

By: Senator(s) Ross

To: Judiciary, Division A;
Appropriations

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2482

1 AN ACT TO AMEND SECTION 7-5-1, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT NOTICE OF CERTAIN LITIGATION SHALL BE GIVEN TO AN
3 AGENCY HEAD; TO AMEND SECTION 7-5-5, MISSISSIPPI CODE OF 1972, TO
4 REVISE THE AUTHORITY OF THE ATTORNEY GENERAL TO ENTER INTO
5 CONTRACTS FOR OUTSIDE LEGAL SERVICES; TO AMEND SECTION 25-9-120,
6 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE PERSONAL SERVICE
7 CONTRACT REVIEW BOARD WILL REVIEW CONTINGENT FEE CONTRACTS FOR
8 OUTSIDE LEGAL COUNSEL WHEN ENTERED INTO BY THE ATTORNEY GENERAL,
9 BUT WITHOUT POWER TO APPROVE OR DISAPPROVE THE CONTRACT; AND FOR
10 RELATED PURPOSES.

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

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

14 7-5-1. (1) The Attorney General provided for by Section 173
15 of the Mississippi Constitution shall be elected at the same time
16 and in the same manner as the Governor is elected. His term of
17 office shall be four (4) years and his compensation shall be fixed
18 by the Legislature. He shall be the chief legal officer and
19 advisor for the state, both civil and criminal, and is charged
20 with managing all litigation on behalf of the state. No arm or
21 agency of the state government shall bring or defend a suit
22 against another such arm or agency without prior written approval
23 of the Attorney General. He shall have the powers of the Attorney
24 General at common law and, subject to the notice requirements of
25 subsection (2) of this section, is given the sole power to bring
26 or defend a lawsuit on behalf of a state agency, the subject
27 matter of which is of statewide interest, and he shall intervene
28 and argue the constitutionality of any statute when notified of a
29 challenge thereto, pursuant to the Mississippi Rules of Civil
30 Procedure. His qualifications for office shall be as provided for

31 chancery and circuit judges in Section 154 of the Mississippi
32 Constitution.

33 (2) No legal action on behalf of any state agency, including
34 a suit to recoup funds expended by an agency, may be taken until
35 seven (7) days' written notice of the proposed legal action is
36 given to the executive director of the agency. Upon the
37 expiration of the notice period, the Attorney General may
38 institute suit with or without the consent of the executive
39 director of the agency.

40 **SECTION 2.** Section 7-5-5, Mississippi Code of 1972, is
41 amended as follows:

42 7-5-5. (1) The Attorney General shall appoint nine (9)
43 competent attorneys, each of whom shall be designated as an
44 assistant attorney general. The assistants shall each possess all
45 of the qualifications required by law of the Attorney General and
46 shall have power and authority under the direction and supervision
47 of the Attorney General to perform all of the duties required by
48 law of that officer; and each shall be liable to the pains and
49 penalties to which the Attorney General is liable. The assistants
50 shall serve at the will and pleasure of the Attorney General, and
51 they shall devote their entire time and attention to the duties
52 pertaining to the Department of Justice as required by the general
53 laws. The compensation of the within enumerated assistant
54 attorneys general and all other regular assistants authorized by
55 law shall be fixed by the Attorney General not to exceed the
56 compensation fixed by law for such assistants.

57 (2) (a) The Attorney General is hereby authorized,
58 empowered and directed to designate three (3) of the * * *
59 assistant attorneys general to devote their time and attention
60 primarily to defending and aiding in the defense in all courts of
61 any suit, filed or threatened, against the State of Mississippi,
62 against any subdivision thereof, or against any agency or
63 instrumentality of the state or subdivision, including all elected

64 officials and any other officer or employee thereof. When the
65 circumstances permit, the assistants may perform any of the
66 Attorney General's powers and duties, including, but not limited
67 to, engaging in lawsuits outside the state when in his opinion
68 same would help bring about the equal application of federal laws
69 and court decisions in every state and guaranteeing equal
70 protection of the laws as guaranteed every citizen by the United
71 States Constitution.

72 (b) To further prosecute and insure such purposes,
73 subject to the limitations in this paragraph, the Attorney General
74 is hereby further expressly authorized, empowered and directed to
75 employ such additional counsel as special assistant attorneys
76 general as may be necessary or advisable, on a fee or contract
77 basis; and the Attorney General shall be the sole judge of the
78 compensation in such cases.

79 (i) Any contract for services of additional
80 counsel providing for a contingent fee shall require that the
81 contracting attorney or law firm keep current and complete written
82 time and expense records that describe in detail the time and
83 money spent each day in performance of the contract.

84 (ii) A contingent fee contract for legal services
85 shall be reviewed by the Personal Service Contract Review Board
86 pursuant to Section 25-9-120.

87 (iii) On conclusion of the matter for which the
88 legal services were obtained on a contingent fee basis, the
89 contracting attorney or law firm shall provide the Personal
90 Service Contract Review Board with a complete written statement
91 showing the contracting attorney's or law firm's computation of
92 the amount of all fees and expenses, and the final complete time
93 and expense records required under subparagraph (i) of this
94 paragraph.

95 (3) The Attorney General may discharge any assistant
96 attorney general or special assistant attorney general at his

97 pleasure and appoint another in his stead. The assistant
98 attorneys general shall devote their entire time and attention to
99 the duties pertaining to the Department of Justice under the
100 control and supervision of the Attorney General.

101 **SECTION 3.** Section 25-9-120, Mississippi Code of 1972, is
102 amended as follows:

103 25-9-120. (1) Contract personnel, whether classified as
104 contract workers or independent contractors shall not be deemed
105 state service or nonstate service employees of the State of
106 Mississippi, and shall not be eligible to participate in the
107 Public Employees' Retirement System, or the state employee health
108 plan, nor be allowed credit for personal and sick leave and other
109 leave benefits as employees of the State of Mississippi,
110 notwithstanding Sections 25-3-91 through 25-3-101; 25-9-101
111 through 25-9-151; 25-11-1 through 25-11-126; 25-11-128 through
112 25-11-131; 25-15-1 through 25-15-23 and for the purpose set forth
113 herein. Contract workers, i.e., contract personnel who do not
114 meet the criteria of independent contractors, shall be subject to
115 the provisions of Section 25-11-127.

116 (2) There is hereby created the Personal Service Contract
117 Review Board, which shall be composed of the State Personnel
118 Director, the Executive Director of the Department of Finance and
119 Administration, or his designee, the Commissioner of Corrections,
120 or his designee, the Executive Director of the Mississippi
121 Department of Wildlife and Fisheries, or his designee, and the
122 Executive Director of the Department of Environmental Quality, or
123 his designee. The State Personnel Director shall be chairman and
124 shall preside over the meetings of the board. The board shall
125 annually elect a vice chairman, who shall serve in the absence of
126 the chairman. No business shall be transacted, including adoption
127 of rules of procedure, without the presence of a quorum of the
128 board. Three (3) members shall be a quorum. No action shall be
129 valid unless approved by the chairman and two (2) other of those

130 members present and voting, entered upon the minutes of the board
131 and signed by the chairman. Necessary clerical and administrative
132 support for the board shall be provided by the State Personnel
133 Board. Minutes shall be kept of the proceedings of each meeting,
134 copies of which shall be filed on a monthly basis with the
135 Legislative Budget Office.

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

138 (a) Promulgate rules and regulations governing the
139 solicitation and selection of contractual services personnel
140 including personal and professional services contracts for any
141 form of consulting, policy analysis, public relations, marketing,
142 public affairs, legislative advocacy services or any other
143 contract that the board deems appropriate for oversight, with the
144 exception of any personal service contracts entered into for
145 computer or information technology-related services governed by
146 the Mississippi Department of Information Technology Services, any
147 personal service contracts entered into by the Mississippi
148 Department of Transportation, and any contract for attorney,
149 accountant, auditor, physician, dentist, architect, engineer,
150 veterinarian and utility rate expert services. Any such rules and
151 regulations shall provide for maintaining continuous internal
152 audit covering the activities of such agency affecting its revenue
153 and expenditures as required under Section 7-7-3(6)(d),
154 Mississippi Code of 1972;

155 (b) Approve all personal and professional services
156 contracts involving the expenditures of funds in excess of One
157 Hundred Thousand Dollars (\$100,000.00);

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

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

165 (d) Prescribe certain circumstances whereby agency
166 heads may enter into contracts for personal and professional
167 services without receiving prior approval from the Personal
168 Service Contract Review Board. The Personal Service Contract
169 Review Board may establish a pre-approved list of providers of
170 various personal and professional services for set prices with
171 which state agencies may contract without bidding or prior
172 approval from the board;

173 (e) To provide standards for the issuance of requests
174 for proposals, the evaluation of proposals received, consideration
175 of costs and quality of services proposed, contract negotiations,
176 the administrative monitoring of contract performance by the
177 agency and successful steps in terminating a contract;

178 (f) To present recommendations for governmental
179 privatization and to evaluate privatization proposals submitted by
180 any state agency;

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

189 (h) To request the State Auditor to conduct a
190 performance audit on any personal or professional service
191 contract;

192 (i) Prepare an annual report to the Legislature
193 concerning the issuance of personal service contracts during the
194 previous year, collecting any necessary information from state
195 agencies in making such report;

196 (j) Notwithstanding any other provision of this
197 subsection, the Personal Service Contract Review Board shall
198 review, without power of recommendation, any contingent fee
199 contract for legal services entered into by the Attorney General.

200 (4) No member of the Personal Service Contract Review Board
201 shall use his official authority or influence to coerce, by threat
202 of discharge from employment, or otherwise, the purchase of
203 commodities or the contracting for personal or professional
204 services under this section.

205 **SECTION 4.** This act shall take effect and be in force from
206 and after July 1, 2007.