

By: Senator(s) Fillingane

To: Judiciary, Division A

SENATE BILL NO. 3059

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 this
51 act.

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, 2010.

