

By: Representatives Gunn, Baker, Lamar, Snowden, Rogers (61st), Upshaw, Monsour, Formby, White, Martinson, Zuber, Turner, Lott, Jennings, Woods, Hamilton, Boyd, Alday, Shirley, Crawford, Eure, DeBar, Weathersby, Barton, Rushing, Morgan, Aldridge, Carpenter, Massengill, Pigott, Haney, Mettetal, Brown (20th), Mims, Staples, Hood, Denny, Chism, DeLano, Busby

To: Judiciary A

HOUSE BILL NO. 122

1 AN ACT TO PROVIDE THAT THE GOVERNOR, LIEUTENANT GOVERNOR,
 2 SPEAKER OF THE HOUSE OF REPRESENTATIVES, ATTORNEY GENERAL,
 3 SECRETARY OF STATE, STATE TREASURER, STATE AUDITOR, COMMISSIONER
 4 OF AGRICULTURE AND COMMERCE, COMMISSIONER OF INSURANCE, AND THE
 5 EXECUTIVE DIRECTOR OF ANY STATE AGENCY, BOARD, COMMISSION,
 6 DEPARTMENT OR INSTITUTION, IS AUTHORIZED TO APPOINT OR EMPLOY
 7 SPECIAL COUNSEL TO REPRESENT THAT OFFICER OR AGENCY, BOARD,
 8 COMMISSION, DEPARTMENT OR INSTITUTION; TO PROVIDE THAT LITIGATION
 9 ON BEHALF OF A STATE AGENCY MUST RECEIVE THE APPROVAL OF THE
 10 AGENCY HEAD; TO REVISE THE AUTHORITY OF THESE OFFICERS TO RETAIN
 11 SPECIAL COUNSEL AND TO GRANT A LIMITED FUNDS ESCALATION; TO
 12 PROVIDE THAT THE PERSONAL SERVICE CONTRACT REVIEW BOARD SHALL
 13 MAINTAIN CERTAIN CONTRACTS FOR APPOINTED OR EMPLOYED OUTSIDE
 14 COUNSEL ENTERED INTO BY THESE OFFICERS AND AGENCIES; TO AMEND
 15 SECTIONS 7-1-5, 7-5-1, 7-5-5, 7-5-7, 7-5-21, 7-7-211, 7-7-225,
 16 25-9-120, 69-1-14 AND 83-1-5, MISSISSIPPI CODE OF 1972, IN
 17 CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

19 **SECTION 1.** (1) For purposes of this section, "officer"
 20 means the Governor, Lieutenant Governor, Speaker of the House of
 21 Representatives, Attorney General, Secretary of State, State
 22 Treasurer, State Auditor, Commissioner of Agriculture and
 23 Commerce, Commissioner of Insurance, and executive director of any
 24 state agency, board, commission, department or institution.

25 (2) Any officer is authorized to appoint or employ special
 26 counsel of the officer's choice other than the attorney employed
 27 in the Office of the Attorney General and assigned by the Attorney
 28 General and other than an attorney employed in state service who
 29 may be recommended by the State Personnel Board, to represent that
 30 officer or the entity he leads or represents. An attorney
 31 appointed as special counsel shall not be an attorney in the state
 32 service, and may be compensated on a fee basis. An attorney
 33 employed as special counsel may be an attorney in the state



34 service and shall be compensated on a salary basis. The special
35 counsel may assist the officer in any or all legal matters,
36 including, but not limited to, the preparation for, prosecution,
37 or defense of any litigation in the state or federal courts or
38 before any federal or state commission or agency in which the
39 appointing or employing entity is a party or has an interest. The
40 approval of the Attorney General is not required for an
41 appointment or employment under this section. Unless compensation
42 is paid pursuant to a contingent fee agreement, the appointed or
43 employed special counsel's compensation shall be paid out of any
44 funds appropriated or otherwise available to the officer.

45 (3) The officer is further entitled, without a determination
46 as required in subsection (4), to retain special counsel of the
47 officer's choice under this section if, in the officer's opinion,
48 any conflict of interest exists with the Office of the Attorney
49 General. If appointed special counsel has been retained under
50 this subsection, the Attorney General shall withdraw from
51 representation of that officer, but the Attorney General may
52 continue to appear in any other capacity.

53 (4) Before an attorney may be appointed or employed as
54 special counsel under the provisions of this section, the officer
55 must first determine and make a written finding that the needed
56 legal services cannot be adequately performed by the attorneys and
57 supporting legal staff members in state service who are assigned
58 to the officer by the Attorney General.

59 (5) (a) An attorney appointed as special counsel under the
60 provisions of this subsection shall be compensated for his or her
61 legal services on an hourly basis, unless the legal services being
62 sought can reasonably be obtained from attorneys in the private
63 practice of law only under a contract providing for a contingent
64 fee, or because there are not appropriated funds available to pay
65 the estimated amounts required under a contract providing only for
66 the payment of hourly fees.



67 (b) Any contract, in which the anticipated fee is in
68 excess of One Hundred Thousand Dollars (\$100,000.00), for the
69 legal services of appointed special counsel under this subsection
70 shall be forwarded by the officer to the Personal Service Contract
71 Review Board created under Section 25-9-120. Unless the officer
72 specifies in writing to the board reasons which may negatively
73 affect the interests of the state in relation to the matter for
74 which the contract was executed, all such contracts shall be
75 delivered to the board within five (5) days of the execution of
76 the contract, and placed on the website of the board within five
77 (5) days of the board's receipt of the contract, and such
78 contracts shall remain on the website during the pendency of the
79 matter for which the contract was executed. Under no
80 circumstances shall such contracts not be submitted to the board
81 for placement on the board's website within five (5) days of the
82 filing of any lawsuit or appearance by such contracting law firm
83 or attorney in the matter for which the contract was executed.

84 (6) The following provisions shall apply to any contract for
85 the services of appointed special counsel:

86 (a) Any contract for services of special counsel,
87 whether providing for set, hourly or contingent fees, must require
88 that the contracting attorney or law firm appointed as special
89 counsel keep current and complete written time and expense records
90 that describe in detail the time and expenses incurred each day in
91 performance of the contract.

92 (b) At the conclusion of the matter for which the legal
93 services were obtained, the contracting attorney or law firm
94 appointed as special counsel shall prepare a complete written
95 statement that describes the outcome of the matter, states the
96 amount of any recovery, shows the contracting attorney's or law
97 firm's computation of the amount of all fees and expenses, and
98 contains the final complete time and expense records required
99 under this subsection. The officer shall keep and maintain these



100 records, shall forward copies of these records to the Personal
101 Service Contract Review Board, and shall provide an annual report
102 that shall be an open and public record, detailing all litigation
103 pursued with appointed special counsel. This report shall include
104 a description of the litigation, name of counsel retained,
105 description of the terms and conditions by which outside counsel
106 was retained, compensation, a description of the outcome of the
107 matter, the amount of recovery, the contracting attorney's or law
108 firm's computation of the amount of all fees and expenses and the
109 final and complete time and expense records.

110 (7) The officer may reallocate appropriated funds in the
111 budget of such officer for the purpose of allowing the officer to
112 retain appointed special counsel to pursue any legal matters
113 consistent with this act. The officer shall notify the
114 Legislative Budget Office of any such budget reallocation and
115 shall ensure that the office receives timely, detailed and
116 accurate information about the amount and use of the authority
117 granted under this subsection.

118 (8) The officer shall provide a docket of all cases using
119 appointed or employed counsel under this section to the Personal
120 Service Contract Review Board, which must be open to the
121 inspection of the public during normal business hours and
122 available online. The docket shall contain the information
123 required in Section 7-5-21.

124 **SECTION 2.** Section 7-1-5, Mississippi Code of 1972, is
125 amended as follows:

126 7-1-5. In addition to the powers conferred and duties
127 imposed on the Governor by the Constitution and by the laws as
128 elsewhere provided, he shall have the powers and perform the
129 duties following:

130 (a) He is the supreme executive officer of the state.



131 (b) He is the commander in chief of the militia of the
132 state and may call out the militia to execute the laws, to
133 suppress insurrections or riots, and to repel invasions.

134 (c) He shall see that the laws are faithfully executed.

135 (d) He is to supervise the official conduct of all
136 executive and ministerial officers.

137 (e) He is to see that all offices are filled and the
138 duties of the offices are performed or, in default thereof, apply
139 such remedy as the law allows; and if the remedy is inadequate, he
140 shall inform the Legislature at its next session.

141 (f) He shall make appointments and fill vacancies as
142 prescribed by law.

143 (g) Whenever any suit or legal proceeding is pending
144 that affects the title of the state to any property, or that may
145 result in any claim against the state, he may direct the Attorney
146 General to appear on behalf of the state and protect its interest.

147 (h) He may require the Attorney General, or district
148 attorney of any district, to inquire into the affairs or
149 management of any corporation existing under the laws of this
150 state, or doing business in this state under the laws of the
151 state.

152 (i) He may require the Attorney General to aid any
153 district attorney in the discharge of his duties.

154 (j) He may offer rewards, not exceeding Two Hundred
155 Dollars (\$200.00), for persons with mental illness who have
156 escaped and are dangerous, and such other rewards as are
157 authorized by law.

158 (k) He may require any officer or board to make special
159 reports to him upon demand in writing.

160 (l) He shall transact all necessary business with state
161 officers, shall require them to be present at their respective
162 offices at all reasonable business hours, and may require



163 information, in writing, from any such officer relating to the
164 duties of his office.

165 (m) When deemed advisable upon proceedings for the
166 arrest in this state of fugitives from justice from other states
167 or countries, he may commission a special officer to arrest the
168 fugitive in any part of the state.

169 (n) He may bring any proper suit affecting the general
170 public interests, in his own name for the State of Mississippi, if
171 after first requesting the proper officer so to do, the officer
172 refuses or neglects to do the same.

173 (o) He may appoint or employ special counsel in
174 accordance with Section 1 of this act.

175 **SECTION 3.** Section 7-5-1, Mississippi Code of 1972, is
176 amended as follows:

177 7-5-1. (1) The Attorney General provided for by Section 173
178 of the Mississippi Constitution shall be elected at the same time
179 and in the same manner as the Governor is elected. His term of
180 office shall be four (4) years and his compensation shall be fixed
181 by the Legislature. He shall be the chief legal officer and
182 advisor for the state, both civil and criminal, and is charged
183 with managing * * * litigation on behalf of the state. No arm or
184 agency of the state government shall bring or defend a suit
185 against another such arm or agency without prior written approval
186 of the Attorney General. He shall have the powers of the Attorney
187 General at common law and, except as provided in subsection (2) of
188 this section, is given * * * power to bring or defend a lawsuit on
189 behalf of a state agency, the subject matter of which is of
190 statewide interest, and he shall intervene and argue the
191 constitutionality of any statute when notified of a challenge
192 thereto, pursuant to the Mississippi Rules of Civil Procedure.
193 His qualifications for office shall be as provided for chancery
194 and circuit judges in Section 154 of the Mississippi Constitution.



195 (2) No legal action on behalf of any officer as defined in
196 Section 1 of this act, including a suit to recoup funds expended
197 by an agency, may be taken until ten (10) days' written notice of
198 the proposed legal action is given to the officer or agency,
199 board, commission, department or institution. Upon the expiration
200 of the notice period, the Attorney General may institute suit with
201 or without the consent of the officer or agency, board,
202 commission, department or institution. If the officer or agency,
203 board, commission, department or institution does not consent to
204 the legal action, an appointed or employed special counsel may be
205 retained by such officer or agency, board, commission, department
206 or institution pursuant to Section 1 of this act.

207 **SECTION 4.** Section 7-5-5, Mississippi Code of 1972, is
208 amended as follows:

209 7-5-5. (1) The Attorney General shall appoint nine (9)
210 competent attorneys, each of whom shall be designated as an
211 assistant attorney general. The assistants shall each possess all
212 of the qualifications required by law of the Attorney General and
213 shall have power and authority under the direction and supervision
214 of the Attorney General to perform all of the duties required by
215 law of that officer; and each shall be liable to the pains and
216 penalties to which the Attorney General is liable. The assistants
217 shall serve at the will and pleasure of the Attorney General, and
218 they shall devote their entire time and attention to the duties
219 pertaining to the department of justice as required by the general
220 laws. The compensation of the within enumerated assistant
221 attorneys general and all other regular assistants authorized by
222 law shall be fixed by the Attorney General, not to exceed the
223 compensation fixed by law for such assistants.

224 (2) (a) The Attorney General is hereby authorized,
225 empowered and directed to designate three (3) of the * * *
226 assistant attorneys general to devote their time and attention
227 primarily to defending and aiding in the defense in all courts of



228 any suit, filed or threatened, against the State of Mississippi,
229 against any subdivision thereof, or against any agency or
230 instrumentality of the state or subdivision, including all elected
231 officials and any other officer or employee thereof. When the
232 circumstances permit, the assistants may perform any of the
233 Attorney General's powers and duties, including, but not limited
234 to, engaging in lawsuits outside the state when in his opinion
235 same would help bring about the equal application of federal laws
236 and court decisions in every state and guaranteeing equal
237 protection of the laws as guaranteed every citizen by the United
238 States Constitution.

239 **(b)** To further prosecute and insure such purposes, the
240 Attorney General is hereby further expressly authorized, empowered
241 and directed to appoint or employ such additional special counsel
242 as * * * may be necessary or advisable, on a fee or contract basis
243 pursuant to the provisions of Section 1 of this act.

244 **(3)** The Attorney General may discharge any assistant
245 attorney general, special assistant attorney general or appointed
246 or employed special counsel at his pleasure and appoint another in
247 his stead. The assistant attorneys general shall devote their
248 entire time and attention to the duties pertaining to the
249 Department of Justice under the control and supervision of the
250 Attorney General.

251 **SECTION 5.** Section 7-5-7, Mississippi Code of 1972, is
252 amended as follows:

253 7-5-7. The Governor may engage counsel to assist the
254 Attorney General in cases to which the state is a party when, in
255 his opinion, the interest of the state requires it, subject to the
256 action of the Legislature in providing compensation for such
257 services.

258 Pursuant to the provisions of Section 1 of this act, the
259 Attorney General is hereby authorized and empowered to appoint and
260 employ special counsel, on a fee or salary basis, to assist the



261 Attorney General in the preparation for, prosecution, or defense
262 of any litigation in the state or federal courts or before any
263 state or federal commission or agency in which the state is a
264 party or has an interest.

265 The Attorney General may designate such special counsel as
266 special assistant attorney general, and may pay such special
267 counsel reasonable compensation provided that he complies with the
268 requirements of Section 1 of this act.

269 The Attorney General may also employ special investigators on
270 a per diem or salary basis, to be agreed upon at the time of
271 employment, for the purpose of interviewing witnesses,
272 ascertaining facts, or rendering any other services that may be
273 needed by the Attorney General in the preparation for and
274 prosecution of suits by or against the State of Mississippi, or in
275 suits in which the Attorney General is participating on account of
276 same being of statewide interest.

277 The Attorney General may pay travel and other expenses of
278 employees and appointees made hereunder in the same manner and
279 amount as authorized by law for the payment of travel and expenses
280 of state employees and officials.

281 The compensation of appointees and employees made hereunder
282 shall be paid out of the Attorney General's contingent fund, or
283 out of any other funds appropriated to the Attorney General's
284 office.

285 **SECTION 6.** Section 7-5-21, Mississippi Code of 1972, is
286 amended as follows:

287 7-5-21. The Attorney General shall keep a docket of all
288 causes in which he is required to appear or is appearing, either
289 through his office or through counsel retained as appointed or
290 employed special counsel, which must * * * be open to the
291 inspection of the public during regular business hours and must
292 show the style of the case and the county, district, and court in
293 which the causes have been instituted and tried, the cause number



294 of the action, and whether they be civil or criminal. If civil,
295 the docket must show the nature of the demand, the stage of the
296 proceedings, the name and address of any appointed or employed
297 special counsel, a memorandum of the judgment when prosecuted to
298 judgment, any process issued thereon, whether satisfied or not,
299 and if not satisfied, the return of the sheriff. If criminal, the
300 docket must show the nature of the crime, the mode of prosecution,
301 the stage of the proceedings, a memorandum of the sentence when
302 prosecuted to a sentence, the execution thereof, if executed, and,
303 if not executed, the reasons of delay or prevention. The docket
304 information shall be available on the Attorney General's website.

305 **SECTION 7.** Section 7-7-211, Mississippi Code of 1972, is
306 amended as follows:

307 7-7-211. The department shall have the power and it shall be
308 its duty:

309 (a) To identify and define for all public offices of
310 the state and its subdivisions generally accepted accounting
311 principles as promulgated by nationally recognized professional
312 organizations and to consult with the State Fiscal Officer in the
313 prescription and implementation of accounting rules and
314 regulations;

315 (b) To provide best practices, for all public offices
316 of regional and local subdivisions of the state, systems of
317 accounting, budgeting and reporting financial facts relating to
318 said offices in conformity with legal requirements and with
319 generally accepted accounting principles as promulgated by
320 nationally recognized professional organizations; to assist such
321 subdivisions in need of assistance in the installation of such
322 systems; to revise such systems when deemed necessary, and to
323 report to the Legislature at periodic times the extent to which
324 each office is maintaining such systems, along with such
325 recommendations to the Legislature for improvement as seem
326 desirable;



327 (c) To study and analyze existing managerial policies,
328 methods, procedures, duties and services of the various state
329 departments and institutions upon written request of the Governor,
330 the Legislature or any committee or other body empowered by the
331 Legislature to make such request to determine whether and where
332 operations can be eliminated, combined, simplified and improved;

333 (d) To postaudit each year and, when deemed necessary,
334 preaudit and investigate the financial affairs of the departments,
335 institutions, boards, commissions or other agencies of state
336 government, as part of the publication of a comprehensive annual
337 financial report for the State of Mississippi. In complying with
338 the requirements of this paragraph, the department shall have the
339 authority to conduct all necessary audit procedures on an interim
340 and year-end basis;

341 (e) To postaudit and, when deemed necessary, preaudit
342 and investigate separately the financial affairs of (i) the
343 offices, boards and commissions of county governments and any
344 departments and institutions thereof and therein; (ii) public
345 school districts, departments of education and junior college
346 districts; and (iii) any other local offices or agencies which
347 share revenues derived from taxes or fees imposed by the State
348 Legislature or receive grants from revenues collected by
349 governmental divisions of the state; the cost of such audits,
350 investigations or other services to be paid as follows: Such part
351 shall be paid by the state from appropriations made by the
352 Legislature for the operation of the State Department of Audit as
353 may exceed the sum of Thirty Dollars (\$30.00) per man hour for the
354 services of each staff person engaged in performing the audit or
355 other service, which sum shall be paid by the county, district,
356 department, institution or other agency audited out of its general
357 fund or any other available funds from which such payment is not
358 prohibited by law.



359 Each school district in the state shall have its financial
360 records audited annually, at the end of each fiscal year, either
361 by the State Auditor or by a certified public accountant approved
362 by the State Auditor, except that, beginning with audits of fiscal
363 year 2010 activity, the State Auditor shall conduct the audit of
364 each school district at least once every four (4) years. If
365 financial and personnel resources are not made available to the
366 State Auditor for the purpose of ensuring that school districts
367 are audited by the State Auditor at least once every four (4)
368 years then, beginning with the audits of fiscal year 2010
369 activity, no certified public accountant shall be selected to
370 perform the annual audit of a school district who has audited that
371 district for three (3) or more consecutive years previously.
372 Certified public accountants shall be selected in a manner
373 determined by the State Auditor. The school district shall have
374 the responsibility to pay for the audit, including the review by
375 the State Auditor of audits performed by certified public
376 accountants;

377 (f) To postaudit and, when deemed necessary, preaudit
378 and investigate the financial affairs of the levee boards;
379 agencies created by the Legislature or by executive order of the
380 Governor; profit or nonprofit business entities administering
381 programs financed by funds flowing through the State Treasury or
382 through any of the agencies of the state, or its subdivisions; and
383 all other public bodies supported by funds derived in part or
384 wholly from public funds, except municipalities which annually
385 submit an audit prepared by a qualified certified public
386 accountant using methods and procedures prescribed by the
387 department;

388 (g) To make written demand, when necessary, for the
389 recovery of any amounts representing public funds improperly
390 withheld, misappropriated and/or otherwise illegally expended by
391 an officer, employee or administrative body of any state, county



392 or other public office, and/or for the recovery of the value of
393 any public property disposed of in an unlawful manner by a public
394 officer, employee or administrative body, such demands to be made
395 (i) upon the person or persons liable for such amounts and upon
396 the surety on official bond thereof, and/or (ii) upon any
397 individual, partnership, corporation or association to whom the
398 illegal expenditure was made or with whom the unlawful disposition
399 of public property was made, if such individual, partnership,
400 corporation or association knew or had reason to know through the
401 exercising of reasonable diligence that the expenditure was
402 illegal or the disposition unlawful. Such demand shall be
403 premised on competent evidence, which shall include at least one
404 (1) of the following: (i) sworn statements, (ii) written
405 documentation, (iii) physical evidence, or (iv) reports and
406 findings of government or other law enforcement agencies. Other
407 provisions notwithstanding, a demand letter issued pursuant to
408 this paragraph shall remain confidential by the State Auditor
409 until the individual against whom the demand letter is being filed
410 has been served with a copy of such demand letter. If, however,
411 such individual cannot be notified within fifteen (15) days using
412 reasonable means and due diligence, such notification shall be
413 made to the individual's bonding company, if he or she is bonded.
414 Each such demand shall be paid into the proper treasury of the
415 state, county or other public body through the office of the
416 department in the amount demanded within thirty (30) days from the
417 date thereof, together with interest thereon in the sum of one
418 percent (1%) per month from the date such amount or amounts were
419 improperly withheld, misappropriated and/or otherwise illegally
420 expended. In the event, however, such person or persons or such
421 surety shall refuse, neglect or otherwise fail to pay the amount
422 demanded and the interest due thereon within the allotted thirty
423 (30) days, the State Auditor shall have the authority and it shall
424 be his duty to institute suit, and the Attorney General shall



425 prosecute the same in any court of the state to the end that there
426 shall be recovered the total of such amounts from the person or
427 persons and surety on official bond named therein; and the amounts
428 so recovered shall be paid into the proper treasury of the state,
429 county or other public body through the State Auditor. In any
430 case where written demand is issued to a surety on the official
431 bond of such person or persons and the surety refuses, neglects or
432 otherwise fails within one hundred twenty (120) days to either pay
433 the amount demanded and the interest due thereon or to give the
434 State Auditor a written response with specific reasons for
435 nonpayment, then the surety shall be subject to a civil penalty in
436 an amount of twelve percent (12%) of the bond, not to exceed Ten
437 Thousand Dollars (\$10,000.00), to be deposited into the State
438 General Fund;

439 (h) To investigate any alleged or suspected violation
440 of the laws of the state by any officer or employee of the state,
441 county or other public office in the purchase, sale or the use of
442 any supplies, services, equipment or other property belonging
443 thereto; and in such investigation to do any and all things
444 necessary to procure evidence sufficient either to prove or
445 disprove the existence of such alleged or suspected violations.
446 The Department of Investigation of the State Department of Audit
447 may investigate, for the purpose of prosecution, any suspected
448 criminal violation of the provisions of this chapter. For the
449 purpose of administration and enforcement of this chapter, the
450 enforcement employees of the Department of Investigation of the
451 State Department of Audit have the powers of a law enforcement
452 officer of this state, and shall be empowered to make arrests and
453 to serve and execute search warrants and other valid legal process
454 anywhere within the State of Mississippi. All enforcement
455 employees of the Department of Investigation of the State
456 Department of Audit hired on or after July 1, 1993, shall be



457 required to complete the Law Enforcement Officers Training Program
458 and shall meet the standards of the program;

459 (i) To issue subpoenas, with the approval of, and
460 returnable to, a judge of a chancery or circuit court, in termtime
461 or in vacation, to examine the records, documents or other
462 evidence of persons, firms, corporations or any other entities
463 insofar as such records, documents or other evidence relate to
464 dealings with any state, county or other public entity. The
465 circuit or chancery judge must serve the county in which the
466 records, documents or other evidence is located; or where all or
467 part of the transaction or transactions occurred which are the
468 subject of the subpoena;

469 (j) In any instances in which the State Auditor is or
470 shall be authorized or required to examine or audit, whether
471 preaudit or postaudit, any books, ledgers, accounts or other
472 records of the affairs of any public hospital owned or owned and
473 operated by one or more political subdivisions or parts thereof or
474 any combination thereof, or any school district, including
475 activity funds thereof, it shall be sufficient compliance
476 therewith, in the discretion of the State Auditor, that such
477 examination or audit be made from the report of any audit or other
478 examination certified by a certified public accountant and
479 prepared by or under the supervision of such certified public
480 accountant. Such audits shall be made in accordance with
481 generally accepted standards of auditing, with the use of an audit
482 program prepared by the State Auditor, and final reports of such
483 audits shall conform to the format prescribed by the State
484 Auditor. All files, working papers, notes, correspondence and all
485 other data compiled during the course of the audit shall be
486 available, without cost, to the State Auditor for examination and
487 abstracting during the normal business hours of any business day.
488 The expense of such certified reports shall be borne by the
489 respective hospital, or any available school district funds other



490 than minimum program funds, subject to examination or audit. The
491 State Auditor shall not be bound by such certified reports and
492 may, in his or their discretion, conduct such examination or audit
493 from the books, ledgers, accounts or other records involved as may
494 be appropriate and authorized by law;

495 (k) The State Auditor shall have the authority to
496 contract with qualified public accounting firms to perform
497 selected audits required in paragraphs (d), (e), (f) and (j) of
498 this section, if funds are made available for such contracts by
499 the Legislature, or if funds are available from the governmental
500 entity covered by paragraphs (d), (e), (f) and (j). Such audits
501 shall be made in accordance with generally accepted standards of
502 auditing. All files, working papers, notes, correspondence and
503 all other data compiled during the course of the audit shall be
504 available, without cost, to the State Auditor for examination and
505 abstracting during the normal business hours of any business day;

506 (l) The State Auditor shall have the authority to
507 establish training courses and programs for the personnel of the
508 various state and local governmental entities under the
509 jurisdiction of the Office of the State Auditor. The training
510 courses and programs shall include, but not be limited to, topics
511 on internal control of funds, property and equipment control and
512 inventory, governmental accounting and financial reporting, and
513 internal auditing. The State Auditor is authorized to charge a
514 fee from the participants of these courses and programs, which fee
515 shall be deposited into the Department of Audit Special Fund.
516 State and local governmental entities are authorized to pay such
517 fee and any travel expenses out of their general funds or any
518 other available funds from which such payment is not prohibited by
519 law;

520 (m) Upon written request by the Governor or any member
521 of the State Legislature, the State Auditor may audit any state



522 funds and/or state and federal funds received by any nonprofit
523 corporation incorporated under the laws of this state;

524 (n) To conduct performance audits of personal or
525 professional service contracts by state agencies on a random
526 sampling basis, or upon request of the State Personal Service
527 Contract Review Board under Section 25-9-120(3);

528 (o) To appoint or employ special counsel pursuant to
529 the provisions of Section 1 of this act.

530 **SECTION 8.** Section 7-7-225, Mississippi Code of 1972, is
531 amended as follows:

532 7-7-225. The State Auditor * * *, when conducting agency
533 audits, shall test to determine whether or not the state
534 institutions of higher learning and any state agency which does
535 not draw warrants on the Treasury have complied with the
536 provisions of Section 1 of this act with regard to any contract
537 for legal services.

538 **SECTION 9.** Section 25-9-120, Mississippi Code of 1972, is
539 amended as follows:

540 25-9-120. (1) Contract personnel, whether classified as
541 contract workers or independent contractors shall not be deemed
542 state service or nonstate service employees of the State of
543 Mississippi, and shall not be eligible to participate in the
544 Public Employees' Retirement System, or the state employee health
545 plan, nor be allowed credit for personal and sick leave and other
546 leave benefits as employees of the State of Mississippi,
547 notwithstanding Sections 25-3-91 through 25-3-101; 25-9-101
548 through 25-9-151; 25-11-1 through 25-11-126; 25-11-128 through
549 25-11-131; 25-15-1 through 25-15-23 and for the purpose set forth
550 herein. Contract workers, i.e., contract personnel who do not
551 meet the criteria of independent contractors, shall be subject to
552 the provisions of Section 25-11-127.

553 (2) There is hereby created the Personal Service Contract
554 Review Board, which shall be composed of the State Personnel



555 Director, the Executive Director of the Department of Finance and
556 Administration, or his designee, the Commissioner of Corrections,
557 or his designee, the Executive Director of the Mississippi
558 Department of Wildlife and Fisheries, or his designee, and the
559 Executive Director of the Department of Environmental Quality, or
560 his designee. The State Personnel Director shall be chairman and
561 shall preside over the meetings of the board. The board shall
562 annually elect a vice chairman, who shall serve in the absence of
563 the chairman. No business shall be transacted, including adoption
564 of rules of procedure, without the presence of a quorum of the
565 board. Three (3) members shall be a quorum. No action shall be
566 valid unless approved by the chairman and two (2) other of those
567 members present and voting, entered upon the minutes of the board
568 and signed by the chairman. Necessary clerical and administrative
569 support for the board shall be provided by the State Personnel
570 Board. Minutes shall be kept of the proceedings of each meeting,
571 copies of which shall be filed on a monthly basis with the
572 Legislative Budget Office.

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

575 (a) Promulgate rules and regulations governing the
576 solicitation and selection of contractual services personnel
577 including personal and professional services contracts for any
578 form of consulting, policy analysis, public relations, marketing,
579 public affairs, legislative advocacy services or any other
580 contract that the board deems appropriate for oversight, with the
581 exception of any personal service contracts entered into for
582 computer or information technology-related services governed by
583 the Mississippi Department of Information Technology Services, any
584 personal service contracts entered into by the Mississippi
585 Department of Transportation, and any contract for * * *
586 accountant, auditor, physician, dentist, architect, engineer,
587 veterinarian and utility rate expert services. Any such rules and



588 regulations shall provide for maintaining continuous internal
589 audit covering the activities of such agency affecting its revenue
590 and expenditures as required under Section 7-7-3(6) (d),
591 Mississippi Code of 1972;

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

595 (ii) Maintain all contracts and related documents
596 for legal services submitted to it and perform related
597 responsibilities in accordance with the provisions of Section 1 of
598 this act.

599 (c) Develop standards with respect to contractual
600 services personnel which require invitations for public bid,
601 requests for proposals, record keeping and financial
602 responsibility of contractors. The Personal Service Contract
603 Review Board may, in its discretion, require the agency involved
604 to advertise such contract for public bid, and may reserve the
605 right to reject any or all bids;

606 (d) Prescribe certain circumstances whereby agency
607 heads may enter into contracts for personal and professional
608 services without receiving prior approval from the Personal
609 Service Contract Review Board. The Personal Service Contract
610 Review Board may establish a preapproved list of providers of
611 various personal and professional services for set prices with
612 which state agencies may contract without bidding or prior
613 approval from the board;

614 (e) To provide standards for the issuance of requests
615 for proposals, the evaluation of proposals received, consideration
616 of costs and quality of services proposed, contract negotiations,
617 the administrative monitoring of contract performance by the
618 agency and successful steps in terminating a contract;



619 (f) To present recommendations for governmental
620 privatization and to evaluate privatization proposals submitted by
621 any state agency;

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

630 (h) To request the State Auditor to conduct a
631 performance audit on any personal or professional service
632 contract;

633 (i) Prepare an annual report to the Legislature
634 concerning the issuance of personal service contracts during the
635 previous year, collecting any necessary information from state
636 agencies in making such report.

637 (4) No member of the Personal Service Contract Review Board
638 shall use his official authority or influence to coerce, by threat
639 of discharge from employment, or otherwise, the purchase of
640 commodities or the contracting for personal or professional
641 services under this section.

642 **SECTION 10.** Section 69-1-14, Mississippi Code of 1972, is
643 amended as follows:

644 69-1-14. (1) The Commissioner of Agriculture and Commerce
645 is hereby authorized and empowered to employ an attorney to
646 represent the Department of Agriculture and Commerce and to fix
647 his compensation subject to the approval of the State Personnel
648 Board. Said attorney shall be a full-time employee of the
649 Department of Agriculture and Commerce and shall be furnished such
650 office space and clerical assistance as shall be necessary. In
651 addition to his duties with the Department of Agriculture and



652 Commerce, said attorney shall represent the Board of Animal
653 Health, the Mississippi State Fair Commission and the Mississippi
654 Central Market Board. The salary and expenses of said attorney
655 shall be paid from any funds available to the Department of
656 Agriculture and Commerce, the Board of Animal Health, the
657 Mississippi Fair Commission and the Mississippi Central Market
658 Board in a ratio commensurate with the services provided by said
659 attorney to each of the said agencies.

660 (2) The Department of Agriculture and Commerce, the Board of
661 Animal Health, the Mississippi Fair Commission and the Mississippi
662 Central Market Board are hereby authorized and empowered to expend
663 such sums from any funds available for the purposes of paying the
664 salary and expenses of the attorney provided for in subsection
665 (1).

666 (3) In addition, the commissioner is authorized to appoint
667 or employ special counsel pursuant to the provisions of Section 1
668 of this act.

669 **SECTION 11.** Section 83-1-5, Mississippi Code of 1972, is
670 amended as follows:

671 83-1-5. The commissioner shall receive a compensation to be
672 fixed by law. He is hereby authorized to employ a clerk and
673 stenographer and an actuary at a salary to be fixed by law; and in
674 addition shall be allowed a sufficient sum for traveling expenses
675 and for extra clerical help.

676 Further, the commissioner may appoint or employ special
677 counsel pursuant to the provisions of Section 1 of this act.

678 **SECTION 12.** This act shall take effect and be in force from
679 and after July 1, 2012.

