,654.20	2,747.20	2,656.00	(2,998.20)
Gaming Commission	6,091.91	5,377.11	6,540.37	448.46
Governor, Office of the - Support	71,066.25	83,302.63	93,543.24	22,476.99
Health, Department of	0.00	0.00	6,452,034.70	6,452,034.70
Human Services, Department of	303.00	0.00	0.00	(303.00)
Information Technology Services, Department of	346,813.74	323,910.42	185,489.34	(161,324.40)
Insurance Department	0.00	23,197.50	0.00	0.00
Legislature	24,242.00	5,331.54	1,167.05	(23,074.95)
Marine Resources, Department of	86,039.81	71,690.55	70,873.11	(15,166.70)
Medicaid, Division of	448,628.77	716,797.08	1,294,065.44	845,436.67
Medical Licensure, Board of	0.00	12,112.08	14,278.92	14,278.92
Mental Health, Department of	812,000.60	1,292,874.18	1,202,573.54	390,572.94
Military Department	1,623,704.46	3,057,618.95	5,904,390.34	4,280,685.88
Oil & Gas Board	0.00	0.00	6,504.39	6,504.39
Personnel Board	50,679.61	42,043.80	67,434.50	16,754.89
Physical Therapy, Board of	0.00	0.00	270.00	270.00
Public Accountancy, Board of	16,147.37	13,270.41	8,696.00	(7,451.37)
Public Employees' Retirement System	16,631.33	17,943.71	17,273.26	641.93
Public Safety, Department of	571,475.86	898,697.83	395,907.65	(175,568.21)
Real Estate Appraiser Licensing & Certification Bd.	0.00	0.00	1,595.39	1,595.39
Real Estate Commission	0.00	7,817.50	17,147.50	17,147.50
Rehabilitation Services, Department of	1,703,546.62	1,727,269.41	1,878,942.62	175,396.00
Secretary of State, Office of the	118,811.70	197,445.77	193,487.85	74,676.15
Supreme Court Services	25,472.28	33,425.08	28,272.32	2,800.04
Transportation, Department of	960,960.04	1,310,130.08	1,673,064.41	712,104.37
Treasurer, Office of the State	113,176.93	82,178.62	63,282.00	(49,894.93)
Veterans Affairs Board	2,253,520.74	4,701,179.28	5,852,172.30	3,598,651.56
Veterans Memorial Stadium Commission	47,727.40	56,374.16	14,647.48	(33,079.92)
Veterinary Medicine, Board of	36,564.90	37,884.03	41,953.64	5,388.74
Wildlife, Fisheries and Parks, Department of	794,285.36	770,823.73	761,328.15	(32,957.21)
TOTAL	\$ 14,269,243.78	\$ 20,226,723.63	\$ 30,461,047.66	\$ 16,191,803.88

SOURCE: Department of Finance and Administration and PEER analysis.

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