

By: Senator(s) Nunnelee

To: Public Health and Welfare

SENATE BILL NO. 2009
(As Passed the Senate)

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5 AND PRESCRIBE THEIR POWERS AND DUTIES, AND WHICH WERE REPEALED BY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8 1972, TO PROVIDE THAT THOSE SECTIONS WILL STAND REPEALED ON JULY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, 2009; 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28 (2) This section shall stand repealed on July 1, 2009.

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. The provisions of this subsection shall stand repealed
139 on June 30, 2006.

140 (8) This section shall stand repealed on July 1, 2009.

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

143 43-1-3. Notwithstanding the authority granted under
144 subsection (4)(d) of Section 43-1-2, the Department of Human
145 Services or the Executive Director of Human Services shall not be
146 authorized to delegate, privatize or otherwise enter into a
147 contract with a private entity for the operation of any office,
148 bureau or division of the department, as defined in Section
149 7-17-11, without specific authority to do so by general act of the
150 Legislature. However, nothing in this section shall be construed
151 to invalidate (i) any contract of the department that is in place
152 and operational before January 1, 1994; or (ii) the continued
153 renewal of any such contract with the same entity upon the
154 expiration of the contract; or (iii) the execution of a contract
155 with another legal entity as a replacement of any such contract
156 that is expiring, provided that the replacement contract is
157 substantially the same as the expiring contract. Notwithstanding
158 any other provision of this section, the department shall be
159 authorized to continue the operation of its child support
160 collection program with a private entity on a pilot program basis
161 in Hinds and Warren Counties in Mississippi, and the department
162 and the private entity shall specifically be prohibited from
163 expanding such pilot program to any counties other than Hinds and
164 Warren Counties without specific authority to do so by amendment

165 to this section by general act of the Legislature. Before
166 December 15, 1994, the department shall provide a detailed report
167 to the Joint Oversight Committee established by Section 43-1-2 and
168 to the Legislature that describes the results of the pilot program
169 for the privatization of the department's child support collection
170 program as of December 1, 1994, including an evaluation of whether
171 there has been substantial compliance with the performance
172 standards specified in the contract for the private entity in
173 conducting the pilot program.

174 This section shall stand repealed on July 1, 2009.

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

177 43-1-5. It shall be the duty of the Department of Human
178 Services to:

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

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

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

193 (a) The total number of recipients;

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

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

197 (d) The total number of applications;

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

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

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

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

245 This section shall stand repealed on July 1, 2009.

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

248 43-1-6. The following programs within the Division of
249 Federal-State Programs, Office of the Governor, shall be
250 transferred to the * * * Department of Human Services:

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

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

256 This section shall stand repealed on July 1, 2009.

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

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

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

290 25-9-107. The following terms, when used in this chapter,
291 unless a different meaning is plainly required by the context,
292 shall have the following meanings:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

384 (xviii) Repealed;

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

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

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

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

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

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

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

418 25-9-127. (1) No employee of any department, agency or
419 institution who is included under this chapter or hereafter
420 included under its authority, and who is subject to the rules and
421 regulations prescribed by the state personnel system may be
422 dismissed or otherwise adversely affected as to compensation or
423 employment status except for inefficiency or other good cause, and
424 after written notice and hearing within the department, agency or
425 institution as shall be specified in the rules and regulations of
426 the State Personnel Board complying with due process of law; and

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

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

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

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

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