

By: Senator(s) Gordon

To: Judiciary;
Appropriations

SENATE BILL NO. 2155

1 AN ACT TO CREATE THE MISSISSIPPI DEATH PENALTY DEFENSE
 2 LITIGATION ACT; TO CREATE THE MISSISSIPPI OFFICE OF DEATH PENALTY
 3 DEFENSE COUNSEL AND SPECIFY ITS PERSONNEL; TO PROVIDE
 4 QUALIFICATIONS FOR ATTORNEYS IN THE OFFICE; TO PROVIDE FOR
 5 COMPENSATION; TO SPECIFY OFFICE HOURS; TO AUTHORIZE THE DIRECTOR
 6 TO ACQUIRE OFFICE SPACE, SUPPLIES AND EQUIPMENT; TO REQUIRE THE
 7 DIRECTOR TO MAINTAIN A DOCKET; TO AUTHORIZE APPOINTMENT OF
 8 ATTORNEYS IN SITUATIONS WHERE CONFLICTS ARISE; TO CREATE THE
 9 SPECIAL DEATH PENALTY DEFENSE LITIGATION FUND; TO PROVIDE THAT
 10 ATTORNEYS APPOINTED TO THE OFFICE SHALL BE FULL TIME; TO REPEAL
 11 SECTIONS 99-18-1 THROUGH 99-18-19, MISSISSIPPI CODE OF 1972, WHICH
 12 CREATE THE MISSISSIPPI CAPITAL DEFENSE COUNSEL AND DELINEATE THE
 13 PURPOSE AND DUTIES OF THE OFFICE, THE COMPENSATION OF THE STAFF,
 14 THE OFFICE HOURS AND THE DUTIES OF THE DIRECTOR, REQUIRE KEEPING
 15 OF A DOCKET, SPECIFY THE PROCEDURE IN THE EVENT OF CONFLICT OF
 16 INTEREST AND THE APPOINTMENT OF LOCAL COUNSEL; AND FOR RELATED
 17 PURPOSES.

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

19 **SECTION 1.** This act may be cited as the "Mississippi Death
 20 Penalty Defense Litigation Act."

21 **SECTION 2.** There is hereby created the Mississippi Office of
 22 Death Penalty Defense Counsel. This office shall consist of four
 23 (4) attorneys, two (2) investigators, one (1) fiscal officer and
 24 two (2) secretaries/paralegals. One of these attorneys shall
 25 serve as director of the office. The director shall be appointed
 26 by the Chief Judge of the Mississippi Court of Appeals with the
 27 approval of the majority of the justices voting for a term of four
 28 (4) years or until a successor takes office. The remaining
 29 attorneys and other staff shall be appointed by the director of
 30 the office and shall serve at the will and pleasure of the
 31 director. The director and all other attorneys in the office
 32 shall be active members of The Mississippi Bar. The director may
 33 be removed by the Chief Judge of the Court of Appeals upon finding
 34 that the director is not qualified under law, has failed to



35 perform the duties of the office, or has acted beyond the scope of
36 the authority granted by law for the office.

37 **SECTION 3.** The Office of Death Penalty Defense Counsel is
38 created for the purpose of providing representation to indigent
39 parties under indictment for death penalty eligible offenses and
40 to perform such other duties as set forth by law.

41 **SECTION 4.** The Office of Death Penalty Defense Counsel shall
42 limit its activities to representation of defendants accused of
43 death eligible offenses and ancillary matters related directly to
44 death eligible offenses and other activities expressly authorized
45 by statute. Representation by the office or by other court
46 appointed counsel under this act shall terminate upon the
47 exhaustion of all state court remedies. The attorneys appointed
48 to serve in the Office of Death Penalty Defense Counsel shall
49 devote their entire time to the duties of the office, shall not
50 represent any persons in other litigation, civil or criminal, nor
51 in any other way engage in the practice of law, and shall in no
52 manner, directly or indirectly, engage in lobbying activities for
53 or against the death penalty. Any violation of this provision
54 shall be grounds for termination from employment, in the case of
55 the director by the Chief Judge and in the case of other attorneys
56 by the director with approval of the Chief Judge.

57 **SECTION 5.** The director appointed under this act shall be
58 compensated at no more than the maximum amount allowed by statute
59 for a district attorney, and other attorneys in the office shall
60 be compensated at no more than the maximum amount allowed by
61 statute for an assistant district attorney.

62 **SECTION 6.** The Director of the Office of Death Penalty
63 Defense Counsel shall keep the office open Monday through Friday
64 for not less than eight (8) hours each day and observe such
65 holidays as prescribed by statute.

66 **SECTION 7.** In addition to the authority to represent persons
67 under indictment for death eligible offenses, the director is



68 hereby empowered to pay and disburse salaries, employment benefits
69 and charges relating to employment of staff and to establish their
70 salaries and expenses of the office; to incur and pay travel
71 expenses of staff necessary for the performance of the duties of
72 the office; to rent or lease on such terms as he may think proper
73 such office space as is necessary in the City of Jackson to
74 accommodate the staff; to enter into and perform contracts and to
75 purchase such necessary office supplies and equipment as may be
76 needed for the proper administration of said offices within the
77 funds appropriated for such purpose; and to incur and pay such
78 other expenses as are appropriate and customary to the operation
79 of the office.

80 **SECTION 8.** The director shall keep a docket of all indicted
81 death eligible cases originating in the courts of Mississippi
82 which must, at all reasonable times, be open to inspection by the
83 public and must show the county, district and court in which the
84 cause is pending. The director shall prepare and maintain a
85 roster of all death penalty cases in the courts of Mississippi
86 indicating the current status of each case and submit this report
87 to the Chief Judge of the Court of Appeals as frequently as the
88 Chief Judge may direct. The director shall also report monthly to
89 the Administrative Office of Courts the activities, receipts and
90 expenditures of the office.

91 **SECTION 9.** If at any time during the representation of two
92 (2) or more defendants, the director determines that the interests
93 of those persons are so adverse or hostile they cannot all be
94 represented by the director or his staff without conflict of
95 interest, or if the director shall determine that the volume or
96 number of representations shall so require, the director in his
97 sole discretion, notwithstanding any statute or regulation to the
98 contrary, shall be authorized to employ qualified private counsel.
99 Fees and expenses approved by order of the court of original
100 jurisdiction, including investigative and expert witness expenses



101 of such private counsel, shall be paid by funds appropriated to a
102 Death Penalty Defense Counsel Special Fund for this purpose, which
103 fund is hereby created. Monies in this fund shall not lapse into
104 the General Fund at the end of the fiscal year but shall remain in
105 the fund, and any interest accrued to the fund shall remain in the
106 fund.

107 **SECTION 10.** Upon determination of indigence, the Circuit
108 Court, in its discretion, may appoint local counsel for the
109 purpose of defending death eligible indigent defendants, the fees
110 and expenses of which shall be paid by the Death Penalty Defense
111 Counsel Special Fund. In the presiding Circuit Judge's
112 discretion, a determination of the absence of competent death
113 penalty defense counsel having been made, counsel from the Office
114 of Death Penalty Defense Counsel may be appointed to assist local
115 counsel to defend said case with all fees and expenses to be paid
116 by the Death Penalty Defense Counsel Special Fund.

117 **SECTION 11.** Sections 99-18-1, 99-18-3, 99-18-5, 99-18-7,
118 99-18-9, 99-18-11, 99-18-13, 99-18-15, 99-18-17 and 99-18-19,
119 Mississippi Code of 1972, which create the Mississippi Capital
120 Defense Counsel and delineate the purpose and duties of the
121 office, the compensation of the staff, the office hours and the
122 duties of the director, require keeping of a docket, specify the
123 procedure in the event of conflict of interest and the appointment
124 of local counsel, are repealed.

125 **SECTION 12.** This act shall take effect and be in force from
126 and after July 1, 2003.

