

By: Senator(s) Nunnelee

To: Public Health and Welfare

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2009

1 AN ACT TO REENACT SECTIONS 43-1-1, 43-1-2, 43-1-3, 43-1-5 AND
2 43-1-6, MISSISSIPPI CODE OF 1972, WHICH ESTABLISH THE DEPARTMENT
3 OF HUMAN SERVICES, THE OFFICE OF EXECUTIVE DIRECTOR OF THE
4 DEPARTMENT, AND THE JOINT OVERSIGHT COMMITTEE OF THE DEPARTMENT
5 AND PRESCRIBE THEIR POWERS AND DUTIES, AND WHICH WERE REPEALED BY
6 OPERATION OF LAW ON JULY 1, 2004; TO AMEND REENACTED SECTIONS
7 43-1-1, 43-1-2, 43-1-3, 43-1-5 AND 43-1-6, MISSISSIPPI CODE OF
8 1972, TO PROVIDE THAT THOSE SECTIONS WILL STAND REPEALED ON JULY
9 1, 2007; TO RATIFY CERTAIN ACTIONS IN CONNECTION WITH THE
10 DEPARTMENT OF HUMAN SERVICES TAKEN BETWEEN JUNE 30, 1994, AND THE
11 EFFECTIVE DATE OF THIS ACT; TO AMEND SECTIONS 25-9-107 AND
12 25-9-127, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT FOR A PERIOD
13 OF ONE YEAR, THE PERSONNEL ACTIONS OF THE DEPARTMENT OF HUMAN
14 SERVICES SHALL BE EXEMPT FROM CERTAIN STATE PERSONNEL BOARD
15 PROCEDURES; AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** Section 43-1-1, Mississippi Code of 1972, is
18 reenacted and amended as follows:

19 43-1-1. (1) The Department of Human Services shall be the
20 State Department of Public Welfare and shall retain all powers and
21 duties as granted to the State Department of Public Welfare.
22 Wherever the term "State Department of Public Welfare" or "State
23 Board of Public Welfare" appears in any law, the same shall mean
24 the Department of Human Services. The Executive Director of the
25 Department of Human Services may assign to the appropriate offices
26 such powers and duties deemed appropriate to carry out the lawful
27 functions of the department.

28 (2) This section shall stand repealed on July 1, 2007.

29 **SECTION 2.** Section 43-1-2, Mississippi Code of 1972, is
30 reenacted and amended as follows:

31 43-1-2. (1) There is created the Mississippi Department of
32 Human Services, whose offices shall be located in Jackson,

33 Mississippi, and which shall be under the policy direction of the
34 Governor.

35 (2) The chief administrative officer of the department shall
36 be the Executive Director of Human Services. The Governor shall
37 appoint the Executive Director of Human Services with the advice
38 and consent of the Senate, and he shall serve at the will and
39 pleasure of the Governor, and until his successor is appointed and
40 qualified. The Executive Director of Human Services shall possess
41 the following qualifications:

42 (a) A bachelor's degree from an accredited institution
43 of higher learning and ten (10) years' experience in management,
44 public administration, finance or accounting; or

45 (b) A master's or doctoral degree from an accredited
46 institution of higher learning and five (5) years' experience in
47 management, public administration, finance or accounting.

48 Those qualifications shall be certified by the State
49 Personnel Board.

50 (3) There shall be a Joint Oversight Committee of the
51 Department of Human Services composed of the respective chairmen
52 of the Senate Public Health and Welfare Committee, the Senate
53 Appropriations Committee, the House Public Health and Human
54 Services Committee and the House Appropriations Committee, two (2)
55 members of the Senate appointed by the Lieutenant Governor to
56 serve at the will and pleasure of the Lieutenant Governor, and two
57 (2) members of the House of Representatives appointed by the
58 Speaker of the House to serve at the will and pleasure of the
59 Speaker. The chairmanship of the committee shall alternate for
60 twelve-month periods between the Senate members and the House
61 members, with the Chairman of the Senate Public Health and Welfare
62 Committee serving as the first chairman. The committee shall meet
63 once each month, or upon the call of the chairman at such times as
64 he deems necessary or advisable, and may make recommendations to
65 the Legislature pertaining to any matter within the jurisdiction

66 of the Mississippi Department of Human Services. The appointing
67 authorities may designate an alternate member from their
68 respective houses to serve when the regular designee is unable to
69 attend such meetings of the oversight committee. For attending
70 meetings of the oversight committee, such legislators shall
71 receive per diem and expenses which shall be paid from the
72 contingent expense funds of their respective houses in the same
73 amounts as provided for committee meetings when the Legislature is
74 not in session; however, no per diem and expenses for attending
75 meetings of the committee will be paid while the Legislature is in
76 session. No per diem and expenses will be paid except for
77 attending meetings of the oversight committee without prior
78 approval of the proper committee in their respective houses.

79 (4) The * * * Department of Human Services shall provide the
80 services authorized by law to every individual determined to be
81 eligible therefor, and in carrying out the purposes of the
82 department, the executive director is authorized:

83 (a) To formulate the policy of the department regarding
84 human services within the jurisdiction of the department;

85 (b) To adopt, modify, repeal and promulgate, after due
86 notice and hearing, and where not otherwise prohibited by federal
87 or state law, to make exceptions to and grant exemptions and
88 variances from, and to enforce rules and regulations implementing
89 or effectuating the powers and duties of the department under any
90 and all statutes within the department's jurisdiction, all of
91 which shall be binding upon the county departments of human
92 services;

93 (c) To apply for, receive and expend any federal or
94 state funds or contributions, gifts, devises, bequests or funds
95 from any other source;

96 (d) Except as limited by Section 43-1-3, to enter into
97 and execute contracts, grants and cooperative agreements with any
98 federal or state agency or subdivision thereof, or any public or

99 private institution located inside or outside the State of
100 Mississippi, or any person, corporation or association in
101 connection with carrying out the programs of the department; and
102 (e) To discharge such other duties, responsibilities
103 and powers as are necessary to implement the programs of the
104 department.

105 (5) The executive director shall establish the
106 organizational structure of the Mississippi Department of Human
107 Services which shall include the creation of any units necessary
108 to implement the duties assigned to the department and consistent
109 with specific requirements of law, including, but not limited to:

110 (a) Office of Family and Children's Services;

111 (b) Office of Youth Services;

112 (c) Office of Economic Assistance;

113 (d) Office of Child Support Enforcement.

114 (6) The Executive Director of Human Services shall appoint
115 heads of offices, bureaus and divisions, as defined in Section
116 7-17-11, who shall serve at the pleasure of the executive
117 director. The salary and compensation of such office, bureau and
118 division heads shall be subject to the rules and regulations
119 adopted and promulgated by the State Personnel Board as created
120 under Section 25-9-101 et seq. The executive director shall have
121 the authority to organize offices as deemed appropriate to carry
122 out the responsibilities of the department. The organization
123 charts of the department shall be presented annually with the
124 budget request of the Governor for review by the Legislature.

125 (7) By fiscal year 2007 the Office of Youth Services shall
126 ensure that every county shall have available at least one (1)
127 nonresidential, community-based dispositional service for
128 juveniles who are adjudicated delinquent. Examples of such
129 services include, but are not limited to, the existing adolescent
130 offender program, mentoring programs, home detention, counseling
131 services, conflict resolution programs, community service and

132 substance abuse treatment. The Office of Youth Services shall
133 seek funds for a statewide system of nonresidential,
134 community-based dispositional services through the state budget
135 process, federal grants, private foundations and donations. When
136 possible the Office of Youth Services shall contract with
137 nonprofit organizations and universities to provide such services
138 to youth. No TANF funds shall be used for any of the services in
139 this subsection (7). The provisions of this subsection shall
140 stand repealed on June 30, 2006.

141 (8) This section shall stand repealed on July 1, 2007.

142 **SECTION 3.** Section 43-1-3, Mississippi Code of 1972, is
143 reenacted and amended as follows:

144 43-1-3. Notwithstanding the authority granted under
145 subsection (4)(d) of Section 43-1-2, the Department of Human
146 Services or the Executive Director of Human Services shall not be
147 authorized to delegate, privatize or otherwise enter into a
148 contract with a private entity for the operation of any office,
149 bureau or division of the department, as defined in Section
150 7-17-11, without specific authority to do so by general act of the
151 Legislature. However, nothing in this section shall be construed
152 to invalidate (i) any contract of the department that is in place
153 and operational before January 1, 1994; or (ii) the continued
154 renewal of any such contract with the same entity upon the
155 expiration of the contract; or (iii) the execution of a contract
156 with another legal entity as a replacement of any such contract
157 that is expiring, provided that the replacement contract is
158 substantially the same as the expiring contract. Notwithstanding
159 any other provision of this section, the department shall be
160 authorized to continue the operation of its child support
161 collection program with a private entity on a pilot program basis
162 in Hinds and Warren Counties in Mississippi, and the department
163 and the private entity shall specifically be prohibited from
164 expanding such pilot program to any counties other than Hinds and

165 Warren Counties without specific authority to do so by amendment
166 to this section by general act of the Legislature. Before
167 December 15, 1994, the department shall provide a detailed report
168 to the Joint Oversight Committee established by Section 43-1-2 and
169 to the Legislature that describes the results of the pilot program
170 for the privatization of the department's child support collection
171 program as of December 1, 1994, including an evaluation of whether
172 there has been substantial compliance with the performance
173 standards specified in the contract for the private entity in
174 conducting the pilot program.

175 This section shall stand repealed on July 1, 2007.

176 **SECTION 4.** Section 43-1-5, Mississippi Code of 1972, is
177 reenacted and amended as follows:

178 43-1-5. It shall be the duty of the Department of Human
179 Services to:

180 (1) Establish and maintain programs not inconsistent with
181 the terms of this chapter and the rules, regulations and policies
182 of the * * * Department of Human Services, and publish the rules
183 and regulations of the department pertaining to such programs.

184 (2) Make such reports in such form and containing such
185 information as the federal government may, from time to time,
186 require, and comply with such provisions as the federal government
187 may, from time to time, find necessary to assure the correctness
188 and verification of such reports.

189 (3) Within ninety (90) days after the end of each fiscal
190 year, and at each regular session of the Legislature, make and
191 publish one (1) report to the Governor and to the Legislature,
192 showing for the period of time covered, in each county and for the
193 state as a whole:

194 (a) The total number of recipients;

195 (b) The total amount paid to them in cash;

196 (c) The maximum and the minimum amount paid to any
197 recipients in any one month;

- 198 (d) The total number of applications;
- 199 (e) The number granted;
- 200 (f) The number denied;
- 201 (g) The number cancelled;
- 202 (h) The amount expended for administration of the
- 203 provisions of this chapter;
- 204 (i) The amount of money received from the federal
- 205 government, if any;
- 206 (j) The amount of money received from recipients of
- 207 assistance and from their estates and the disposition of same;
- 208 (k) Such other information and recommendations as the
- 209 Governor may require or the department shall deem advisable;
- 210 (l) The number of state-owned automobiles purchased and
- 211 operated during the year by the department, the number purchased
- 212 and operated out of funds appropriated by the Legislature, the
- 213 number purchased and operated out of any other public funds, the
- 214 miles traveled per automobile, the total miles traveled, the
- 215 average cost per mile and depreciation estimate on each
- 216 automobile;
- 217 (m) The cost per mile and total number of miles
- 218 traveled by department employees in privately-owned automobiles,
- 219 for which reimbursement is made out of state funds;
- 220 (n) Each association, convention or meeting attended by
- 221 any department employees, the purposes thereof, the names of the
- 222 employees attending and the total cost to the state of such
- 223 convention, association or meeting;
- 224 (o) How the money appropriated to the institutions
- 225 under the jurisdiction of the department has been expended during
- 226 the preceding year, beginning and ending with the fiscal year of
- 227 each institution, exhibiting the salaries paid to officers and
- 228 employees of the institutions, and each and every item of receipt
- 229 and expenditure;

230 (p) The activities of each division within the
231 Department of Human Services and recommendations for improvement
232 of the services to be performed by each division;

233 (q) In order of authority, the twenty (20) highest paid
234 employees in the department receiving an annual salary in excess
235 of Forty Thousand Dollars (\$40,000.00), by P.I.N. number, job
236 title, job description and annual salary.

237 Each report shall be balanced and shall begin with the
238 balance at the end of the preceding fiscal year, and if any
239 property belonging to the state or the institution is used for
240 profit such report shall show the expenses incurred in managing
241 the property and the amount received from the same. Such reports
242 shall also show a summary of the gross receipts and gross
243 disbursements for each fiscal year and shall show the money on
244 hand at the beginning of the fiscal period of each division and
245 institution of the department.

246 This section shall stand repealed on July 1, 2007.

247 **SECTION 5.** Section 43-1-6, Mississippi Code of 1972, is
248 reenacted and amended as follows:

249 43-1-6. The following programs within the Division of
250 Federal-State Programs, Office of the Governor, shall be
251 transferred to the * * * Department of Human Services:

- 252 (a) Office of Energy and Community Services;
253 (b) Juvenile Justice Advisory Committee; and
254 (c) Mississippi Council on Aging.

255 All authority to implement those programs shall be vested in
256 the * * * Department of Human Services.

257 This section shall stand repealed on July 1, 2007.

258 **SECTION 6.** The Department of Human Services created by
259 Section 2 of this act is a continuation of the Department of Human
260 Services that existed on June 30, 2004, and the Joint Oversight
261 Committee created by Section 2 of this act is a continuation of
262 the Joint Oversight Committee that existed on June 30, 2004. It

263 is the intention of this Senate Bill No. 2009, 2005 Regular
264 Session, to resolve all issues and matters in the Order Appointing
265 a Receiver for the Department of Human Services issued by the
266 Chancery Court of the First Judicial District of Hinds County,
267 Mississippi, in the case of State of Mississippi, Ex Rel. Jim
268 Hood, Attorney General v. Haley Barbour, Governor, et al., Cause
269 No. 62004-1170, and the Attorney General shall file appropriate
270 motions in the chancery court to dismiss this case. Provided,
271 however, all actions taken by the receivership referred to in said
272 court order between June 30, 2004, and the effective date of this
273 act that would have been lawful if they had been taken by the
274 Department of Human Services as it existed on June 30, 2004,
275 pursuant to the department's powers or duties as they existed on
276 June 30, 2004, or pursuant to any powers or duties as they existed
277 on June 30, 2004, or pursuant to any powers or duties of the
278 department provided for by any state law enacted during the 2004
279 Regular Session or any federal law or regulation that was in
280 effect between June 30, 2004, and the effective date of this act,
281 are retroactively ratified, confirmed and validated. In addition,
282 all actions taken by the State Fiscal Officer, the State Treasurer
283 and their respective employees between June 30, 2004, and the
284 effective date of this act in connection with the expenditure by
285 the receivership referred to in said court order of any of the
286 funds appropriated to the Department of Human Services by House
287 Bill No. 1747, 2004 Regular Session, are retroactively ratified,
288 confirmed and validated.

289 **SECTION 7.** Section 25-9-107, Mississippi Code of 1972, is
290 amended as follows:

291 25-9-107. The following terms, when used in this chapter,
292 unless a different meaning is plainly required by the context,
293 shall have the following meanings:

294 (a) "Board" means the State Personnel Board created
295 under the provisions of this chapter.

296 (b) "State service" means all employees of state
297 departments, agencies and institutions as defined herein, except
298 those officers and employees excluded by this chapter.

299 (c) "Nonstate service" means the following officers and
300 employees excluded from the state service by this chapter. The
301 following are excluded from the state service:

302 (i) Members of the State Legislature, their staffs
303 and other employees of the legislative branch;

304 (ii) The Governor and staff members of the
305 immediate Office of the Governor;

306 (iii) Justices and judges of the judicial branch
307 or members of appeals boards on a per diem basis;

308 (iv) The Lieutenant Governor, staff members of the
309 immediate Office of the Lieutenant Governor and officers and
310 employees directly appointed by the Lieutenant Governor;

311 (v) Officers and officials elected by popular vote
312 and persons appointed to fill vacancies in elective offices;

313 (vi) Members of boards and commissioners appointed
314 by the Governor, Lieutenant Governor or the State Legislature;

315 (vii) All academic officials, members of the
316 teaching staffs and employees of the state institutions of higher
317 learning, the State Board for Community and Junior Colleges, and
318 community and junior colleges;

319 (viii) Officers and enlisted members of the
320 National Guard of the state;

321 (ix) Prisoners, inmates, student or patient help
322 working in or about institutions;

323 (x) Contract personnel; provided, that any agency
324 which employs state service employees may enter into contracts for
325 personal and professional services only if such contracts are
326 approved in compliance with the rules and regulations promulgated
327 by the State Personal Service Contract Review Board under Section
328 25-9-120(3). Before paying any warrant for such contractual

329 services in excess of One Hundred Thousand Dollars (\$100,000.00),
330 the Auditor of Public Accounts, or the successor to those duties,
331 shall determine whether the contract involved was for personal or
332 professional services, and, if so, was approved by the State
333 Personal Service Contract Review Board;

334 (xi) Part-time employees; provided, however,
335 part-time employees shall only be hired into authorized employment
336 positions classified by the board, shall meet minimum
337 qualifications as set by the board, and shall be paid in
338 accordance with the Variable Compensation Plan as certified by the
339 board;

340 (xii) Persons appointed on an emergency basis for
341 the duration of the emergency; the effective date of the emergency
342 appointments shall not be earlier than the date approved by the
343 State Personnel Director, and shall be limited to thirty (30)
344 working days. Emergency appointments may be extended to sixty
345 (60) working days by the State Personnel Board;

346 (xiii) Physicians, dentists, veterinarians, nurse
347 practitioners and attorneys, while serving in their professional
348 capacities in authorized employment positions who are required by
349 statute to be licensed, registered or otherwise certified as such,
350 provided that the State Personnel Director shall verify that the
351 statutory qualifications are met prior to issuance of a payroll
352 warrant by the auditor;

353 (xiv) Personnel who are employed and paid from
354 funds received from a federal grant program which has been
355 approved by the Legislature or the Department of Finance and
356 Administration whose length of employment has been determined to
357 be time-limited in nature. This subparagraph shall apply to
358 personnel employed under the provisions of the Comprehensive
359 Employment and Training Act of 1973, as amended, and other special
360 federal grant programs which are not a part of regular federally
361 funded programs wherein appropriations and employment positions

362 are appropriated by the Legislature. Such employees shall be paid
363 in accordance with the Variable Compensation Plan and shall meet
364 all qualifications required by federal statutes or by the
365 Mississippi Classification Plan;

366 (xv) The administrative head who is in charge of
367 any state department, agency, institution, board or commission,
368 wherein the statute specifically authorizes the Governor, board,
369 commission or other authority to appoint said administrative head;
370 provided, however, that the salary of such administrative head
371 shall be determined by the State Personnel Board in accordance
372 with the Variable Compensation Plan unless otherwise fixed by
373 statute;

374 (xvi) The State Personnel Board shall exclude top
375 level positions if the incumbents determine and publicly advocate
376 substantive program policy and report directly to the agency head,
377 or the incumbents are required to maintain a direct confidential
378 working relationship with a key excluded official. Provided
379 further, a written job classification shall be approved by the
380 board for each such position, and positions so excluded shall be
381 paid in conformity with the Variable Compensation Plan;

382 (xvii) Employees whose employment is solely in
383 connection with an agency's contract to produce, store or
384 transport goods, and whose compensation is derived therefrom;

385 (xviii) Repealed;

386 (xix) The associate director, deputy directors and
387 bureau directors within the Department of Agriculture and
388 Commerce;

389 (xx) Personnel employed by the Mississippi
390 Industries for the Blind; provided, that any agency may enter into
391 contracts for the personal services of MIB employees without the
392 prior approval of the State Personnel Board or the State Personal
393 Service Contract Review Board; however, any agency contracting for
394 the personal services of an MIB employee shall provide the MIB

395 employee with not less than the entry level compensation and
396 benefits that the agency would provide to a full-time employee of
397 the agency who performs the same services;

398 (xxi) Personnel employed by the Mississippi
399 Department of Wildlife, Fisheries and Parks as law enforcement
400 trainees (cadets); such personnel shall be paid in accordance with
401 the Colonel Guy Groff State Variable Compensation Plan;

402 (xxii) For a period beginning with the effective
403 date of Senate Bill No. 2009, 2005 Regular Session, through June
404 30, 2006, all employees in the Mississippi Department of Human
405 Services who are under the purview of the State Personnel Board;
406 such employees shall be paid in accordance with the Colonel Guy
407 Groff State Variable Compensation Plan and shall be otherwise
408 subject to the policies and procedures of the State Personnel
409 Board.

410 (d) "Agency" means any state board, commission,
411 committee, council, department or unit thereof created by the
412 Constitution or statutes if such board, commission, committee,
413 council, department, unit or the head thereof, is authorized to
414 appoint subordinate staff by the Constitution or statute, except a
415 legislative or judicial board, commission, committee, council,
416 department or unit thereof.

417 **SECTION 8.** Section 25-9-127, Mississippi Code of 1972, is
418 amended as follows:

419 25-9-127. (1) No employee of any department, agency or
420 institution who is included under this chapter or hereafter
421 included under its authority, and who is subject to the rules and
422 regulations prescribed by the state personnel system may be
423 dismissed or otherwise adversely affected as to compensation or
424 employment status except for inefficiency or other good cause, and
425 after written notice and hearing within the department, agency or
426 institution as shall be specified in the rules and regulations of
427 the State Personnel Board complying with due process of law; and

428 any employee who has by written notice of dismissal or action
429 adversely affecting his compensation or employment status shall,
430 on hearing and on any appeal of any decision made in such action,
431 be required to furnish evidence that the reasons stated in the
432 notice of dismissal or action adversely affecting his compensation
433 or employment status are not true or are not sufficient grounds
434 for the action taken; provided, however, that this provision shall
435 not apply (a) to persons separated from any department, agency or
436 institution due to curtailment of funds or reduction in staff when
437 such separation is in accordance with rules and regulations of the
438 state personnel system; (b) during the probationary period of
439 state service of twelve (12) months; * * * (c) to an executive
440 officer of any state agency who serves at the will and pleasure of
441 the Governor, board, commission or other appointing authority; and
442 (d) all employees employed in the Department of Human Services who
443 are under the purview of the State Personnel Board, whose
444 accumulated property interests in state service employment shall
445 be suspended for a period beginning upon the effective date of
446 Senate Bill No. 2009, 2005 Regular Session, and through June 30,
447 2006, notwithstanding any existing statutory provision which
448 conveys state service status. The Department of Human Services
449 shall consult with the Office of the Attorney General before
450 taking personnel actions permitted by this subsection (1)(d) to
451 review those actions for compliance with applicable state and
452 federal law.

453 (2) The operation of a state-owned motor vehicle without a
454 valid Mississippi driver's license by an employee of any
455 department, agency or institution that is included under this
456 chapter and that is subject to the rules and regulations of the
457 state personnel system shall constitute good cause for dismissal
458 of such person from employment.

459 (3) Beginning July 1, 1999, every male between the ages of
460 eighteen (18) and twenty-six (26) who is required to register

461 under the federal Military Selective Service Act, 50 USCS App.
462 453, and who is an employee of the state shall not be promoted to
463 any higher position of employment with the state until he submits
464 to the person, commission, board or agency by which he is employed
465 satisfactory documentation of his compliance with the draft
466 registration requirements of the Military Selective Service Act.
467 The documentation shall include a signed affirmation under penalty
468 of perjury that the male employee has complied with the
469 requirements of the federal selective service act.

470 **SECTION 9.** This act shall take effect and be in force from
471 and after its passage.