

By: Senator(s) Ross

To: Appropriations

SENATE BILL NO. 2869

1 AN ACT TO AUTHORIZE STATE AGENCIES AND OTHER STATE ENTITIES
2 TO DIRECTLY EMPLOY LEGAL COUNSEL, WHETHER SALARIED OR ON A
3 CASE-BY-CASE BASIS; TO PROVIDE THAT COMPENSATION OF SUCH LEGAL
4 COUNSEL MAY BE PAID FROM ANY FUNDS APPROPRIATED OR OTHERWISE
5 AVAILABLE TO THE APPOINTING OR EMPLOYING ENTITY; TO AMEND SECTIONS
6 7-5-1, 7-5-7, 7-7-225 AND 27-104-105, MISSISSIPPI CODE OF 1972, TO
7 CONFORM; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** The executive director of any state agency,
10 board, institution or commission is authorized and empowered to
11 appoint or employ special counsel, on a fee or salary basis, to
12 assist the appointing or employing entity in any or all legal
13 matters, including, but not limited to, the preparation for,
14 prosecution or defense of any litigation in the state or federal
15 courts or before any federal commission or agency in which the
16 appointing or employing entity is a party or has an interest. The
17 approval of the Attorney General is not required for an
18 appointment or hiring under this section. The compensation of any
19 appointee under this section shall not exceed recognized bar rates
20 for similar services, and the compensation of any employee under
21 this section shall not exceed that customarily paid to a special
22 assistant attorney general who performs similar duties; the
23 attorney's compensation shall be paid out of any funds
24 appropriated or otherwise available to the appointing or employing
25 entity.

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

28 7-5-1. (1) The Attorney General provided for by Section 173
29 of the Mississippi Constitution shall be elected at the same time

30 and in the same manner as the Governor is elected. His term of
31 office shall be four (4) years and his compensation shall be fixed
32 by the Legislature.

33 (2) He shall be the chief legal officer and advisor for the
34 state, both civil and criminal, and shall provide such legal
35 services as may be requested from time to time, without cost. He
36 is charged with managing * * * litigation on behalf of the state
37 in cases where other counsel has not been hired or retained by an
38 entity authorized to do so.

39 (3) No arm or agency of the state government shall bring or
40 defend a suit against another such arm or agency without prior
41 written approval of the Attorney General.

42 (4) Except as expressly restricted or modified by statute or
43 the Mississippi Constitution of 1890:

44 (a) He shall have the powers of the Attorney General at
45 common law; and

46 (b) He may bring or defend a lawsuit on behalf of a
47 state agency, the subject matter of which is of statewide
48 interest. * * *

49 (5) The Attorney General shall intervene and argue the
50 constitutionality of any statute when notified of a challenge
51 thereto, pursuant to the Mississippi Rules of Civil Procedure.

52 (6) The qualifications for Office of the Attorney General
53 shall be as provided for chancery and circuit judges in Section
54 154 of the Mississippi Constitution.

55 **SECTION 3.** Section 7-5-7, Mississippi Code of 1972, is
56 amended as follows:

57 7-5-7. (1) The Governor may engage counsel to assist the
58 Attorney General in cases to which the state is a party when, in
59 his opinion, the interest of the state requires it, subject to the
60 action of the Legislature in providing compensation for such
61 services.

62 (2) (a) The Attorney General is hereby authorized and
63 empowered to appoint or employ special counsel, on a fee or salary
64 basis, to assist the Attorney General in the preparation for,
65 prosecution, or defense of any litigation in the state or federal
66 courts or before any federal commission or agency in which the
67 state is a party or has an interest.

68 (b) The Attorney General may designate such special
69 counsel as special assistant attorney general, and may pay such
70 special counsel reasonable compensation to be agreed upon by the
71 Attorney General and such special counsel, in no event to exceed
72 recognized bar rates for similar services.

73 (3) The Attorney General may also employ special
74 investigators on a per diem or salary basis, to be agreed upon at
75 the time of employment, for the purpose of interviewing witnesses,
76 ascertaining facts, or rendering any other services that may be
77 needed by the Attorney General in the preparation for and
78 prosecution of suits by or against the State of Mississippi, or in
79 suits in which the Attorney General is participating on account of
80 same being of statewide interest.

81 (4) The Attorney General may pay travel and other expenses
82 of employees and appointees made hereunder in the same manner and
83 amount as authorized by law for the payment of travel and expenses
84 of state employees and officials.

85 (5) The compensation of appointees and employees made
86 hereunder shall be paid out of the Attorney General's contingent
87 fund, or out of any other funds appropriated to the Attorney
88 General's office.

89 **SECTION 4.** Section 7-7-225, Mississippi Code of 1972, is
90 amended as follows:

91 7-7-225. The State Auditor shall, when conducting agency
92 audits, test to determine whether or not the state institutions of
93 higher learning and any state agency which does not draw warrants
94 on the Treasury have received approval of the Attorney General for

95 any contract for legal services, if approval by the Attorney
96 General is required.

97 **SECTION 5.** Section 27-104-105, Mississippi Code of 1972, is
98 amended as follows:

99 27-104-105. The Department of Finance and Administration
100 shall not process any warrant requested by any state agency for
101 payment for legal services without first determining that the
102 services and contract were approved by the Attorney General and
103 the State Personnel Board, where the Attorney General's approval
104 is required; contracts for legal services performed for the
105 Mississippi Department of Transportation in eminent domain cases
106 shall not require approval by the State Personnel Board. The
107 State Auditor shall test for compliance with this section.

108 **SECTION 6.** This act shall take effect and be in force from
109 and after its passage.