

By: Senator(s) Ross

To: Judiciary, Division A;
Appropriations

SENATE BILL NO. 2960

1 AN ACT TO CREATE THE MISSISSIPPI OFFICE OF INDIGENT APPEALS;
 2 TO PROVIDE A DIRECTOR AND STAFF; TO PROVIDE COMPENSATION; TO
 3 PROVIDE THE DUTIES OF THE OFFICE; TO CREATE THE MISSISSIPPI OFFICE
 4 OF INDIGENT APPEALS OFFICE FUND AND PROVIDE FOR ITS
 5 ADMINISTRATION; TO AMEND SECTION 99-18-17, MISSISSIPPI CODE OF
 6 1972, TO REVISE THE SPECIAL FUND KNOWN AS THE CAPITAL DEFENSE
 7 COUNSEL FUND; TO AMEND SECTION 99-39-117, MISSISSIPPI CODE OF
 8 1972, TO REVISE THE SPECIAL FUND KNOWN AS THE CAPITAL
 9 POST-CONVICTION COUNSEL FUND; TO AMEND SECTION 93-21-117,
 10 MISSISSIPPI CODE OF 1972, TO REVISE THE SPECIAL FUND KNOWN AS THE
 11 VICTIMS OF DOMESTIC VIOLENCE FUND; TO AMEND SECTION 99-19-73,
 12 MISSISSIPPI CODE OF 1972, TO PROVIDE ASSESSMENTS FOR THE FUNDS;
 13 AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** (1) There is created the Mississippi Office of
 16 Indigent Appeals. This office shall consist of six (6) attorneys,
 17 two (2) secretaries/paralegals and one (1) financial assistant.
 18 One (1) of the attorneys shall serve as director of the office.
 19 The director shall be appointed by the Governor and shall serve
 20 for a term of four (4) years. The remaining attorneys and other
 21 staff shall be appointed by the director and shall serve at the
 22 will and pleasure of the director. The director and all other
 23 attorneys in the office shall either be active members of The
 24 Mississippi Bar, or, if a member in good standing of the bar of
 25 another jurisdiction, must apply to and secure admission to The
 26 Mississippi Bar within twelve (12) months of the commencement of
 27 the person's employment by the office. The attorneys in the
 28 office shall practice law exclusively for the office and shall not
 29 engage in any other practice. The office shall not engage in any
 30 litigation other than that related to the office. The salary for
 31 the director shall be equivalent to the salary of district

32 attorneys and the salary of the other attorneys in the office
33 shall be equivalent to the salary of assistant district attorney.

34 (2) The office shall provide representation on appeal for
35 indigent persons convicted of felonies but not under sentences of
36 death. Representation shall be provided by staff attorneys, or,
37 in the case of conflict or excessive workload, by attorneys
38 selected, employed and compensated by the office on a contract
39 basis. All fees charged by contract counsel and expenses incurred
40 by attorneys in the office and contract counsel must be approved
41 by the court. The office shall provide advice, education and
42 support to attorneys representing persons under felony charges in
43 the trial courts.

44 (3) There is created in the State Treasury a special fund to
45 be known as the Indigent Appeals Fund. The purpose of the fund
46 shall be to provide funding for the Mississippi Office of Indigent
47 Appeals. Monies from the funds derived from assessments under
48 Section 99-19-73 shall be distributed by the State Treasurer upon
49 warrants issued by the Mississippi Office of Indigent Appeals.
50 The fund shall be a continuing fund, not subject to fiscal-year
51 limitations, and shall consist of:

52 (a) Monies appropriated by the Legislature for the
53 purposes of funding the Office of Indigent Appeals;

54 (b) The interest accruing to the fund;

55 (c) Monies received under the provisions of Section
56 99-19-73;

57 (d) Monies received from the federal government;

58 (e) Donations; and

59 (f) Monies received from such other sources as may be
60 provided by law.

61 **SECTION 2.** Section 99-18-17, Mississippi Code of 1972, is
62 amended as follows:

63 99-18-17. (1) If at any time during the representation of
64 two (2) or more defendants, the director determines that the

65 interests of those persons are so adverse or hostile they cannot
66 all be represented by the director or his staff without conflict
67 of interest, or if the director shall determine that the volume or
68 number of representations shall so require, the director in his
69 sole discretion, notwithstanding any statute or regulation to the
70 contrary, shall be authorized to employ qualified private counsel.
71 Fees and expenses approved by order of the court of original
72 jurisdiction, including investigative and expert witness expenses
73 of such private counsel, shall be paid by funds appropriated to
74 the Capital Defense Counsel * * * Fund for this purpose * * *.

75 (2) There is created in the State Treasury a special fund to
76 be known as the Capital Defense Counsel Fund. The purpose of the
77 fund shall be to provide funding for the Office of Capital Defense
78 Counsel. Monies from the funds derived from assessments under
79 Section 99-19-73 shall be distributed by the State Treasurer upon
80 warrants issued by the Mississippi Office of Capital Defense
81 Counsel. The fund shall be a continuing fund, not subject to
82 fiscal-year limitations, and shall consist of:

83 (a) Monies appropriated by the Legislature for the
84 purposes of funding the Office of Capital Defense Counsel;

85 (b) The interest accruing to the fund;

86 (c) Monies received under the provisions of Section
87 99-19-73;

88 (d) Monies received from the federal government;

89 (e) Donations; and

90 (f) Monies received from such other sources as may be
91 provided by law.

92 **SECTION 3.** Section 99-39-117, Mississippi Code of 1972, is
93 amended as follows:

94 99-39-117. (1) If at any time during the representation of
95 two (2) or more defendants, the director determines that the
96 interest of those persons are so adverse or hostile that they
97 cannot all be represented by the director or his staff without

98 conflict of interest, or if the director shall determine that the
99 volume or number of representations shall so require, the
100 director, in his sole discretion, notwithstanding any statute or
101 regulation to the contrary, shall be authorized to employ
102 qualified private counsel. Fees and expenses, approved by order
103 of the appropriate court, including investigative and expert
104 witness expenses of such private counsel shall be paid from funds
105 appropriated to the * * * Capital Post-Conviction Counsel Fund for
106 this purpose * * *.

107 (2) There is created in the State Treasury a special fund to
108 be known as the Capital Post-Conviction Counsel Fund. The purpose
109 of the fund shall be to provide funding for the Office of Capital
110 Post-Conviction Counsel. Monies from the funds derived from
111 assessments under Section 99-19-73 shall be distributed by the
112 State Treasurer upon warrants issued by the Mississippi Office of
113 Capital Post-Conviction Counsel. The fund shall be a continuing
114 fund, not subject to fiscal-year limitations, and shall consist
115 of:

116 (a) Monies appropriated by the Legislature for the
117 purposes of funding the Office of Capital Post-Conviction Counsel;

118 (b) The interest accruing to the fund;

119 (c) Monies received under the provisions of Section
120 99-19-73;

121 (d) Monies received from the federal government;

122 (e) Donations; and

123 (f) Monies received from such other sources as may be
124 provided by law.

125 **SECTION 4.** Section 93-21-117, Mississippi Code of 1972, is
126 amended as follows:

127 93-21-117. (1) There is hereby created in the State
128 Treasury a special fund to be known as the "Victims of Domestic
129 Violence Fund." The fund shall be a continuing fund, not subject
130 to fiscal-year limitations, and shall consist of:

131 (a) Monies appropriated by the Legislature;
132 (b) The interest accruing to the fund;
133 (c) Monies received under the provisions of Section
134 99-19-73;
135 (d) Monies received from the federal government;
136 (e) Donations; and
137 (f) Monies received from such other sources as may be
138 provided by law.

139 (2) The circuit clerks of the state shall deposit in the
140 fund on a monthly basis the additional fee charged and collected
141 for marriage licenses under the provisions of Section 25-7-13,
142 Mississippi Code of 1972.

143 (3) * * * All other monies received from every source for
144 the support of the program for victims of domestic violence,
145 established by Sections 93-21-101 through 93-21-113, shall be
146 deposited in the "Victims of Domestic Violence Fund." The monies
147 in the fund shall be used by the State Department of Health solely
148 for funding and administering domestic violence shelters under the
149 provisions of Sections 93-21-101 through 93-21-113, in such
150 amounts as the Legislature may appropriate to the department for
151 the program for victims of domestic violence established by
152 Sections 93-21-101 through 93-21-113. Not more than ten percent
153 (10%) of the monies in the "Victims of Domestic Violence Fund"
154 shall be appropriated to the State Department of Health for the
155 administration of domestic violence shelters.

156 **SECTION 5.** Section 99-19-73, Mississippi Code of 1972, is
157 amended as follows:

158 99-19-73. (1) **Traffic Violations.** In addition to any
159 monetary penalties and any other penalties imposed by law, there
160 shall be imposed and collected the following state assessment from
161 each person upon whom a court imposes a fine or other penalty for
162 any violation in Title 63, Mississippi Code of 1972, except
163 offenses relating to the Mississippi Implied Consent Law (Section

164 63-11-1 et seq.) and offenses relating to vehicular parking or
 165 registration:

166 FUND	AMOUNT
167 State Court Education Fund.....	\$ 1.50
168 State Prosecutor Education Fund.....	1.00
169 Driver Training Penalty Assessment Fund.....	7.00
170 Law Enforcement Officers Training Fund.....	5.00
171 Spinal Cord and Head Injury Trust Fund	
172 (for all moving violations).....	4.00
173 Emergency Medical Services Operating Fund.....	10.00
174 Mississippi Leadership Council on Aging Fund.....	1.00
175 Law Enforcement Officers and Fire Fighters Death	
176 Benefits Trust Fund.....	.50
177 State Prosecutor Compensation Fund for the purpose	
178 of providing additional compensation for legal	
179 assistants to district attorneys.....	1.00
180 Crisis Intervention Mental Health Fund.....	10.00
181 Drug Court Fund.....	10.00
182 <u>Capital Defense Counsel Fund</u>	<u>1.89</u>
183 <u>Indigent Appeals Fund</u>	<u>2.29</u>
184 <u>Capital Post-Conviction Counsel Fund</u>	<u>2.33</u>
185 <u>Victims of Domestic Violence Fund</u>	<u>.49</u>
186 TOTAL STATE ASSESSMENT.....	\$ <u>58.00</u>

187 (2) **Implied Consent Law Violations.** In addition to any
 188 monetary penalties and any other penalties imposed by law, there
 189 shall be imposed and collected the following state assessment from
 190 each person upon whom a court imposes a fine or any other penalty
 191 for any violation of the Mississippi Implied Consent Law (Section
 192 63-11-1 et seq.):

193 FUND	AMOUNT
194 Crime Victims' Compensation Fund.....	\$ 10.00
195 State Court Education Fund.....	1.50
196 State Prosecutor Education Fund.....	1.00

197	Driver Training Penalty Assessment Fund.....	22.00
198	Law Enforcement Officers Training Fund.....	11.00
199	Emergency Medical Services Operating Fund.....	10.00
200	Mississippi Alcohol Safety Education Program Fund...	5.00
201	Federal-State Alcohol Program Fund.....	10.00
202	Mississippi Crime Laboratory	
203	Implied Consent Law Fund.....	25.00
204	Spinal Cord and Head Injury Trust Fund.....	25.00
205	Capital Defense Counsel * * * Fund.....	<u>1.89</u>
206	<u>Indigent Appeals Fund</u>	<u>2.29</u>
207	<u>Capital Post-Conviction Counsel Fund</u>	<u>2.33</u>
208	<u>Victims of Domestic Violence Fund</u>	<u>.49</u>
209	State General Fund.....	35.00
210	Law Enforcement Officers and Fire Fighters Death	
211	Benefits Trust Fund.....	.50
212	State Prosecutor Compensation Fund for the purpose	
213	of providing additional compensation for legal	
214	assistants to district attorneys.....	1.00
215	Crisis Intervention Mental Health Fund.....	10.00
216	Drug Court Fund.....	10.00
217	TOTAL STATE ASSESSMENT.....	\$ <u>184.00</u>

218 (3) **Game and Fish Law Violations.** In addition to any
219 monetary penalties and any other penalties imposed by law, there
220 shall be imposed and collected the following state assessment from
221 each person upon whom a court imposes a fine or other penalty for
222 any violation of the game and fish statutes or regulations of this
223 state:

224	FUND	AMOUNT
225	State Court Education Fund.....	\$ 1.50
226	State Prosecutor Education Fund.....	1.00
227	Law Enforcement Officers Training Fund.....	5.00
228	Hunter Education and Training Program Fund.....	5.00
229	State General Fund.....	30.00

230	Law Enforcement Officers and Fire Fighters Death	
231	Benefits Trust Fund.....	.50
232	State Prosecutor Compensation Fund for the purpose	
233	of providing additional compensation for legal	
234	assistants to district attorneys.....	1.00
235	Crisis Intervention Mental Health Fund.....	10.00
236	Drug Court Fund.....	10.00
237	TOTAL STATE ASSESSMENT.....	\$ 64.00

238 (4) **Litter Law Violations.** In addition to any monetary
239 penalties and any other penalties imposed by law, there shall be
240 imposed and collected the following state assessment from each
241 person upon whom a court imposes a fine or other penalty for any
242 violation of Section 97-15-29 or 97-15-30:

243	FUND	AMOUNT
244	Statewide Litter Prevention Fund.....	\$ 25.00
245	State Prosecutor Compensation Fund for the purpose	
246	of providing additional compensation for legal	
247	assistants to district attorneys.....	1.00
248	Crisis Intervention Mental Health Fund.....	10.00
249	Drug Court Fund.....	10.00
250	TOTAL STATE ASSESSMENT.....	\$ 46.00

251 (5) **Other Misdemeanors.** In addition to any monetary
252 penalties and any other penalties imposed by law, there shall be
253 imposed and collected the following state assessment from each
254 person upon whom a court imposes a fine or other penalty for any
255 misdemeanor violation not specified in subsection (1), (2) or (3)
256 of this section, except offenses relating to vehicular parking or
257 registration:

258	FUND	AMOUNT
259	Crime Victims' Compensation Fund.....	\$ 10.00
260	State Court Education Fund.....	1.50
261	State Prosecutor Education Fund.....	1.00
262	Law Enforcement Officers Training Fund.....	5.00

263	Capital Defense Counsel * * * Fund.....	<u>1.89</u>
264	<u>Indigent Appeals Fund</u>	<u>2.29</u>
265	<u>Capital Post-Conviction Counsel Fund</u>	<u>2.33</u>
266	<u>Victims of Domestic Violence Fund</u>	<u>.49</u>
267	State General Fund.....	30.00
268	State Crime Stoppers Fund.....	1.50
269	Law Enforcement Officers and Fire Fighters Death	
270	Benefits Trust Fund.....	.50
271	State Prosecutor Compensation Fund for the purpose	
272	of providing additional compensation for legal	
273	assistants to district attorneys.....	1.00
274	Crisis Intervention Mental Health Fund.....	10.00
275	Drug Court Fund.....	8.00
276	Judicial Performance Fund.....	2.00
277	TOTAL STATE ASSESSMENT.....	\$ <u>77.50</u>

278 (6) **Other Felonies.** In addition to any monetary penalties
279 and any other penalties imposed by law, there shall be imposed and
280 collected the following state assessment from each person upon
281 whom a court imposes a fine or other penalty for any felony
282 violation not specified in subsection (1), (2) or (3) of this
283 section:

284	FUND	AMOUNT
285	Crime Victims' Compensation Fund.....	\$ 10.00
286	State Court Education Fund.....	1.50
287	State Prosecutor Education Fund.....	1.00
288	Law Enforcement Officers Training Fund.....	5.00
289	Capital Defense Counsel * * * Fund.....	<u>1.89</u>
290	<u>Indigent Appeals Fund</u>	<u>2.29</u>
291	<u>Capital Post-Conviction Counsel Fund</u>	<u>2.33</u>
292	<u>Victims of Domestic Violence Fund</u>	<u>.49</u>
293	State General Fund.....	60.00
294	Criminal Justice Fund.....	50.00
295	Law Enforcement Officers and Fire Fighters Death	

296	Benefits Trust Fund.....	.50
297	State Prosecutor Compensation Fund for the purpose	
298	of providing additional compensation for legal	
299	assistants to district attorneys.....	1.00
300	Crisis Intervention Mental Health Fund.....	10.00
301	Drug Court Fund.....	10.00
302	TOTAL STATE ASSESSMENT.....	<u>\$156.00</u>

303 (7) If a fine or other penalty imposed is suspended, in
304 whole or in part, such suspension shall not affect the state
305 assessment under this section. No state assessment imposed under
306 the provisions of this section may be suspended or reduced by the
307 court.

308 (8) After a determination by the court of the amount due, it
309 shall be the duty of the clerk of the court to promptly collect
310 all state assessments imposed under the provisions of this
311 section. The state assessments imposed under the provisions of
312 this section may not be paid by personal check. It shall be the
313 duty of the chancery clerk of each county to deposit all such
314 state assessments collected in the circuit, county and justice
315 courts in such county on a monthly basis with the State Treasurer
316 pursuant to appropriate procedures established by the State
317 Auditor. The chancery clerk shall make a monthly lump-sum deposit
318 of the total state assessments collected in the circuit, county
319 and justice courts in such county under this section, and shall
320 report to the Department of Finance and Administration the total
321 number of violations under each subsection for which state
322 assessments were collected in the circuit, county and justice
323 courts in such county during such month. It shall be the duty of
324 the municipal clerk of each municipality to deposit all such state
325 assessments collected in the municipal court in such municipality
326 on a monthly basis with the State Treasurer pursuant to
327 appropriate procedures established by the State Auditor. The
328 municipal clerk shall make a monthly lump-sum deposit of the total

329 state assessments collected in the municipal court in such
330 municipality under this section, and shall report to the
331 Department of Finance and Administration the total number of
332 violations under each subsection for which state assessments were
333 collected in the municipal court in such municipality during such
334 month.

335 (9) It shall be the duty of the Department of Finance and
336 Administration to deposit on a monthly basis all such state
337 assessments into the proper special fund in the State Treasury.
338 The monthly deposit shall be based upon the number of violations
339 reported under each subsection and the pro rata amount of such
340 assessment due to the appropriate special fund. The Department of
341 Finance and Administration shall issue regulations providing for
342 the proper allocation of these special funds.

343 (10) The State Auditor shall establish by regulation
344 procedures for refunds of state assessments, including refunds
345 associated with assessments imposed before July 1, 1990, and
346 refunds after appeals in which the defendant's conviction is
347 reversed. The Auditor shall provide in such regulations for
348 certification of eligibility for refunds and may require the
349 defendant seeking a refund to submit a verified copy of a court
350 order or abstract by which such defendant is entitled to a refund.
351 All refunds of state assessments shall be made in accordance with
352 the procedures established by the Auditor.

353 **SECTION 6.** This act shall take effect and be in force from
354 and after July 1, 2005.