

By: Senator(s) Ross

To: Appropriations

SENATE BILL NO. 2733

1 AN ACT TO AUTHORIZE STATE AGENCIES AND OTHER STATE ENTITIES  
2 TO DIRECTLY EMPLOY LEGAL COUNSEL, WHETHER SALARIED OR ON A  
3 CASE-BY-CASE BASIS; TO PROVIDE THAT COMPENSATION OF SUCH LEGAL  
4 COUNSEL MAY BE PAID FROM ANY FUNDS APPROPRIATED OR OTHERWISE  
5 AVAILABLE TO THE APPOINTING OR EMPLOYING ENTITY; TO AMEND SECTIONS  
6 7-5-1, 7-5-7, 7-7-225 AND 27-104-105, MISSISSIPPI CODE OF 1972, TO  
7 CONFORM; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** The executive director of any state agency,  
10 board, institution or commission is authorized and empowered to  
11 appoint or employ special counsel, on a fee or salary basis, to  
12 assist the appointing or employing entity in any or all legal  
13 matters, including, but not limited to, the preparation for,  
14 prosecution or defense of any litigation in the state or federal  
15 courts or before any federal commission or agency in which the  
16 appointing or employing entity is a party or has an interest. The  
17 approval of the Attorney General is not required for an  
18 appointment or hiring under this section; however, the  
19 compensation of any appointee or employee under this section shall  
20 be subject to the approval of the Attorney General, such approval  
21 not to be unreasonably withheld. The compensation of any  
22 appointee under this section shall not exceed recognized bar rates  
23 for similar services, and the compensation of any employee under  
24 this section shall not exceed that customarily paid to a Special  
25 Assistant Attorney General who performs similar duties; the  
26 attorney's compensation shall be paid out of any funds  
27 appropriated or otherwise available to the appointing or employing  
28 entity.

29           **SECTION 2.** Section 7-5-1, Mississippi Code of 1972, is  
30 amended as follows:

31           7-5-1. (1) The Attorney General provided for by Section 173  
32 of the Mississippi Constitution shall be elected at the same time  
33 and in the same manner as the Governor is elected. His term of  
34 office shall be four (4) years and his compensation shall be fixed  
35 by the Legislature.

36           (2) He shall be the chief legal officer and advisor for the  
37 state, both civil and criminal, and shall provide such legal  
38 services as may be requested from time to time, without cost. He  
39 is charged with managing \* \* \* litigation on behalf of the state  
40 in cases where other counsel has not been hired or retained by an  
41 entity authorized to do so.

42           (3) No arm or agency of the state government shall bring or  
43 defend a suit against another such arm or agency without prior  
44 written approval of the Attorney General.

45           (4) Except as expressly restricted or modified by statute or  
46 the Mississippi Constitution of 1890:

47           (a) He shall have the powers of the Attorney General at  
48 common law; and

49           (b) He may bring or defend a lawsuit on behalf of a  
50 state agency, the subject matter of which is of statewide  
51 interest. \* \* \*

52           (5) The Attorney General shall intervene and argue the  
53 constitutionality of any statute when notified of a challenge  
54 thereto, pursuant to the Mississippi Rules of Civil Procedure.

55           (6) The qualifications for Office of the Attorney General  
56 shall be as provided for Chancery and Circuit Judges in Section  
57 154 of the Mississippi Constitution.

58           **SECTION 3.** Section 7-5-7, Mississippi Code of 1972, is  
59 amended as follows:

60           7-5-7. (1) The Governor may engage counsel to assist the  
61 Attorney General in cases to which the state is a party when, in

62 his opinion, the interest of the state requires it, subject to the  
63 action of the Legislature in providing compensation for such  
64 services.

65 (2) (a) The Attorney General is hereby authorized and  
66 empowered to appoint or employ Special Counsel, on a fee or salary  
67 basis, to assist the Attorney General in the preparation for,  
68 prosecution, or defense of any litigation in the state or federal  
69 courts or before any federal commission or agency in which the  
70 state is a party or has an interest.

71 (b) The Attorney General may designate such special  
72 counsel as Special Assistant Attorney General, and may pay such  
73 special counsel reasonable compensation to be agreed upon by the  
74 Attorney General and such Special Counsel, in no event to exceed  
75 recognized bar rates for similar services.

76 (3) The Attorney General may also employ special  
77 investigators on a per diem or salary basis, to be agreed upon at  
78 the time of employment, for the purpose of interviewing witnesses,  
79 ascertaining facts, or rendering any other services that may be  
80 needed by the Attorney General in the preparation for and  
81 prosecution of suits by or against the State of Mississippi, or in  
82 suits in which the Attorney General is participating on account of  
83 same being of statewide interest.

84 (4) The Attorney General may pay travel and other expenses  
85 of employees and appointees made hereunder in the same manner and  
86 amount as authorized by law for the payment of travel and expenses  
87 of state employees and officials.

88 (5) The compensation of appointees and employees made  
89 hereunder shall be paid out of the Attorney General's contingent  
90 fund, or out of any other funds appropriated to the Attorney  
91 General's Office.

92 **SECTION 4.** Section 7-7-225, Mississippi Code of 1972, is  
93 amended as follows:

94           7-7-225. The State Auditor shall, when conducting agency  
95 audits, test to determine whether or not the State Institutions of  
96 Higher Learning and any state agency which does not draw warrants  
97 on the Treasury have received approval of the Attorney General for  
98 any contract for legal services, the extent approval by the  
99 Attorney General is required.

100           **SECTION 5.** Section 27-104-105, Mississippi Code of 1972, is  
101 amended as follows:

102           27-104-105. The Department of Finance and Administration  
103 shall not process any warrant requested by any state agency for  
104 payment for legal services without first determining that the  
105 services and contract were approved by the Attorney General and  
106 the State Personnel Board, to the extent the Attorney General's  
107 approval is required; contracts for legal services performed for  
108 the Mississippi Department of Transportation in eminent domain  
109 cases shall not require approval by the State Personnel Board.  
110 The State Auditor shall test for compliance with this section.

111           **SECTION 6.** This act shall take effect and be in force from  
112 and after its passage.