

By: Representative Snowden

To: Judiciary A;  
Appropriations

HOUSE BILL NO. 823

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 such approval is required;  
104 contracts for legal services performed for the Mississippi  
105 Transportation Department in eminent domain cases shall not  
106 require approval by the State Personnel Board. The State Auditor  
107 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.