

By: Senator(s) Brown, Burton, Hewes, Jackson To: Judiciary, Division A;  
 (15th), Gollott, Nunnelee, King, Fillingane, Appropriations  
 Dickerson, Chassaniol, Davis (1st),  
 Carmichael, Mettetal, Yancey, Kirby, Watson,  
 Ward

COMMITTEE SUBSTITUTE  
 FOR  
 SENATE BILL NO. 2188

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 AND THAT AGENCIES MAY RETAIN SEPARATE COUNSEL IN  
 4 CERTAIN SITUATIONS; TO AMEND SECTION 7-5-5, MISSISSIPPI CODE OF  
 5 1972, TO REVISE THE AUTHORITY OF THE ATTORNEY GENERAL TO ENTER  
 6 INTO CONTRACTS FOR OUTSIDE LEGAL SERVICES; TO AMEND SECTION  
 7 7-5-21, MISSISSIPPI CODE OF 1972, TO REVISE THE CASE DOCKET  
 8 MAINTAINED BY THE ATTORNEY GENERAL; TO AUTHORIZE STATE AGENCIES  
 9 AND OTHER STATE ENTITIES TO DIRECTLY EMPLOY LEGAL COUNSEL, WHETHER  
 10 SALARIED OR ON A CASE-BY-CASE BASIS, WHEN CERTAIN CONFLICTS OF  
 11 INTEREST EXIST; TO PROVIDE THAT COMPENSATION OF SUCH LEGAL COUNSEL  
 12 MAY BE PAID FROM ANY FUNDS APPROPRIATED OR OTHERWISE AVAILABLE TO  
 13 THE APPOINTING OR EMPLOYING ENTITY; TO AMEND SECTION 25-9-120,  
 14 MISSISSIPPI CODE OF 1972, TO REVISE THE DUTIES OF THE PERSONAL  
 15 SERVICE CONTRACT REVIEW BOARD TO REVIEW CERTAIN FEE CONTRACTS FOR  
 16 OUTSIDE LEGAL COUNSEL WHEN ENTERED INTO BY THE ATTORNEY GENERAL OR  
 17 STATE AGENCIES; TO AMEND SECTION 7-5-39, MISSISSIPPI CODE OF 1972,  
 18 TO CONFORM; AND FOR RELATED PURPOSES.

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

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

22 7-5-1. (1) The Attorney General provided for by Section 173  
 23 of the Mississippi Constitution shall be elected at the same time  
 24 and in the same manner as the Governor is elected. His term of  
 25 office shall be four (4) years and his compensation shall be fixed  
 26 by the Legislature. He shall be the chief legal officer and  
 27 advisor for the state, both civil and criminal, and is charged  
 28 with managing all litigation on behalf of the state. No arm or  
 29 agency of the state government shall bring or defend a suit  
 30 against another such arm or agency without prior written approval  
 31 of the Attorney General. He shall have the powers of the Attorney  
 32 General at common law and, subject to the notice requirements of  
 33 subsection (2) of this section, is given the sole power to bring  
 34 or defend a lawsuit on behalf of a state agency, the subject



35 matter of which is of statewide interest, and he shall intervene  
36 and argue the constitutionality of any statute when notified of a  
37 challenge thereto, pursuant to the Mississippi Rules of Civil  
38 Procedure. His qualifications for office shall be as provided for  
39 chancery and circuit judges in Section 154 of the Mississippi  
40 Constitution.

41 (2) No legal action on behalf of any state agency, including  
42 a suit to recoup funds expended by an agency, may be taken until  
43 seven (7) working days' written notice of the proposed legal  
44 action is given to the executive director of the agency unless  
45 irreparable injury to the state would result by waiting for the  
46 expiration of the seven-day period. Upon the expiration of the  
47 notice period, the Attorney General may institute suit with or  
48 without the consent of the executive director of the agency. In  
49 such instances where the executive director does not consent, the  
50 agency may retain separate counsel pursuant to Section 4 of Senate  
51 Bill No. 2188, 2008 Regular Session.

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

54 7-5-5. (1) The Attorney General shall appoint nine (9)  
55 competent attorneys, each of whom shall be designated as an  
56 assistant attorney general. The assistants shall each possess all  
57 of the qualifications required by law of the Attorney General and  
58 shall have power and authority under the direction and supervision  
59 of the Attorney General to perform all of the duties required by  
60 law of that officer; and each shall be liable to the pains and  
61 penalties to which the Attorney General is liable. The assistants  
62 shall serve at the will and pleasure of the Attorney General, and  
63 they shall devote their entire time and attention to the duties  
64 pertaining to the Department of Justice as required by the general  
65 laws. The compensation of the within enumerated assistant  
66 attorneys general and all other regular assistants authorized by



67 law shall be fixed by the Attorney General not to exceed the  
68 compensation fixed by law for such assistants.

69 (2) (a) The Attorney General is hereby authorized,  
70 empowered and directed to designate three (3) of the \* \* \*  
71 assistant attorneys general to devote their time and attention  
72 primarily to defending and aiding in the defense in all courts of  
73 any suit, filed or threatened, against the State of Mississippi,  
74 against any subdivision thereof, or against any agency or  
75 instrumentality of the state or subdivision, including all elected  
76 officials and any other officer or employee thereof. When the  
77 circumstances permit, the assistants may perform any of the  
78 Attorney General's powers and duties, including, but not limited  
79 to, engaging in lawsuits outside the state when in his opinion  
80 same would help bring about the equal application of federal laws  
81 and court decisions in every state and guaranteeing equal  
82 protection of the laws as guaranteed every citizen by the United  
83 States Constitution.

84 (b) To further prosecute and insure such purposes,  
85 subject to the limitations in this paragraph, the Attorney General  
86 is hereby further expressly authorized, empowered and directed to  
87 employ such additional counsel as special assistant attorneys  
88 general as may be necessary or advisable, on a fee or contract  
89 basis; and the Attorney General shall be the sole judge of the  
90 compensation in such cases.

91 (i) Any contract for services of additional  
92 counsel shall require that the contracting attorney or law firm  
93 keep current and complete written time and expense records that  
94 describe in detail the time and money spent each day in  
95 performance of the contract.

96 (ii) Any contract for legal services where the  
97 legal fee is reasonably expected to exceed Five Hundred Thousand  
98 Dollars (\$500,000.00) shall be reviewed by the Personal Service  
99 Contract Review Board pursuant to Section 25-9-120.



100                   (iii) Any contract for legal services providing  
101 for a contingent fee shall contain a clause capping the  
102 contingency at no more than One Million Dollars (\$1,000,000.00)  
103 over the amounts documented under subparagraph (v).

104                   (iv) In those cases where the anticipated fee is  
105 in excess of Five Hundred Thousand Dollars (\$500,000.00), no  
106 contract for services of additional counsel shall be entered into  
107 by the Attorney General until requests for proposals have been  
108 issued to at least three (3) separate law firms or individual  
109 attorneys who are sole practitioners, and the Attorney General  
110 shall submit copies of all proposals to the Personal Service  
111 Contract Review Board.

112                   (v) On conclusion of the matter for which the  
113 outside legal services were obtained, the contracting attorney or  
114 law firm shall provide the Personal Service Contract Review Board  
115 with a complete written statement showing the contracting  
116 attorney's or law firm's computation of the amount of all fees and  
117 expenses, and the final complete time and expense records required  
118 under subparagraph (i) of this paragraph.

119           (3) The Attorney General may discharge any assistant  
120 attorney general or special assistant attorney general at his  
121 pleasure and appoint another in his stead. The assistant  
122 attorneys general shall devote their entire time and attention to  
123 the duties pertaining to the Department of Justice under the  
124 control and supervision of the Attorney General.

125           **SECTION 3.** Section 7-5-21, Mississippi Code of 1972, is  
126 amended as follows:

127           7-5-21. The Attorney General shall keep a docket of all  
128 causes in which he is required to appear or is appearing, either  
129 through his office or through retained counsel, which must \* \* \*  
130 be open to the inspection of the public and must show the county,  
131 district and court in which the causes have been instituted and  
132 tried, and whether they be civil or criminal. If civil, the



133 docket must show the nature of the demand, the stage of the  
134 proceedings, the name and address of any retained or contract  
135 counsel, a memorandum of the judgment when prosecuted to judgment,  
136 any process issued thereon, whether satisfied or not, and if not  
137 satisfied, the return of the sheriff. If criminal, the docket  
138 must show the nature of the crime, the mode of prosecution, the  
139 stage of the proceedings, a memorandum of the sentence when  
140 prosecuted to a sentence, the execution thereof, if executed, and,  
141 if not executed, the reasons of delay or prevention.

142 **SECTION 4.** The governing director or governing entity of any  
143 state agency, board, institution or commission is entitled to  
144 retain special counsel on a fee or salary basis if a conflict of  
145 interest exists between the positions of the agency, board,  
146 institution or commission and the Office of the Attorney General  
147 as to a legal or policy position with regard to which the agency,  
148 board, institution or commission has standing or if the Attorney  
149 General has declined to represent any governing entity of any  
150 state agency, board, institution or commission with regard to a  
151 legal or policy position in which the governing entity of any  
152 state agency, board, institution or commission has standing. The  
153 compensation of any special counsel under this section shall not  
154 exceed recognized bar rates for similar services; the attorney's  
155 compensation shall be paid out of any funds appropriated or  
156 otherwise available to the appointing or employing entity. If the  
157 contract provides for a fee anticipated to exceed Five Hundred  
158 Thousand Dollars (\$500,000.00), the agency, board, institution or  
159 commission shall not enter into a contract for legal services  
160 until requests for proposals have been issued to at least three  
161 (3) separate law firms or attorneys who are sole practitioners;  
162 copies of all proposals shall be submitted to the Personal Service  
163 Contract Review Board. Notwithstanding any other provision in  
164 law, if a conflict of interest exists or if other reasons exist  
165 for which the Attorney General has declined representation, then



166 the Attorney General shall not have the authority to approve  
167 contracts to retain counsel or to approve the payments for such  
168 contracts.

169 **SECTION 5.** Section 25-9-120, Mississippi Code of 1972, is  
170 amended as follows:

171 25-9-120. (1) Contract personnel, whether classified as  
172 contract workers or independent contractors shall not be deemed  
173 state service or nonstate service employees of the State of  
174 Mississippi, and shall not be eligible to participate in the  
175 Public Employees' Retirement System, or the state employee health  
176 plan, nor be allowed credit for personal and sick leave and other  
177 leave benefits as employees of the State of Mississippi,  
178 notwithstanding Sections 25-3-91 through 25-3-101; 25-9-101  
179 through 25-9-151; 25-11-1 through 25-11-126; 25-11-128 through  
180 25-11-131; 25-15-1 through 25-15-23 and for the purpose set forth  
181 herein. Contract workers, i.e., contract personnel who do not  
182 meet the criteria of independent contractors, shall be subject to  
183 the provisions of Section 25-11-127.

184 (2) There is hereby created the Personal Service Contract  
185 Review Board, which shall be composed of the State Personnel  
186 Director, the Executive Director of the Department of Finance and  
187 Administration, or his designee, the Commissioner of Corrections,  
188 or his designee, the Executive Director of the Mississippi  
189 Department of Wildlife and Fisheries, or his designee, and the  
190 Executive Director of the Department of Environmental Quality, or  
191 his designee. The State Personnel Director shall be chairman and  
192 shall preside over the meetings of the board. The board shall  
193 annually elect a vice chairman, who shall serve in the absence of  
194 the chairman. No business shall be transacted, including adoption  
195 of rules of procedure, without the presence of a quorum of the  
196 board. Three (3) members shall be a quorum. No action shall be  
197 valid unless approved by the chairman and two (2) other of those  
198 members present and voting, entered upon the minutes of the board



199 and signed by the chairman. Necessary clerical and administrative  
200 support for the board shall be provided by the State Personnel  
201 Board. Minutes shall be kept of the proceedings of each meeting,  
202 copies of which shall be filed on a monthly basis with the  
203 Legislative Budget Office.

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

206 (a) Promulgate rules and regulations governing the  
207 solicitation and selection of contractual services personnel  
208 including personal and professional services contracts for any  
209 form of consulting, policy analysis, public relations, marketing,  
210 public affairs, legislative advocacy services or any other  
211 contract that the board deems appropriate for oversight, with the  
212 exception of any personal service contracts entered into for  
213 computer or information technology-related services governed by  
214 the Mississippi Department of Information Technology Services, any  
215 personal service contracts entered into by the Mississippi  
216 Department of Transportation, and any contract for attorney not  
217 subject to paragraph (b) (ii) of this subsection, accountant,  
218 auditor, physician, dentist, architect, engineer, veterinarian and  
219 utility rate expert services. Any such rules and regulations  
220 shall provide for maintaining continuous internal audit covering  
221 the activities of such agency affecting its revenue and  
222 expenditures as required under Section 7-7-3(6) (d), Mississippi  
223 Code of 1972;

224 (b) (i) Approve all personal and professional services  
225 contracts involving the expenditures of funds in excess of One  
226 Hundred Thousand Dollars (\$100,000.00);

227 (ii) Review all contracts for legal services,  
228 whether on a set fee, contingent fee or hourly fee basis, in which  
229 the anticipated fee is in excess of Five Hundred Thousand Dollars  
230 (\$500,000.00), and provide a recommendation to the Attorney



231 General or the retaining agency which the Attorney General or the  
232 retaining agency may consider;

233 (c) Develop standards with respect to contractual  
234 services personnel which require invitations for public bid,  
235 requests for proposals, record keeping and financial  
236 responsibility of contractors. The Personal Service Contract  
237 Review Board may, in its discretion, require the agency involved  
238 to advertise such contract for public bid, and may reserve the  
239 right to reject any or all bids;

240 (d) Prescribe certain circumstances whereby agency  
241 heads may enter into contracts for personal and professional  
242 services without receiving prior approval from the Personal  
243 Service Contract Review Board. The Personal Service Contract  
244 Review Board may establish a preapproved list of providers of  
245 various personal and professional services for set prices with  
246 which state agencies may contract without bidding or prior  
247 approval from the board;

248 (e) To provide standards for the issuance of requests  
249 for proposals, the evaluation of proposals received, consideration  
250 of costs and quality of services proposed, contract negotiations,  
251 the administrative monitoring of contract performance by the  
252 agency and successful steps in terminating a contract;

253 (f) To present recommendations for governmental  
254 privatization and to evaluate privatization proposals submitted by  
255 any state agency;

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





264 (h) To request the State Auditor to conduct a  
265 performance audit on any personal or professional service  
266 contract;

267 (i) Prepare an annual report to the Legislature  
268 concerning the issuance of personal service contracts during the  
269 previous year, collecting any necessary information from state  
270 agencies in making such report.

271 (4) No member of the Personal Service Contract Review Board  
272 shall use his official authority or influence to coerce, by threat  
273 of discharge from employment, or otherwise, the purchase of  
274 commodities or the contracting for personal or professional  
275 services under this section.

276 (5) The Personal Service Contract Review Board may retain  
277 outside counsel for the purpose of advising it in its review  
278 pursuant to subsection (3) (b) (ii) of contracts entered into by the  
279 Attorney General or an agency for outside legal counsel.

280 **SECTION 6.** Section 7-5-39, Mississippi Code of 1972, is  
281 amended as follows:

282 7-5-39. (1) The Attorney General shall also represent the  
283 state, in person or by his assistant, as counsel in all suits  
284 against the state in other courts than the Supreme Court at the  
285 seat of government, and he shall, in like manner, act as counsel  
286 for any of the state officers in suits brought by or against them  
287 in their official capacity, touching any official duty or trust  
288 and triable at the seat of government. He may pursue the  
289 collection of any claim or judgment in favor of the state outside  
290 of the state.

291 (2) Except as otherwise expressly provided by law, no legal  
292 action on behalf of any state agency, including a suit to recoup  
293 funds expended by an agency, may be taken without complying with  
294 Section 7-5-1.

295 **SECTION 7.** This act shall take effect and be in force from  
296 and after July 1, 2008.

