

By: Representatives Gunn, Upshaw

To: Judiciary A;  
Appropriations

## HOUSE BILL NO. 1146

1 AN ACT TO AMEND SECTION 7-5-1, MISSISSIPPI CODE OF 1972, TO  
 2 REVISE THE NATURE OF THE ATTORNEY GENERAL'S APPROVAL OF OUTSIDE  
 3 COUNSEL HIRED BY A STATE AGENCY AND TO PROVIDE THAT LITIGATION ON  
 4 BEHALF OF A STATE AGENCY MUST RECEIVE THE APPROVAL OF THE AGENCY  
 5 HEAD; TO BRING FORWARD SECTION 7-5-3, MISSISSIPPI CODE OF 1972,  
 6 FOR PURPOSES OF AMENDMENT; TO AMEND SECTION 7-5-5, MISSISSIPPI  
 7 CODE OF 1972, TO REVISE THE AUTHORITY OF THE ATTORNEY GENERAL TO  
 8 RETAIN OUTSIDE COUNSEL AND TO GRANT A LIMITED FUNDS ESCALATION; TO  
 9 BRING FORWARD SECTION 7-5-7, MISSISSIPPI CODE OF 1972, FOR  
 10 PURPOSES OF AMENDMENT; TO AMEND SECTION 7-5-21, MISSISSIPPI CODE  
 11 OF 1972, TO REVISE THE CASE DOCKET MAINTAINED BY THE ATTORNEY  
 12 GENERAL; TO AUTHORIZE STATE AGENCIES AND OTHER STATE ENTITIES TO  
 13 DIRECTLY EMPLOY LEGAL COUNSEL, WHETHER SALARIED OR ON A  
 14 CASE-BY-CASE BASIS; TO PROVIDE THAT COMPENSATION OF SUCH LEGAL  
 15 COUNSEL MAY BE PAID FROM ANY FUNDS APPROPRIATED OR OTHERWISE  
 16 AVAILABLE TO THE APPOINTING OR EMPLOYING ENTITY; TO BRING FORWARD  
 17 SECTION 7-5-39, MISSISSIPPI CODE OF 1972, FOR PURPOSES OF  
 18 AMENDMENT; TO AMEND SECTION 25-9-120, MISSISSIPPI CODE OF 1972, TO  
 19 REVISE THE DUTIES OF THE PERSONAL SERVICE CONTRACT REVIEW BOARD  
 20 WITH REGARD TO CONTRACTS FOR OUTSIDE COUNSEL ENTERED INTO BY THE  
 21 ATTORNEY GENERAL; AND FOR RELATED PURPOSES.

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

23 **SECTION 1.** Section 7-5-1, Mississippi Code of 1972, is  
 24 amended as follows:

25 7-5-1. (1) The Attorney General provided for by Section 173  
 26 of the Mississippi Constitution shall be elected at the same time  
 27 and in the same manner as the Governor is elected. His term of  
 28 office shall be four (4) years and his compensation shall be fixed  
 29 by the Legislature. He shall be the chief legal officer and  
 30 advisor for the state, both civil and criminal, and is charged  
 31 with managing \* \* \* litigation on behalf of the state or of  
 32 approving the outside counsel retained by an agency to manage  
 33 litigation as provided in Section 5 of Senate Bill No. 2482, 2007  
 34 Regular Session. No arm or agency of the state government shall  
 35 bring or defend a suit against another such arm or agency without  
 36 prior written approval of the Attorney General. He shall have the

37 powers of the Attorney General at common law and, except as  
38 provided in subsection (2) of this section, is given \* \* \* power  
39 to bring or defend a lawsuit on behalf of a state agency, the  
40 subject matter of which is of statewide interest, and he shall  
41 intervene and argue the constitutionality of any statute when  
42 notified of a challenge thereto, pursuant to the Mississippi Rules  
43 of Civil Procedure. His qualifications for office shall be as  
44 provided for chancery and circuit judges in Section 154 of the  
45 Mississippi Constitution.

46 (2) No legal action on behalf of any state agency, including  
47 a suit to recoup funds expended by an agency, may be taken until  
48 ten (10) days' written notice of the proposed legal action is  
49 given to the executive director of the agency. Upon the  
50 expiration of the notice period, the Attorney General may  
51 institute suit with or without the consent of the executive  
52 director of the agency. If the executive director of the agency  
53 does not consent to the legal action, the executive director may  
54 retain counsel pursuant to Section 5 of Senate Bill No. 2482, 2007  
55 Regular Session.

56 **SECTION 2.** Section 7-5-3, Mississippi Code of 1972, is  
57 brought forward as follows:

58 7-5-3. There shall be no more than two (2) deputy attorneys  
59 general whose qualifications shall be the same as that of the  
60 Attorney General, who shall be appointed by the Attorney General  
61 to serve at his will and pleasure and whose compensation shall be  
62 fixed by the Legislature. The Attorney General may, in writing  
63 filed with the office of the Secretary of State, designate the  
64 deputy attorneys general to perform any duties and powers  
65 conferred on the Attorney General and to serve in his place and  
66 stead on any nonconstitutional board or commission for a  
67 particular meeting or series of called or regular meetings; and on  
68 such boards or commissions the deputy attorney general's vote,  
69 decision or signature thereon shall have the full force and effect

70 and shall be legal and binding on the State of Mississippi as if  
71 the Attorney General had personally participated in such meeting  
72 or meetings.

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

75 7-5-5. (1) The Attorney General shall appoint nine (9)  
76 competent attorneys, each of whom shall be designated as an  
77 assistant attorney general. The assistants shall each possess all  
78 of the qualifications required by law of the Attorney General and  
79 shall have power and authority under the direction and supervision  
80 of the Attorney General to perform all of the duties required by  
81 law of that officer; and each shall be liable to the pains and  
82 penalties to which the Attorney General is liable. The assistants  
83 shall serve at the will and pleasure of the Attorney General, and  
84 they shall devote their entire time and attention to the duties  
85 pertaining to the department of justice as required by the general  
86 laws. The compensation of the within enumerated assistant  
87 attorneys general and all other regular assistants authorized by  
88 law shall be fixed by the Attorney General, not to exceed the  
89 compensation fixed by law for such assistants.

90 (2) (a) The Attorney General is hereby authorized,  
91 empowered and directed to designate three (3) of the \* \* \*  
92 assistant attorneys general to devote their time and attention  
93 primarily to defending and aiding in the defense in all courts of  
94 any suit, filed or threatened, against the State of Mississippi,  
95 against any subdivision thereof, or against any agency or  
96 instrumentality of the state or subdivision, including all elected  
97 officials and any other officer or employee thereof. When the  
98 circumstances permit, the assistants may perform any of the  
99 Attorney General's powers and duties, including, but not limited  
100 to, engaging in lawsuits outside the state when in his opinion  
101 same would help bring about the equal application of federal laws  
102 and court decisions in every state and guaranteeing equal

103 protection of the laws as guaranteed every citizen by the United  
104 States Constitution.

105 (b) To further prosecute and insure such purposes, the  
106 Attorney General is hereby further expressly authorized, empowered  
107 and directed to employ such additional counsel as special  
108 assistant attorneys general as may be necessary or advisable, on a  
109 fee or contract basis; and the Attorney General shall be the sole  
110 judge of the compensation in such cases.

111 (i) The Attorney General must first determine that  
112 the needed legal services cannot be adequately performed by the  
113 attorneys and supporting personnel who are employees of the  
114 Attorney General before the Attorney General can hire additional  
115 attorneys who will not be employees of the Attorney General.

116 (ii) The hiring shall be on an hourly basis unless  
117 the legal services cannot reasonably be obtained from attorneys in  
118 private practice under a contract providing only for the payment  
119 of hourly fees, without regard to the outcome of the matter,  
120 because of the nature of the matter for which the services will be  
121 obtained or because there are not appropriated funds available to  
122 pay the estimated amounts required under a contract providing only  
123 for the payment of hourly fees.

124 (iii) Any contract for services of additional  
125 counsel shall be reviewed by the Personal Service Contract Review  
126 Board created under Section 25-9-120.

127 (iv) No contract for services of additional  
128 counsel shall be entered into by the Attorney General until  
129 Requests for Proposal have been issued to at least six (6)  
130 separate law firms or solo practitioners; the Attorney General  
131 shall submit copies of all proposals to the Personal Service  
132 Contract Review Board to use as a part of the board's evaluation  
133 of the contract entered into.

134 (v) 1. Any contract for services of additional  
135 counsel, whether providing for set, hourly or contingent fee, must

136 require that the contracting attorney or law firm keep current and  
137 complete written time and expense records that describe in detail  
138 the time and money spent each day in performance of the contract.

139 2. The contracting attorney or law firm shall  
140 permit the Attorney General, the Personal Service Contract Review  
141 Board and the State Auditor each to inspect or obtain copies of  
142 the time and expense records at any time on request.

143 3. On conclusion of the matter for which the  
144 legal services were obtained, the contracting attorney or law firm  
145 shall provide the Personal Service Contract Review Board with a  
146 complete written statement that describes the outcome of the  
147 matter, states the amount of any recovery, shows the contracting  
148 attorney's or law firm's computation of the amount of all fees and  
149 expenses, and contains the final complete time and expense records  
150 required under item 1 of this subparagraph. The Attorney General  
151 shall keep and maintain these records and shall annually provide a  
152 report detailing all litigation pursued with outside counsel to  
153 the Governor, Lieutenant Governor, Speaker of the House and the  
154 Chairmen of the House Judiciary "A" and Senate Judiciary, Division  
155 A Committees. This report shall include a description of the  
156 litigation, name of counsel retained, description of the terms and  
157 conditions by which outside counsel was retained, and  
158 compensation.

159 (3) Unless otherwise specified in the appropriation bill,  
160 upon application of the Attorney General, the Executive Director  
161 of the Department of Finance and Administration shall have the  
162 authority to approve escalations in the budget of the Attorney  
163 General not to exceed Five Hundred Thousand Dollars (\$500,000.00)  
164 in any one (1) fiscal year for the purpose of allowing the  
165 Attorney General to retain counsel to pursue litigation. The  
166 Executive Director shall immediately notify the Legislative Budget  
167 Office of the approval of the budget escalation. The Executive  
168 Director shall ensure the Legislative Budget Office receives

169 timely, detailed and accurate information about the amount and use  
170 of the escalation authority granted under this subsection.

171 (4) The Attorney General may discharge any assistant  
172 Attorney General or special assistant Attorney General at his  
173 pleasure and appoint another in his stead. The assistant  
174 attorneys general shall devote their entire time and attention to  
175 the duties pertaining to the department of justice under the  
176 control and supervision of the Attorney General.

177 **SECTION 4.** Section 7-5-7, Mississippi Code of 1972, is  
178 brought forward as follows:

179 7-5-7. The Governor may engage counsel to assist the  
180 Attorney General in cases to which the state is a party when, in  
181 his opinion, the interest of the state requires it, subject to the  
182 action of the Legislature in providing compensation for such  
183 services.

184 The Attorney General is hereby authorized and empowered to  
185 appoint and employ special counsel, on a fee or salary basis, to  
186 assist the Attorney General in the preparation for, prosecution,  
187 or defense of any litigation in the state or federal courts or  
188 before any federal commission or agency in which the state is a  
189 party or has an interest.

190 The Attorney General may designate such special counsel as  
191 special assistant attorney general, and may pay such special  
192 counsel reasonable compensation to be agreed upon by the Attorney  
193 General and such special counsel, in no event to exceed recognized  
194 bar rates for similar services.

195 The Attorney General may also employ special investigators on  
196 a per diem or salary basis, to be agreed upon at the time of  
197 employment, for the purpose of interviewing witnesses,  
198 ascertaining facts, or rendering any other services that may be  
199 needed by the Attorney General in the preparation for and  
200 prosecution of suits by or against the State of Mississippi, or in

201 suits in which the Attorney General is participating on account of  
202 same being of statewide interest.

203 The Attorney General may pay travel and other expenses of  
204 employees and appointees made hereunder in the same manner and  
205 amount as authorized by law for the payment of travel and expenses  
206 of state employees and officials.

207 The compensation of appointees and employees made hereunder  
208 shall be paid out of the Attorney General's contingent fund, or  
209 out of any other funds appropriated to the Attorney General's  
210 office.

211 **SECTION 5.** Section 7-5-21, Mississippi Code of 1972, is  
212 amended as follows:

213 7-5-21. The Attorney General shall keep a docket of all  
214 causes in which he is required to appear or is appearing, either  
215 through his office or through retained counsel, which must \* \* \*  
216 be open to the inspection of the public during regular business  
217 hours and must show the style of the case and the county,  
218 district, and court in which the causes have been instituted and  
219 tried, the cause number of the action, and whether they be civil  
220 or criminal. If civil, the docket must show the nature of the  
221 demand, the stage of the proceedings, the name and address of any  
222 retained or contract counsel, a memorandum of the judgment when  
223 prosecuted to judgment, any process issued thereon, whether  
224 satisfied or not, and if not satisfied, the return of the sheriff.  
225 If criminal, the docket must show the nature of the crime, the  
226 mode of prosecution, the stage of the proceedings, a memorandum of  
227 the sentence when prosecuted to a sentence, the execution thereof,  
228 if executed, and, if not executed, the reasons of delay or  
229 prevention.

230 **SECTION 6.** (1) The executive director of any state agency,  
231 board, institution or commission is authorized and empowered to  
232 appoint or employ special counsel, on a fee or salary basis, to  
233 assist the appointing or employing entity in any or all legal

234 matters, including, but not limited to, the preparation for,  
235 prosecution, or defense of any litigation in the state or federal  
236 courts or before any federal commission or agency in which the  
237 appointing or employing entity is a party or has an interest. The  
238 approval of the Attorney General as to the competence of the  
239 attorney and the attorney's standing in The Mississippi Bar is  
240 required for an appointment or hiring under this section. The  
241 compensation of any appointee under this section shall not exceed  
242 recognized bar rates for similar services, and the compensation of  
243 any employee under this section shall not exceed that customarily  
244 paid to a special assistant attorney general who performs similar  
245 duties; the attorney's compensation shall be paid out of any funds  
246 appropriated or otherwise available to the appointing or employing  
247 entity.

248 (2) The director of any state agency is absolutely entitled  
249 to retain counsel under this section if any conflict exists with  
250 the Office of the Attorney General. If the director of any state  
251 agency hires outside counsel under this section, the Attorney  
252 General shall withdraw from representation of that agency, but the  
253 Attorney General may continue to appear in any other capacity.

254 **SECTION 7.** Section 7-5-39, Mississippi Code of 1972, is  
255 brought forward as follows:

256 7-5-39. The Attorney General shall also represent the state,  
257 in person or by his assistant, as counsel in all suits against the  
258 state in other courts than the Supreme Court at the seat of  
259 government, and he shall, in like manner, act as counsel for any  
260 of the state officers in suits brought by or against them in their  
261 official capacity, touching any official duty or trust and triable  
262 at the seat of government. He may pursue the collection of any  
263 claim or judgment in favor of the state outside of the state.

264 **SECTION 8.** Section 25-9-120, Mississippi Code of 1972, is  
265 amended as follows:

266           25-9-120. (1) Contract personnel, whether classified as  
267 contract workers or independent contractors shall not be deemed  
268 state service or nonstate service employees of the State of  
269 Mississippi, and shall not be eligible to participate in the  
270 Public Employees' Retirement System, or the state employee health  
271 plan, nor be allowed credit for personal and sick leave and other  
272 leave benefits as employees of the State of Mississippi,  
273 notwithstanding Sections 25-3-91 through 25-3-101; 25-9-101  
274 through 25-9-151; 25-11-1 through 25-11-126; 25-11-128 through  
275 25-11-131; 25-15-1 through 25-15-23 and for the purpose set forth  
276 herein. Contract workers, i.e., contract personnel who do not  
277 meet the criteria of independent contractors, shall be subject to  
278 the provisions of Section 25-11-127.

279           (2) There is hereby created the Personal Service Contract  
280 Review Board, which shall be composed of the State Personnel  
281 Director, the Executive Director of the Department of Finance and  
282 Administration, or his designee, the Commissioner of Corrections,  
283 or his designee, the Executive Director of the Mississippi  
284 Department of Wildlife and Fisheries, or his designee, and the  
285 Executive Director of the Department of Environmental Quality, or  
286 his designee. The State Personnel Director shall be chairman and  
287 shall preside over the meetings of the board. The board shall  
288 annually elect a vice chairman, who shall serve in the absence of  
289 the chairman. No business shall be transacted, including adoption  
290 of rules of procedure, without the presence of a quorum of the  
291 board. Three (3) members shall be a quorum. No action shall be  
292 valid unless approved by the chairman and two (2) other of those  
293 members present and voting, entered upon the minutes of the board  
294 and signed by the chairman. Necessary clerical and administrative  
295 support for the board shall be provided by the State Personnel  
296 Board. Minutes shall be kept of the proceedings of each meeting,  
297 copies of which shall be filed on a monthly basis with the  
298 Legislative Budget Office.

299 (3) The Personal Service Contract Review Board shall have  
300 the following powers and responsibilities:

301 (a) Promulgate rules and regulations governing the  
302 solicitation and selection of contractual services personnel  
303 including personal and professional services contracts for any  
304 form of consulting, policy analysis, public relations, marketing,  
305 public affairs, legislative advocacy services or any other  
306 contract that the board deems appropriate for oversight, with the  
307 exception of any personal service contracts entered into for  
308 computer or information technology-related services governed by  
309 the Mississippi Department of Information Technology Services, any  
310 personal service contracts entered into by the Mississippi  
311 Department of Transportation, and any contract for \* \* \*  
312 accountant, auditor, physician, dentist, architect, engineer,  
313 veterinarian and utility rate expert services. Any such rules and  
314 regulations shall provide for maintaining continuous internal  
315 audit covering the activities of such agency affecting its revenue  
316 and expenditures as required under Section 7-7-3(6)(d),  
317 Mississippi Code of 1972;

318 (b) Approve:

319 (i) All personal and professional services  
320 contracts involving the expenditures of funds in excess of One  
321 Hundred Thousand Dollars (\$100,000.00); and

322 (ii) All contracts for legal services, whether on  
323 a set fee, contingent fee or hourly fee basis, in which the  
324 anticipated fee is in excess of One Million Dollars  
325 (\$1,000,000.00);

326 (c) Develop standards with respect to contractual  
327 services personnel which require invitations for public bid,  
328 requests for proposals, record keeping and financial  
329 responsibility of contractors. The Personal Service Contract  
330 Review Board may, in its discretion, require the agency involved

331 to advertise such contract for public bid, and may reserve the  
332 right to reject any or all bids;

333 (d) Prescribe certain circumstances whereby agency  
334 heads may enter into contracts for personal and professional  
335 services without receiving prior approval from the Personal  
336 Service Contract Review Board. The Personal Service Contract  
337 Review Board may establish a pre-approved list of providers of  
338 various personal and professional services for set prices with  
339 which state agencies may contract without bidding or prior  
340 approval from the board;

341 (e) To provide standards for the issuance of requests  
342 for proposals, the evaluation of proposals received, consideration  
343 of costs and quality of services proposed, contract negotiations,  
344 the administrative monitoring of contract performance by the  
345 agency and successful steps in terminating a contract;

346 (f) To present recommendations for governmental  
347 privatization and to evaluate privatization proposals submitted by  
348 any state agency;

349 (g) To authorize personal and professional service  
350 contracts to be effective for more than one (1) year provided a  
351 funding condition is included in any such multiple year contract,  
352 except the State Board of Education, which shall have the  
353 authority to enter into contractual agreements for student  
354 assessment for a period up to ten (10) years. The State Board of  
355 Education shall procure these services in accordance with the  
356 Personal Service Contract Review Board procurement regulations;

357 (h) To request the State Auditor to conduct a  
358 performance audit on any personal or professional service  
359 contract;

360 (i) Prepare an annual report to the Legislature  
361 concerning the issuance of personal service contracts during the  
362 previous year, collecting any necessary information from state  
363 agencies in making such report.

364 (4) No member of the Personal Service Contract Review Board  
365 shall use his official authority or influence to coerce, by threat  
366 of discharge from employment, or otherwise, the purchase of  
367 commodities or the contracting for personal or professional  
368 services under this section.

369 (5) The Personal Service Contract Review Board shall retain  
370 outside counsel for the purpose of advising it in reviewing  
371 contracts entered into by the Attorney General for outside legal  
372 counsel.

373 **SECTION 9.** This act shall take effect and be in force from  
374 and after July 1, 2007.