

By: Senator(s) Ross

To: Judiciary, Division A;
AppropriationsSENATE BILL NO. 2482
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 7-5-1, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT NOTICE OF CERTAIN LITIGATION SHALL BE GIVEN TO AN
3 AGENCY HEAD AND THAT AGENCIES MAY RETAIN SEPARATE COUNSEL IN
4 CERTAIN SITUATIONS; TO AMEND SECTION 7-5-5, MISSISSIPPI CODE OF
5 1972, TO REVISE THE AUTHORITY OF THE ATTORNEY GENERAL TO ENTER
6 INTO CONTRACTS FOR OUTSIDE LEGAL SERVICES; TO AMEND SECTION
7 7-5-21, MISSISSIPPI CODE OF 1972, TO REVISE THE CASE DOCKET
8 MAINTAINED BY THE ATTORNEY GENERAL; TO AUTHORIZE STATE AGENCIES
9 AND OTHER STATE ENTITIES TO DIRECTLY EMPLOY LEGAL COUNSEL, WHETHER
10 SALARIED OR ON A CASE-BY-CASE BASIS, WHEN CERTAIN CONFLICTS OF
11 INTEREST EXIST; TO PROVIDE THAT COMPENSATION OF SUCH LEGAL COUNSEL
12 MAY BE PAID FROM ANY FUNDS APPROPRIATED OR OTHERWISE AVAILABLE TO
13 THE APPOINTING OR EMPLOYING ENTITY; TO AMEND SECTION 25-9-120,
14 MISSISSIPPI CODE OF 1972, TO REVISE THE DUTIES OF THE PERSONAL
15 SERVICE CONTRACT REVIEW BOARD TO REVIEW CERTAIN FEE CONTRACTS FOR
16 OUTSIDE LEGAL COUNSEL WHEN ENTERED INTO BY THE ATTORNEY GENERAL OR
17 STATE AGENCIES; AND FOR RELATED PURPOSES.

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

19 **SECTION 1.** Section 7-5-1, Mississippi Code of 1972, is
20 amended as follows:

21 7-5-1. (1) The Attorney General provided for by Section 173
22 of the Mississippi Constitution shall be elected at the same time
23 and in the same manner as the Governor is elected. His term of
24 office shall be four (4) years and his compensation shall be fixed
25 by the Legislature. He shall be the chief legal officer and
26 advisor for the state, both civil and criminal, and is charged
27 with managing all litigation on behalf of the state. No arm or
28 agency of the state government shall bring or defend a suit
29 against another such arm or agency without prior written approval
30 of the Attorney General. He shall have the powers of the Attorney
31 General at common law and, subject to the notice requirements of
32 subsection (2) of this section, is given the sole power to bring
33 or defend a lawsuit on behalf of a state agency, the subject
34 matter of which is of statewide interest, and he shall intervene

35 and argue the constitutionality of any statute when notified of a
36 challenge thereto, pursuant to the Mississippi Rules of Civil
37 Procedure. His qualifications for office shall be as provided for
38 chancery and circuit judges in Section 154 of the Mississippi
39 Constitution.

40 (2) No legal action on behalf of any state agency, including
41 a suit to recoup funds expended by an agency, may be taken until
42 seven (7) working days' written notice of the proposed legal
43 action is given to the executive director of the agency unless
44 irreparable inquiry to the state would result by waiting for the
45 expiration of the seven-day period. Upon the expiration of the
46 notice period, the Attorney General may institute suit with or
47 without the consent of the executive director of the agency. In
48 such instances where the executive director does not consent, the
49 agency may retain separate counsel pursuant to Section 4 of Senate
50 Bill No. 2482, 2007 Regular Session.

51 **SECTION 2.** Section 7-5-5, Mississippi Code of 1972, is
52 amended as follows:

53 7-5-5. (1) The Attorney General shall appoint nine (9)
54 competent attorneys, each of whom shall be designated as an
55 assistant attorney general. The assistants shall each possess all
56 of the qualifications required by law of the Attorney General and
57 shall have power and authority under the direction and supervision
58 of the Attorney General to perform all of the duties required by
59 law of that officer; and each shall be liable to the pains and
60 penalties to which the Attorney General is liable. The assistants
61 shall serve at the will and pleasure of the Attorney General, and
62 they shall devote their entire time and attention to the duties
63 pertaining to the Department of Justice as required by the general
64 laws. The compensation of the within enumerated assistant
65 attorneys general and all other regular assistants authorized by
66 law shall be fixed by the Attorney General not to exceed the
67 compensation fixed by law for such assistants.

68 (2) (a) The Attorney General is hereby authorized,
69 empowered and directed to designate three (3) of the * * *
70 assistant attorneys general to devote their time and attention
71 primarily to defending and aiding in the defense in all courts of
72 any suit, filed or threatened, against the State of Mississippi,
73 against any subdivision thereof, or against any agency or
74 instrumentality of the state or subdivision, including all elected
75 officials and any other officer or employee thereof. When the
76 circumstances permit, the assistants may perform any of the
77 Attorney General's powers and duties, including, but not limited
78 to, engaging in lawsuits outside the state when in his opinion
79 same would help bring about the equal application of federal laws
80 and court decisions in every state and guaranteeing equal
81 protection of the laws as guaranteed every citizen by the United
82 States Constitution.

83 (b) To further prosecute and insure such purposes,
84 subject to the limitations in this paragraph, the Attorney General
85 is hereby further expressly authorized, empowered and directed to
86 employ such additional counsel as special assistant attorneys
87 general as may be necessary or advisable, on a fee or contract
88 basis; and the Attorney General shall be the sole judge of the
89 compensation in such cases.

90 (i) Any contract for services of additional
91 counsel providing for a contingent fee, or where the anticipated
92 fee is in excess of One Million Dollars (\$1,000,000.00), shall
93 require that the contracting attorney or law firm keep current and
94 complete written time and expense records that describe in detail
95 the time and money spent each day in performance of the contract.

96 (ii) Any contract for legal services where the
97 legal fee is reasonably expected to exceed One Million Dollars
98 (\$1,000,000.00) shall be reviewed by the Personal Service Contract
99 Review Board pursuant to Section 25-9-120.

100 (iii) In those cases where the anticipated fee is
101 in excess of One Million Dollars (\$1,000,000.00), no contract for
102 services of additional counsel shall be entered into by the
103 Attorney General until requests for proposals have been issued to
104 at least three (3) separate law firms or solo practitioners, and
105 the Attorney General shall submit copies of all proposals to the
106 Personal Service Contract Review Board.

107 (iv) On conclusion of the matter for which the
108 outside legal services were obtained, the contracting attorney or
109 law firm shall provide the Personal Service Contract Review Board
110 with a complete written statement showing the contracting
111 attorney's or law firm's computation of the amount of all fees and
112 expenses, and the final complete time and expense records required
113 under subparagraph (i) of this paragraph.

114 (3) The Attorney General may discharge any assistant
115 attorney general or special assistant attorney general at his
116 pleasure and appoint another in his stead. The assistant
117 attorneys general shall devote their entire time and attention to
118 the duties pertaining to the Department of Justice under the
119 control and supervision of the Attorney General.

120 **SECTION 3.** Section 7-5-21, Mississippi Code of 1972, is
121 amended as follows:

122 7-5-21. The Attorney General shall keep a docket of all
123 causes in which he is required to appear or is appearing, either
124 through his office or through retained counsel, which must * * *
125 be open to the inspection of the public and must show the county,
126 district, and court in which the causes have been instituted and
127 tried, and whether they be civil or criminal. If civil, the
128 docket must show the nature of the demand, the stage of the
129 proceedings, the name and address of any retained or contract
130 counsel, a memorandum of the judgment when prosecuted to judgment,
131 any process issued thereon, whether satisfied or not, and if not
132 satisfied, the return of the sheriff. If criminal, the docket

133 must show the nature of the crime, the mode of prosecution, the
134 stage of the proceedings, a memorandum of the sentence when
135 prosecuted to a sentence, the execution thereof, if executed, and,
136 if not executed, the reasons of delay or prevention.

137 **SECTION 4.** The governing director or governing entity of any
138 state agency, board, institution or commission is entitled to
139 retain special counsel on a fee or salary basis if a conflict of
140 interest exists between the positions of the agency, board,
141 institution or commission and the Office of the Attorney General
142 as to a legal or policy position with regard to which the agency,
143 board, institution or commission has standing. The compensation
144 of any special counsel under this section shall not exceed
145 recognized bar rates for similar services; the attorney's
146 compensation shall be paid out of any funds appropriated or
147 otherwise available to the appointing or employing entity. If the
148 contract provides for a fee anticipated to exceed One Million
149 Dollars (\$1,000,000.00), the agency, board, institution or
150 commission shall not enter into a contract for legal services
151 until requests for proposals have been issued to at least three
152 (3) separate law firms or solo practitioners; copies of all
153 proposals shall be submitted to the Personal Service Contract
154 Review Board.

155 **SECTION 5.** Section 25-9-120, Mississippi Code of 1972, is
156 amended as follows:

157 25-9-120. (1) Contract personnel, whether classified as
158 contract workers or independent contractors shall not be deemed
159 state service or nonstate service employees of the State of
160 Mississippi, and shall not be eligible to participate in the
161 Public Employees' Retirement System, or the state employee health
162 plan, nor be allowed credit for personal and sick leave and other
163 leave benefits as employees of the State of Mississippi,
164 notwithstanding Sections 25-3-91 through 25-3-101; 25-9-101
165 through 25-9-151; 25-11-1 through 25-11-126; 25-11-128 through

166 25-11-131; 25-15-1 through 25-15-23 and for the purpose set forth
167 herein. Contract workers, i.e., contract personnel who do not
168 meet the criteria of independent contractors, shall be subject to
169 the provisions of Section 25-11-127.

170 (2) There is hereby created the Personal Service Contract
171 Review Board, which shall be composed of the State Personnel
172 Director, the Executive Director of the Department of Finance and
173 Administration, or his designee, the Commissioner of Corrections,
174 or his designee, the Executive Director of the Mississippi
175 Department of Wildlife and Fisheries, or his designee, and the
176 Executive Director of the Department of Environmental Quality, or
177 his designee. The State Personnel Director shall be chairman and
178 shall preside over the meetings of the board. The board shall
179 annually elect a vice chairman, who shall serve in the absence of
180 the chairman. No business shall be transacted, including adoption
181 of rules of procedure, without the presence of a quorum of the
182 board. Three (3) members shall be a quorum. No action shall be
183 valid unless approved by the chairman and two (2) other of those
184 members present and voting, entered upon the minutes of the board
185 and signed by the chairman. Necessary clerical and administrative
186 support for the board shall be provided by the State Personnel
187 Board. Minutes shall be kept of the proceedings of each meeting,
188 copies of which shall be filed on a monthly basis with the
189 Legislative Budget Office.

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

192 (a) Promulgate rules and regulations governing the
193 solicitation and selection of contractual services personnel
194 including personal and professional services contracts for any
195 form of consulting, policy analysis, public relations, marketing,
196 public affairs, legislative advocacy services or any other
197 contract that the board deems appropriate for oversight, with the
198 exception of any personal service contracts entered into for

199 computer or information technology-related services governed by
200 the Mississippi Department of Information Technology Services, any
201 personal service contracts entered into by the Mississippi
202 Department of Transportation, and any contract for attorney not
203 subject to paragraph (b)(ii) of this subsection, accountant,
204 auditor, physician, dentist, architect, engineer, veterinarian and
205 utility rate expert services. Any such rules and regulations
206 shall provide for maintaining continuous internal audit covering
207 the activities of such agency affecting its revenue and
208 expenditures as required under Section 7-7-3(6)(d), Mississippi
209 Code of 1972;

210 (b) (i) Approve all personal and professional services
211 contracts involving the expenditures of funds in excess of One
212 Hundred Thousand Dollars (\$100,000.00).

213 (ii) Review all contracts for legal services,
214 whether on a set fee, contingent fee or hourly fee basis, in which
215 the anticipated fee is in excess of One Million Dollars
216 (\$1,000,000.00), and provide a recommendation to the Attorney
217 General or the retaining agency which the Attorney General or the
218 retaining agency may consider.

219 (c) Develop standards with respect to contractual
220 services personnel which require invitations for public bid,
221 requests for proposals, record keeping and financial
222 responsibility of contractors. The Personal Service Contract
223 Review Board may, in its discretion, require the agency involved
224 to advertise such contract for public bid, and may reserve the
225 right to reject any or all bids;

226 (d) Prescribe certain circumstances whereby agency
227 heads may enter into contracts for personal and professional
228 services without receiving prior approval from the Personal
229 Service Contract Review Board. The Personal Service Contract
230 Review Board may establish a preapproved list of providers of
231 various personal and professional services for set prices with

232 which state agencies may contract without bidding or prior
233 approval from the board;

234 (e) To provide standards for the issuance of requests
235 for proposals, the evaluation of proposals received, consideration
236 of costs and quality of services proposed, contract negotiations,
237 the administrative monitoring of contract performance by the
238 agency and successful steps in terminating a contract;

239 (f) To present recommendations for governmental
240 privatization and to evaluate privatization proposals submitted by
241 any state agency;

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

250 (h) To request the State Auditor to conduct a
251 performance audit on any personal or professional service
252 contract;

253 (i) Prepare an annual report to the Legislature
254 concerning the issuance of personal service contracts during the
255 previous year, collecting any necessary information from state
256 agencies in making such report.

257 (4) No member of the Personal Service Contract Review Board
258 shall use his official authority or influence to coerce, by threat
259 of discharge from employment, or otherwise, the purchase of
260 commodities or the contracting for personal or professional
261 services under this section.

262 (5) The Personal Service Contract Review Board may retain
263 outside counsel for the purpose of advising it in its review

264 pursuant to subsection (3)(b)(ii) of contracts entered into by the
265 Attorney General or an agency for outside legal counsel.

266 **SECTION 6.** This act shall take effect and be in force from
267 and after July 1, 2007.