

By: Representative Baker (74th)

To: Judiciary A;
Appropriations

HOUSE BILL NO. 1369

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 House Bill No. _____, 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 House Bill No. _____, 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 may 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 a
129 request for proposal has been issued to at least six (6) separate
130 law firms or solo practitioners; the Attorney General shall submit
131 copies of all proposals to the Personal Service Contract Review
132 Board to use as a part of the board's evaluation of the contract
133 entered into.

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

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

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

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

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

169 shall ensure the Legislative Budget Office receives timely,
170 detailed and accurate information about the amount and use of the
171 escalation authority granted under this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

319 (b) Approve:

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

323 (ii) All contracts for legal services, whether on
324 a set fee, contingent fee or hourly fee basis, in which the
325 anticipated fee is in excess of One Million Dollars
326 (\$1,000,000.00);

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

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

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

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

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

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

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

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

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

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

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