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Haney, Mettetal, Brown (20th), Mims, Staples, Hood, Denny, Chism,
Gipson, Moore, Byrd

To: Judiciary A

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 211

1 AN ACT TO PROVIDE THAT THE GOVERNOR, LIEUTENANT GOVERNOR,
2 SPEAKER OF THE HOUSE OF REPRESENTATIVES, ATTORNEY GENERAL,
3 SECRETARY OF STATE, STATE TREASURER, STATE AUDITOR, COMMISSIONER
4 OF AGRICULTURE AND COMMERCE, COMMISSIONER OF INSURANCE, AND THE
5 EXECUTIVE DIRECTOR OF ANY STATE AGENCY, BOARD, COMMISSION,
6 DEPARTMENT OR INSTITUTION, IS AUTHORIZED TO APPOINT OR EMPLOY
7 SPECIAL COUNSEL TO REPRESENT THAT OFFICER OR AGENCY, BOARD,
8 COMMISSION, DEPARTMENT OR INSTITUTION; TO PROVIDE THAT LITIGATION
9 ON BEHALF OF A STATE AGENCY MUST RECEIVE THE APPROVAL OF THE
10 AGENCY HEAD; TO REVISE THE AUTHORITY OF THESE OFFICERS TO RETAIN
11 SPECIAL COUNSEL AND TO GRANT A LIMITED FUNDS REALLOCATION; TO
12 PROVIDE THAT THE PERSONAL SERVICE CONTRACT REVIEW BOARD SHALL
13 MAINTAIN CERTAIN CONTRACTS FOR APPOINTED OR EMPLOYED OUTSIDE
14 COUNSEL ENTERED INTO BY THESE OFFICERS AND AGENCIES; TO AMEND
15 SECTIONS 7-1-5, 7-5-1, 7-5-5, 7-5-7, 7-5-21, 7-5-39, 7-7-225,
16 17-18-41, 25-9-120, 27-33-49, 27-104-17, 27-104-19, 27-104-105,
17 29-3-39, 31-29-23, 41-9-35, 43-11-27, 43-15-121, 43-16-21,
18 43-20-21, 43-27-14, 49-5-98, 53-1-47, 57-10-533, 57-61-35,
19 57-71-33, 57-77-39, 59-5-65, 59-17-57, 65-26-37, 69-2-33,
20 69-27-359, 73-11-49, 73-13-39, 73-13-95, 73-15-33, 73-29-39,
21 73-29-43, 73-31-25, 73-36-35, 73-63-25, 75-76-25, 83-1-5, AND
22 97-33-109, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND
23 FOR RELATED PURPOSES.

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

25 **SECTION 1.** (1) For purposes of this section, "officer"
26 means the Governor, Lieutenant Governor, Speaker of the House of
27 Representatives, Attorney General, Secretary of State, State
28 Treasurer, State Auditor, Commissioner of Agriculture and
29 Commerce, Commissioner of Insurance, and executive director of any
30 state agency, board, commission, department or institution.

31 (2) Subject to the approval of the Personal Service Contract
32 Review Board created under Section 25-9-120, any officer is
33 authorized to appoint or employ special counsel of the officer's
34 choice other than the attorney employed in the Office of the
35 Attorney General and assigned by the Attorney General and other
36 than an attorney employed in state service who may be recommended



37 by the State Personnel Board, to represent that officer or the
38 entity he leads or represents. An attorney appointed as special
39 counsel who is not an attorney in the state service may be
40 compensated on a fee basis. An attorney employed as special
41 counsel who is an attorney in the state service shall be
42 compensated on a salary basis. The special counsel may assist the
43 officer in any or all legal matters, including, but not limited
44 to, the preparation for, prosecution, or defense of any litigation
45 in the state or federal courts or before any federal or state
46 commission or agency in which the appointing or employing entity
47 is a party or has an interest. The approval of the Attorney
48 General is not required for an appointment or employment under
49 this section. Unless compensation is paid pursuant to a
50 contingent fee agreement, the appointed or employed special
51 counsel's compensation shall be paid out of any funds appropriated
52 or otherwise available to the officer.

53 (3) The officer is further entitled, without a determination
54 as required in subsection (4), to retain special counsel of the
55 officer's choice under this section if, in the officer's opinion,
56 any conflict of interest exists with the Office of the Attorney
57 General. The officer shall provide his opinions in this respect,
58 in writing, to the Personal Service Contract Review Board. If
59 appointed special counsel has been retained under this subsection,
60 the Attorney General shall withdraw from representation of that
61 officer, but the Attorney General may continue to appear in any
62 other capacity.

63 (4) Before an attorney may be appointed or employed as
64 special counsel under the provisions of this section, the officer
65 must first determine and make a written finding to the Personal
66 Service Contract Review Board that the needed legal services
67 cannot be adequately performed by the attorneys and supporting
68 legal staff members in state service who are assigned to the
69 officer by the Attorney General.



70 (5) (a) An attorney appointed as special counsel under the
71 provisions of this subsection shall be compensated for his or her
72 legal services on an hourly basis, unless the legal services being
73 sought can reasonably be obtained from attorneys in the private
74 practice of law only under a contract providing for a contingent
75 fee, or because there are not appropriated funds available to pay
76 the estimated amounts required under a contract providing only for
77 the payment of hourly fees.

78 (b) Any contract, in which the anticipated fee is in
79 excess of One Hundred Thousand Dollars (\$100,000.00), for the
80 legal services of appointed special counsel under this subsection
81 shall be forwarded by the officer to the Personal Service Contract
82 Review Board. Unless the officer specifies in writing to the
83 board reasons which may negatively affect the interests of the
84 state in relation to the matter for which the contract was
85 executed, all such contracts shall be delivered to the board
86 within five (5) days of the execution of the contract, and placed
87 on the website of the board within five (5) days of the board's
88 receipt of the contract, and such contracts shall remain on the
89 website during the pendency of the matter for which the contract
90 was executed. Under no circumstances shall such contracts not be
91 submitted to the board for placement on the board's website within
92 five (5) days of the filing of any lawsuit or appearance by such
93 contracting law firm or attorney in the matter for which the
94 contract was executed.

95 (6) The following provisions shall apply to any contract for
96 the services of appointed special counsel:

97 (a) Any contract for services of special counsel,
98 whether providing for set, hourly or contingent fees, must require
99 that the contracting attorney or law firm appointed as special
100 counsel keep current and complete written time and expense records
101 that describe in detail the time and expenses incurred each day in
102 performance of the contract.



103 (b) At the conclusion of the matter for which the legal
104 services were obtained, the contracting attorney or law firm
105 appointed as special counsel shall prepare a complete written
106 statement that describes the outcome of the matter, states the
107 amount of any recovery, shows the contracting attorney's or law
108 firm's computation of the amount of all fees and expenses, and
109 contains the final complete time and expense records required
110 under this subsection. The officer shall keep and maintain these
111 records, shall forward copies of these records to the Personal
112 Service Contract Review Board, and shall provide an annual report
113 that shall be an open and public record, detailing all litigation
114 pursued with appointed special counsel. This report shall include
115 a description of the litigation, name of counsel retained,
116 description of the terms and conditions by which outside counsel
117 was retained, compensation, a description of the outcome of the
118 matter, the amount of recovery, the contracting attorney's or law
119 firm's computation of the amount of all fees and expenses and the
120 final and complete time and expense records.

121 (7) The officer may reallocate appropriated funds in the
122 budget of such officer for the purpose of allowing the officer to
123 retain appointed special counsel to pursue any legal matters
124 consistent with this act. The officer shall notify the
125 Legislative Budget Office of any such budget reallocation and
126 shall ensure that the office receives timely, detailed and
127 accurate information about the amount and use of the authority
128 granted under this subsection.

129 (8) The officer shall provide a docket of all cases using
130 appointed or employed counsel under this section to the Personal
131 Service Contract Review Board, which must be open to the
132 inspection of the public during normal business hours and
133 available online. The docket shall contain the information
134 required in Section 7-5-21.



(9) This section shall not apply to Sections 57-75-15 and 81-22-17.

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

7-1-5. In addition to the powers conferred and duties imposed on the Governor by the Constitution and by the laws as elsewhere provided, he shall have the powers and perform the duties following:

(a) He is the supreme executive officer of the state.

(b) He is the commander in chief of the militia of the state and may call out the militia to execute the laws, to suppress insurrections or riots, and to repel invasions.

(c) He shall see that the laws are faithfully executed.

(d) He is to supervise the official conduct of all executive and ministerial officers.

(e) He is to see that all offices are filled and the duties of the offices are performed or, in default thereof, apply such remedy as the law allows; and if the remedy is inadequate, he shall inform the Legislature at its next session.

(f) He shall make appointments and fill vacancies as prescribed by law.

(g) Whenever any suit or legal proceeding is pending that affects the title of the state to any property, or that may result in any claim against the state, he may direct the Attorney General to appear on behalf of the state and protect its interest.

(h) He may require the Attorney General, or district attorney of any district, to inquire into the affairs or management of any corporation existing under the laws of this state, or doing business in this state under the laws of the state.

(i) He may require the Attorney General to aid any district attorney in the discharge of his duties.



(j) He may offer rewards, not exceeding Two Hundred Dollars (\$200.00), for persons with mental illness who have escaped and are dangerous, and such other rewards as are authorized by law.

(k) He may require any officer or board to make special reports to him upon demand in writing.

(l) He shall transact all necessary business with state officers, shall require them to be present at their respective offices at all reasonable business hours, and may require information, in writing, from any such officer relating to the duties of his office.

(m) When deemed advisable upon proceedings for the arrest in this state of fugitives from justice from other states or countries, he may commission a special officer to arrest the fugitive in any part of the state.

(n) He may bring any proper suit affecting the general public interests, in his own name for the State of Mississippi, if after first requesting the proper officer so to do, the officer refuses or neglects to do the same.

(o) He may appoint or employ special counsel in accordance with Section 1 of this act.

SECTION 3. Section 7-5-1, Mississippi Code of 1972, is amended as follows:

7-5-1. (1) The Attorney General provided for by Section 173 of the Mississippi Constitution shall be elected at the same time and in the same manner as the Governor is elected. His term of office shall be four (4) years and his compensation shall be fixed by the Legislature. He shall be the chief legal officer and advisor for the state, both civil and criminal, and is charged with managing * * * litigation on behalf of the state. Nothing in this section shall be construed as exclusive authority by the Attorney General over attorneys for an officer as defined in Section 1 of this act, except as authorized by law. No arm or



agency of the state government shall bring or defend a suit against another such arm or agency without prior written approval of the Attorney General. He shall have the powers of the Attorney General at common law and, except as provided in subsection (2) of this section, is given * * * power to bring or defend a lawsuit on behalf of a state agency, the subject matter of which is of statewide interest, and he shall intervene and argue the constitutionality of any statute when notified of a challenge thereto, pursuant to the Mississippi Rules of Civil Procedure. His qualifications for office shall be as provided for chancery and circuit judges in Section 154 of the Mississippi Constitution.

(2) No legal action on behalf of any officer as defined in Section 1 of this act, including a suit to recoup funds expended by an agency, may be taken until ten (10) days' written notice of the proposed legal action is given to the officer or agency, board, commission, department or institution. Upon the expiration of the notice period, the Attorney General may institute suit with or without the consent of the officer or agency, board, commission, department or institution. If the officer or agency, board, commission, department or institution does not consent to the legal action, an appointed or employed special counsel may be retained by such officer or agency, board, commission, department or institution pursuant to Section 1 of this act.

SECTION 4. Section 7-5-5, Mississippi Code of 1972, is amended as follows:

7-5-5. (1) The Attorney General shall appoint nine (9) competent attorneys, each of whom shall be designated as an assistant attorney general. The assistants shall each possess all of the qualifications required by law of the Attorney General and shall have power and authority under the direction and supervision of the Attorney General to perform all of the duties required by law of that officer; and each shall be liable to the pains and penalties to which the Attorney General is liable. The assistants



shall serve at the will and pleasure of the Attorney General, and they shall devote their entire time and attention to the duties pertaining to the department of justice as required by the general laws. The compensation of the within enumerated assistant attorneys general and all other regular assistants authorized by law shall be fixed by the Attorney General, not to exceed the compensation fixed by law for such assistants.

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

(b) To further prosecute and insure such purposes, the Attorney General is hereby further expressly authorized, empowered and directed to appoint or employ such additional special counsel as * * * may be necessary or advisable, on a fee or contract basis pursuant to the provisions of Section 1 of this act.

(3) The Attorney General may discharge any assistant attorney general, special assistant attorney general or appointed or employed special counsel hired by him at his pleasure and appoint another in his stead. The assistant attorneys general shall devote their entire time and attention to the duties



pertaining to the Department of Justice under the control and supervision of the Attorney General.

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

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

Pursuant to the provisions of Section 1 of this act, the Attorney General is hereby authorized and empowered to appoint and employ special counsel, on a fee or salary basis, to assist the Attorney General in the preparation for, prosecution, or defense of any litigation in the state or federal courts or before any state or federal commission or agency in which the state is a party or has an interest.

The Attorney General may designate such special counsel as special assistant attorney general, and may pay such special counsel reasonable compensation provided that he complies with the requirements of Section 1 of this act.

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

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



297 The compensation of appointees and employees made hereunder
298 shall be paid out of the Attorney General's contingent fund, or
299 out of any other funds appropriated to the Attorney General's
300 office.

301 **SECTION 6.** Section 7-5-21, Mississippi Code of 1972, is
302 amended as follows:

303 7-5-21. The Attorney General shall keep a docket of all
304 causes in which he is required to appear or is appearing, either
305 through his office or through counsel retained as appointed or
306 employed special counsel, which must * * * be open to the
307 inspection of the public during regular business hours and must
308 show the style of the case and the county, district, and court in
309 which the causes have been instituted and tried, the cause number
310 of the action, and whether they be civil or criminal. If civil,
311 the docket must show the nature of the demand, the stage of the
312 proceedings, the name and address of any appointed or employed
313 special counsel, a memorandum of the judgment when prosecuted to
314 judgment, any process issued thereon, whether satisfied or not,
315 and if not satisfied, the return of the sheriff. If criminal, the
316 docket must show the nature of the crime, the mode of prosecution,
317 the stage of the proceedings, a memorandum of the sentence when
318 prosecuted to a sentence, the execution thereof, if executed, and,
319 if not executed, the reasons of delay or prevention. The docket
320 information shall be available on the Attorney General's website.

321 **SECTION 7.** Section 7-5-39, Mississippi Code of 1972, is
322 amended as follows:

323 7-5-39. Except as otherwise authorized in Section 1 of this
324 act, the Attorney General shall also represent the state, in
325 person or by his assistant, as counsel in all suits against the
326 state in other courts than the Supreme Court at the seat of
327 government, and he shall, in like manner, act as counsel for any
328 of the state officers in suits brought by or against them in their
329 official capacity, touching any official duty or trust and triable



at the seat of government. He may pursue the collection of any claim or judgment in favor of the state outside of the state.

SECTION 8. Section 7-7-225, Mississippi Code of 1972, is amended as follows:

7-7-225. The State Auditor * * *, when conducting agency audits, shall test to determine whether or not the state institutions of higher learning and any state agency which does not draw warrants on the Treasury have complied with the provisions of Section 1 of this act with regard to any contract for legal services.

SECTION 9. Section 17-18-41, Mississippi Code of 1972, is amended as follows:

17-18-41. (1) No member, officer or employee of the department, authority or committee while acting within the scope of their authority shall be subject to any personal liability by reason of any act or omission in connection with the exercise of any power or performance of any duty whether expressed or implied pursuant to this chapter.

(2) Except as otherwise authorized in Section 1 of this act, the Attorney General shall be the legal representative of the authority and the committee and shall provide legal advice and counsel without cost to the authority and the committee.

SECTION 10. Section 25-9-120, Mississippi Code of 1972, is amended as follows:

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



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

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

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

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



396 computer or information technology-related services governed by
397 the Mississippi Department of Information Technology Services, any
398 personal service contracts entered into by the Mississippi
399 Department of Transportation, and any contract for * * *
400 accountant, auditor, physician, dentist, architect, engineer,
401 veterinarian and utility rate expert services. Any such rules and
402 regulations shall provide for maintaining continuous internal
403 audit covering the activities of such agency affecting its revenue
404 and expenditures as required under Section 7-7-3(6) (d),
405 Mississippi Code of 1972;

406 (b) (i) Approve all personal and professional services
407 contracts involving the expenditures of funds in excess of One
408 Hundred Thousand Dollars (\$100,000.00); and

409 (ii) Approve and maintain all contracts and
410 related documents for legal services submitted to it and perform
411 related responsibilities in accordance with the provisions of
412 Section 1 of this act. Before any contract submitted to it under
413 the provisions of Section 1 of this act is approved by it, the
414 board shall provide the Attorney General with a copy of the
415 contract and the related documents for legal services submitted to
416 it and shall permit, unless exigent circumstances exist which
417 reasonably require the immediate approval of the same, the
418 Attorney General a reasonable opportunity to provide to it written
419 comments and/or objections, if any, with respect to the same.

420 (c) Develop standards with respect to contractual
421 services personnel which require invitations for public bid,
422 requests for proposals, record keeping and financial
423 responsibility of contractors. The Personal Service Contract
424 Review Board may, in its discretion, require the agency involved
425 to advertise such contract for public bid, and may reserve the
426 right to reject any or all bids;

427 (d) Prescribe certain circumstances whereby agency
428 heads may enter into contracts for personal and professional



429 services without receiving prior approval from the Personal
430 Service Contract Review Board. The Personal Service Contract
431 Review Board may establish a preapproved list of providers of
432 various personal and professional services for set prices with
433 which state agencies may contract without bidding or prior
434 approval from the board;

435 (e) To provide standards for the issuance of requests
436 for proposals, the evaluation of proposals received, consideration
437 of costs and quality of services proposed, contract negotiations,
438 the administrative monitoring of contract performance by the
439 agency and successful steps in terminating a contract;

440 (f) To present recommendations for governmental
441 privatization and to evaluate privatization proposals submitted by
442 any state agency;

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

451 (h) To request the State Auditor to conduct a
452 performance audit on any personal or professional service
453 contract;

454 (i) Prepare an annual report to the Legislature
455 concerning the issuance of personal service contracts during the
456 previous year, collecting any necessary information from state
457 agencies in making such report.

458 (4) No member of the Personal Service Contract Review Board
459 shall use his official authority or influence to coerce, by threat
460 of discharge from employment, or otherwise, the purchase of



commodities or the contracting for personal or professional services under this section.

SECTION 11. Section 27-33-49, Mississippi Code of 1972, is amended as follows:

27-33-49. Except as otherwise authorized in Section 1 of this act, the Attorney General of the state shall be the attorney for the commission and shall represent it in any proceedings before any court. In any hearing before the commission, where the services of an attorney are desired or needed, the Attorney General shall attend on behalf of the commission. The Attorney General shall construe any doubtful or conflicting provisions of this article, and his opinion shall be controlling on all officers.

SECTION 12. Section 27-104-17, Mississippi Code of 1972, is amended as follows:

27-104-17. (1) An allotment period shall be one-half (1/2) of twelve (12) months, and expenditure one-half (1/2) of the appropriated amount, unless otherwise specified in the appropriation bill or justified by the agency to the Department of Finance and Administration, and the first allotment period shall commence on July 1. Estimates shall be filed with the Department of Finance and Administration not later than the first day of the month preceding the beginning period.

* * * The Department of Finance and Administration may, in its discretion, restrict an agency to a monthly allotment period when it becomes evident that an agency's rate of expenditure to date indicates this restriction will be necessary to prevent depletion of its appropriation prior to the close of the fiscal year or when the condition of the State General Fund requires monthly monitoring and control of the rate of General Fund expenditures.

(2) Except as otherwise authorized in Section 1 of this act, and unless otherwise specified in the agency appropriation bill,



in the event any emergency or unforeseen circumstances shall arise, the agency head may authorize increases in major objects of expenditure within each specific budget within each appropriation bill in total amounts not to exceed ten percent (10%) of the appropriated amount of each object, provided that other major objects of expenditure are decreased by a corresponding dollar amount. Except as otherwise authorized in Section 1 of this act, no transfers shall be authorized which increase or decrease the major object of expenditure "Salaries, Wages and Fringe Benefits," or which increase the major object of expenditure "Capital Outlay - Equipment." The agency head shall submit written justification for the transfer to the Legislative Budget Office, the Department of Finance and Administration, and the State Auditor, on or before the fifteenth of the month prior to the effective date of the transfer. The transfer shall be effective the first working day of the month following timely submissions required herein. In cases of extreme hardship, certified in writing by the agency head and submitted with timely submissions required herein, the Executive Director of the Department of Finance and Administration, in his discretion, may authorize an earlier effective date for the transfer.

* * *

(3) No former employee who is receiving State of Mississippi retirement benefits shall be hired under contract for an amount exceeding Twenty Thousand Dollars (\$20,000.00) a year without prior approval by an agency's proper governing board or authority. Upon approval of such contracts a written report shall be submitted detailing the cost and need of such contract services to the Chairmen and members of the Senate and House Appropriations Committees.

SECTION 13. Section 27-104-19, Mississippi Code of 1972, is amended as follows:



526 27-104-19. Except as otherwise authorized in Section 1 of
527 this act, when an operating budget has been approved, the amount
528 approved shall be available and shall constitute the maximum of
529 obligations or indebtedness which may be incurred by the agency
530 for any purpose during the allotment period to be paid from such
531 funds.

532 **SECTION 14.** Section 27-104-105, Mississippi Code of 1972, is
533 amended as follows:

534 27-104-105. The Department of Finance and Administration
535 shall not process any warrant requested by any state agency for
536 payment for legal services without first determining that the
537 services and contract were approved as required by law. Contracts
538 for legal services performed for the Mississippi Department of
539 Transportation in eminent domain cases shall not require approval
540 by the State Personnel Board. The State Auditor shall test for
541 compliance with this section.

542 **SECTION 15.** Section 29-3-39, Mississippi Code of 1972, is
543 amended as follows:

544 29-3-39. It shall be the duty of the board of education to
545 survey periodically the classification of all sixteenth section
546 land under its jurisdiction and to reclassify that land as it may
547 deem advisable because of changes of conditions, and when any land
548 is so reclassified, the board of education shall file a report
549 thereof with the Secretary of State. From time to time the
550 Secretary of State may institute proceedings to reclassify any
551 sixteenth section lands which he may deem advisable and when any
552 land is so reclassified, the Secretary of State shall file a
553 report thereof with the board of education. When any land is
554 reclassified under this section, notice thereof, rights to object
555 thereto and rights to appeal therefrom shall be given in the same
556 manner provided in Section 29-3-37 with reference to the original
557 classification. * * * However, * * * all sixteenth section land
558 shall be classified, or reclassified as is necessary, within one



559 (1) year prior to the expiration date of any existing lease, and
560 within sixty (60) days of the terminating of any lease of
561 sixteenth section land by final court order. In all litigation
562 which may result from the classification or reclassification of
563 lands by the Secretary of State under Sections 29-3-31 through
564 29-3-39, the Secretary of State shall be represented by the
565 Attorney General, who shall have control of the litigation, except
566 as otherwise authorized in Section 1 of this act, but it shall be
567 the duty of the various boards of education to furnish local legal
568 assistance when requested so to do by the Attorney General.

569 **SECTION 16.** Section 31-29-23, Mississippi Code of 1972, is
570 amended as follows:

571 31-29-23. Except as otherwise authorized in Section 1 of
572 this act, the Attorney General of the State of Mississippi shall
573 represent the State Bond Commission in issuing, selling and
574 validating bonds herein provided for, and the bond commission is
575 hereby authorized and empowered to expend from the proceeds
576 derived from the sale of the bonds authorized hereunder all
577 necessary administrative, legal and other expenses incidental and
578 related to the issuance of bonds authorized under this chapter.

579 **SECTION 17.** Section 41-9-35, Mississippi Code of 1972, is
580 amended as follows:

581 41-9-35. Notwithstanding the existence or pursuit of any
582 other remedy, the licensing agency, may in the manner provided by
583 law, upon the advice of the Attorney General who shall represent
584 the licensing agency in the proceedings, except as otherwise
585 authorized in Section 1 of this act, maintain an action in the
586 name of the state for an injunction or other process against any
587 person or governmental unit to restrain or prevent the
588 establishment, conduct, management or operation of a hospital
589 without a license as provided for in Section 41-9-11.

590 **SECTION 18.** Section 43-11-27, Mississippi Code of 1972, is
591 amended as follows:



43-11-27. Notwithstanding the existence or pursuit of any other remedy, the licensing agency may, in the manner provided by law, upon the advice of the Attorney General who shall represent the licensing agency in the proceedings, except as otherwise authorized in Section 1 of this act, maintain an action in the name of the state for injunction or other process against any person to restrain or prevent the establishment, conduct, management or operation of an institution for the aged or infirm without a license under this chapter.

SECTION 19. Section 43-15-121, Mississippi Code of 1972, is amended as follows:

43-15-121. In addition to, and notwithstanding, any other remedy provided by law, the division may, in a manner provided by law and upon the advice of the Attorney General who shall represent the division in the proceedings, except as otherwise authorized in Section 1 of this act, maintain an action in the name of the state for injunction or other process against any person or entity to restrain or prevent the establishment, management or operation of a program or facility or performance of services in violation of this article or rules of the division.

SECTION 20. Section 43-16-21, Mississippi Code of 1972, is amended as follows:

43-16-21. Notwithstanding the existence of any other remedy, the department may, in the manner provided by law, in termtime or in vacation, upon the advice of the Attorney General who shall represent the department in the proceedings, except as otherwise authorized in Section 1 of this act, maintain an action in the name of the state for an injunction or restraining order to cease the operation of the home, and to provide for the appropriate removal of the children from the home and placement in the custody of the parents or legal guardians, the Department of Human Services, or any other appropriate entity in the discretion of the court. Such action shall be brought in the chancery court or the



youth court, as appropriate, of the county in which such child residential home is located, and shall only be initiated for the following violations:

(a) Providing supervision, care, lodging or maintenance for any children in such home without filing notification in accordance with this chapter.

(b) Failure to satisfactorily comply with local health department or State Fire Marshal inspections made pursuant to Section 43-16-15, regarding the health, nutrition, cleanliness, safety, sanitation, written records and discipline policy of such home.

(c) Suspected abuse and/or neglect of the children served by such home, as defined in Section 43-21-105.

SECTION 21. Section 43-20-21, Mississippi Code of 1972, is amended as follows:

43-20-21. Notwithstanding the existence of any other remedy, the licensing agency may, in the manner provided by law, in termtime or in vacation, upon the advice of the Attorney General who shall represent the licensing agency in the proceedings, except as otherwise authorized in Section 1 of this act, maintain an action in the name of the state for an injunction or other proper remedy against any person to restrain or prevent the establishment, conduct, management or operation of a child care facility without license under this chapter, or otherwise in violation of this chapter.

SECTION 22. Section 43-27-14, Mississippi Code of 1972, is amended as follows:

43-27-14. The Department of Youth Services shall have the authority to accept any allotments of federal funds and commodities and shall manage and dispose of them in whatever manner may be required by federal law, and may take advantage of any federal programs, grants-in-aid, or other public or private assistance which may be offered or available which will accomplish



658 or further the objectives of the department. Except as otherwise
659 authorized in Section 1 of this act, the Attorney General shall be
660 the legal representative of the department.

661 **SECTION 23.** Section 49-5-98, Mississippi Code of 1972, is
662 amended as follows:

663 49-5-98. Except as otherwise authorized in Section 1 of this
664 act, the Attorney General of the State of Mississippi shall
665 represent the commission in issuing, selling and validating bonds
666 herein provided for, and the commission may expend any sum not
667 exceeding Fifteen Thousand Dollars (\$15,000.00) from the proceeds
668 derived from the sale of the bonds authorized hereunder to pay the
669 cost of attorney's fees, validating, printing, and cost of
670 delivery of bonds authorized under Sections 49-5-86 through
671 49-5-98.

672 **SECTION 24.** Section 53-1-47, Mississippi Code of 1972, is
673 amended as follows:

674 53-1-47. (a) (i) Any person, who, for the purpose of
675 evading the provisions of Sections 53-1-1 through 53-1-47,
676 inclusive, or any rule, regulation or order made thereunder, shall
677 make or cause to be made any false entry, statement of fact or
678 omission in any report required by such sections or by any rule,
679 regulation or order thereunder or in any account, record or
680 memorandum kept in connection with the provisions thereof or who,
681 for such purpose, shall mutilate, alter, conceal or falsify any
682 such report, account, record or memorandum, shall be subject to a
683 penalty of not more than Ten Thousand Dollars (\$10,000.00) per day
684 for each day of such violation to be assessed by the board. In
685 determining the amount of the penalty, the board shall consider
686 the factors specified in subsection (d) of this section. Such
687 penalties shall be assessed according to the procedures set forth
688 in subsection (b) of this section.

689 (ii) Any person, who, for the purpose of evading the
690 provisions of Sections 53-1-1 through 53-1-47, inclusive, or any



691 rule, regulation or order made thereunder, shall intentionally
692 make or cause to be made any false entry, statement of fact or
693 omission in any report required by said sections or by any rule,
694 regulation or order thereunder or in any account, record or
695 memorandum kept in connection with the provisions thereof or who,
696 for such purpose, shall mutilate, alter, conceal or falsify any
697 such report, account, record or memorandum shall be deemed guilty
698 of a misdemeanor and shall be subject, upon conviction in any
699 court of competent jurisdiction, to a fine of not less than Five
700 Hundred Dollars (\$500.00) nor more than One Thousand Dollars
701 (\$1,000.00), or imprisonment for a term of not less than ten (10)
702 days nor more than six (6) months for each such violation, or both
703 such fine and imprisonment.

704 (b) Any person who violates any provision of Sections 53-1-1
705 through 53-1-47, inclusive, or Sections 53-3-1 through 53-3-33,
706 and 53-3-39 through 53-3-165, or any lawful rule, regulation or
707 order of the board made hereunder, shall, in addition to any
708 penalty for such violation that is otherwise provided for herein,
709 be subject to a penalty of not to exceed Ten Thousand Dollars
710 (\$10,000.00) per day for each day of such violation to be assessed
711 by the board. When any charge is filed with the board charging
712 any person with any such violation, the board shall conduct an
713 adjudicative proceeding in accordance with the Administrative
714 Procedures Law. Such proceeding shall be held by not less than
715 three (3) members of the board and a unanimous verdict of all
716 members hearing such charge shall be necessary for conviction and
717 in the event of a conviction all members of the board hearing such
718 cause must agree on the penalty assessed.

719 Except as otherwise authorized in Section 1 of this act, the
720 Attorney General, by his designated assistant, shall represent the
721 board in all such proceedings. If he represents the board, the
722 Attorney General shall also designate a member of his staff to



723 present evidence and proof of such violation in the event such
724 charge is contested.

725 All penalties assessed by the board under the provisions of
726 this section shall have the force and effect of a judgment of the
727 circuit court and shall be enrolled in the office of the circuit
728 clerk and execution may be issued thereon. All such penalties
729 paid or collected shall be paid to the State Treasurer for credit
730 to the Special Oil and Gas Board Fund.

731 Any person adjudged guilty of any such violation shall have
732 the right of appeal in accordance with the provisions of Section
733 53-1-39.

734 The payment of any penalty as provided herein shall not have
735 the effect of changing illegal oil into legal oil, illegal gas
736 into legal gas or illegal product into legal product, nor shall
737 such payment have the effect of authorizing the sale or purchase
738 or acquisition or the transportation, refining, processing or
739 handling in any other way of such illegal oil, illegal gas or
740 illegal product.

741 (c) Any person who aids or abets any other person in the
742 violation of any provision of Sections 53-1-1 through 53-1-47,
743 inclusive, or Sections 53-3-1 through 53-3-21, inclusive, or any
744 rule, regulation or order made thereunder, shall be subject to the
745 same penalties as are prescribed herein for the violation by such
746 other person.

747 (d) In determining the amount of the penalty under
748 subsection (a), (b) or (c) of this section, the board shall
749 consider at a minimum the following factors:

- 750 (i) The willfulness of the violation;
- 751 (ii) Any damage to water, land or other natural
752 resources of the state or their users;
- 753 (iii) Any cost of restoration and abatement;
- 754 (iv) Any economic benefit to the violator as a result
755 of noncompliance;



(v) The seriousness of the violation, including any harm to the environment and any harm to the health and safety of the public; and

(vi) Any prior violation by such violator.

(e) The board is authorized to utilize the provisions of Section 85-7-132 to enforce penalties provided by this section.

SECTION 25. Section 57-10-533, Mississippi Code of 1972, is amended as follows:

57-10-533. Except as otherwise authorized in Section 1 of this act, the Attorney General of the State of Mississippi shall represent the seller in issuing, selling and validating bonds or notes herein provided for, and the seller is hereby authorized and empowered to expend from the proceeds derived from the sale of the bonds or notes authorized hereunder all necessary administrative, legal and other expenses incidental and related to the issuance of bonds or notes authorized under this article.

SECTION 26. Section 57-61-35, Mississippi Code of 1972, is amended as follows:

57-61-35. Except as otherwise authorized in Section 1 of this act, the Attorney General of the State of Mississippi shall represent the seller in issuing, selling and validating bonds herein provided for, and the seller is hereby authorized and empowered to expend from the proceeds derived from the sale of the bonds authorized hereunder all necessary administrative, legal and other expenses incidental and related to the issuance of bonds authorized under this chapter.

SECTION 27. Section 57-71-33, Mississippi Code of 1972, is amended as follows:

57-71-33. Except as otherwise authorized in Section 1 of this act, the Attorney General of the State of Mississippi shall represent the seller in issuing, selling and validating bonds or notes herein provided for, and the seller is hereby authorized and empowered to expend from the proceeds derived from the sale of the



bonds or notes authorized hereunder all necessary administrative, legal and other expenses incidental and related to the issuance of bonds or notes authorized under this act.

SECTION 28. Section 57-77-39, Mississippi Code of 1972, is amended as follows:

57-77-39. Except as otherwise authorized in Section 1 of this act, the Attorney General of the State of Mississippi shall represent the seller in issuing, selling and validating bonds or notes herein provided for, and the seller is hereby authorized and empowered to expend from the proceeds derived from the sale of the bonds or notes authorized hereunder all necessary administrative, legal and other expenses incidental and related to the issuance of bonds or notes authorized under this chapter.

SECTION 29. Section 59-5-65, Mississippi Code of 1972, is amended as follows:

59-5-65. Except as otherwise authorized in Section 1 of this act, the Attorney General of the State of Mississippi shall represent the State Bond Commission in issuing, selling and validating bonds herein provided for. The State Bond Commission is hereby authorized and empowered to pay the costs that are incident to the sale, issuance and delivery of the bonds herein provided for, and such costs may be paid for out of the proceeds derived from the sale of such bonds.

SECTION 30. Section 59-17-57, Mississippi Code of 1972, is amended as follows:

59-17-57. Except as otherwise authorized in Section 1 of this act, the Attorney General of the State of Mississippi shall represent the State Bond Commission in issuing, selling and validating bonds herein provided for, and the board is hereby authorized and empowered to expend any sum not exceeding Fifteen Thousand Dollars (\$15,000.00) from the proceeds derived from the sale of any one (1) series of bonds authorized hereunder to pay for the cost of the approving attorney's fees, validating,



822 printing and cost of delivery of bonds authorized under this
823 chapter.

824 **SECTION 31.** Section 65-26-37, Mississippi Code of 1972, is
825 amended as follows:

826 65-26-37. Except as otherwise authorized in Section 1 of
827 this act, the Attorney General of the State of Mississippi shall
828 represent the Transportation Commission in issuing, selling and
829 validating bonds herein provided for, and said Transportation
830 Commission is hereby authorized and empowered to expend any sum
831 not to exceed Forty Thousand Dollars (\$40,000.00) on approval by
832 the State Bond Commission from the proceeds derived from the sale
833 of bonds authorized in subsections (1) and (2) of Section
834 65-26-15, or from other funds available to the Transportation
835 Commission, to pay the cost of approving attorney's fees,
836 validating, printing and cost of delivery of bonds authorized
837 under this chapter.

838 **SECTION 32.** Section 69-2-33, Mississippi Code of 1972, is
839 amended as follows:

840 69-2-33. Except as otherwise authorized in Section 1 of this
841 act, the Attorney General of the State of Mississippi shall
842 represent the department in issuing, selling and validating bonds
843 or notes authorized under Sections 69-2-19 through 69-2-39 of this
844 chapter, and the department is authorized to pay from the proceeds
845 derived from the sale of such bonds or notes, or from other funds
846 available to the department, the reasonable cost of approving
847 attorney's fees, validating, printing and cost of delivery of such
848 bonds or notes.

849 **SECTION 33.** Section 69-27-359, Mississippi Code of 1972, is
850 amended as follows:

851 69-27-359. Except as otherwise authorized in Section 1 of
852 this act, the Attorney General of the State of Mississippi shall
853 represent the Soil and Water Conservation Commission in issuing,
854 selling and validating bonds authorized under Sections 69-27-345



855 through 69-27-365, and the commission is authorized to pay from
856 the proceeds derived from the sale of such bonds or from other
857 funds available to the commission, the reasonable cost of
858 approving attorney's fees, validating, printing, cost of delivery
859 of such bonds and any other necessary costs of issuance.

860 **SECTION 34.** Section 73-11-49, Mississippi Code of 1972, is
861 amended as follows:

862 73-11-49. (1) The board is authorized to select from its
863 own membership a chairman, vice chairman and secretary-treasurer.
864 Election of officers shall be held at the first regularly
865 scheduled meeting of the fiscal year.

866 (2) All members of the board shall be reimbursed for their
867 necessary traveling expenses and mileage incident to their
868 attendance upon the business of the board, as provided in Section
869 25-3-41, and shall receive a per diem as provided in Section
870 25-3-69 for every day actually spent upon the business of the
871 board, not to exceed twenty (20) days per year unless authorized
872 by a majority vote of the board.

873 (3) All monies received by the board shall be paid into a
874 special fund in the State Treasury to the credit of the board and
875 shall be used by the board for paying the traveling and necessary
876 expenses and per diem of the members of the board while on board
877 business, and for paying other expenses necessary for the
878 operation of the board in carrying out and involving the
879 provisions of this chapter.

880 (4) The board shall employ an administrator of the board,
881 who shall have complete supervision and be held responsible for
882 the direction of the office of the board, shall have supervision
883 over field inspections and enforcement of the provisions of this
884 chapter, shall have such other duties as may be assigned by the
885 board, shall be responsible and answerable to the board. The
886 board may employ such other clerical assistants and employees as
887 may be necessary to carry out the provisions of this chapter, and



the terms and conditions of such employment shall be determined by the board in accordance with applicable state law and rules and regulations of the State Personnel Board.

(5) Except as otherwise authorized in Section 1 of this act, the board, when it shall deem necessary, shall be represented by an assistant attorney general duly appointed by the Attorney General of this state, and may also request and receive the assistance of other state agencies and county and district attorneys, all of whom are authorized to provide the assistance requested.

(6) The board shall have subpoena power in enforcing the provisions of this chapter.

(7) The board shall adopt and promulgate rules and regulations for the transaction of its business in accordance with the provisions of the Mississippi Administrative Procedures Law (Section 25-43-1 et seq.). No rule or regulation promulgated by the board affecting any person or agency outside the board shall be adopted, amended or repealed without a public hearing on the proposed action. The board shall give written notice at least thirty (30) days in advance of any meeting with respect to any proposed adoption, amendment or repeal of a rule or regulation of the board, in accordance with the Administrative Procedures Act, as well as notifying the duly elected presidents and secretaries of the Mississippi Funeral Directors Association and the Mississippi Funeral Directors and Morticians Association, or their successors.

(8) The board may designate the administrator to perform inspections under this chapter, may employ an individual to perform such inspections or may contract with any other individual or entity to perform such inspections. Any individual or entity that performs such inspections shall have the right of entry into any place in which the business or practice of funeral service and/or funeral directing is carried on or advertised as being



carried on, for the purpose of inspection, for the investigation of complaints coming before the board and for such other matters as the board may direct.

(9) The board shall not adopt any rule or regulation pertaining to the transportation of dead bodies, and shall not adopt any rule or regulation requiring dead bodies to be embalmed except as required by the State Department of Health's Rule 43 or any subsequent rule adopted by the department.

SECTION 35. Section 73-13-39, Mississippi Code of 1972, is amended as follows:

73-13-39. Any person or firm who shall practice, or offer to practice, engineering in this state without being licensed in accordance with the provisions of Sections 73-13-1 through 73-13-45, or any person presenting or attempting to use as his own the certificate of licensure or seal of another, or any person who shall give any false or forged evidence of any kind to the board or to any member thereof in obtaining a certificate of licensure, or any person who shall falsely impersonate any other licensee of like or different name, or any person or firm who shall attempt to use an expired or revoked certificate of licensure, or any person or firm who shall violate any of the provisions of Sections 73-13-1 through 73-13-45, shall be guilty of a misdemeanor, and shall, upon conviction, be sentenced to pay a fine of not less than One Hundred Dollars (\$100.00), nor more than Five Thousand Dollars (\$5,000.00) in addition to reimbursement of investigative expenses and court costs, or suffer imprisonment for a period not exceeding three (3) months, or both. The criminal penalties provided for in this section may be assessed in addition to those civil penalties provided for in Section 73-13-37.

Unless licensed in accordance with the provisions of Sections 73-13-1 through 73-13-45, no person shall:

(a) Directly or indirectly employ, use, cause to be used or make use of any of the following terms or any



combinations, variations or abbreviations thereof as a professional, business or commercial identification, title, name, representation, claim, asset or means of advantage or benefit: "engineer," "professional engineer," "licensed engineer," "registered engineer," "registered professional engineer," "licensed professional engineer," "engineered," "engineering"; or

(b) Directly or indirectly employ, use, cause to be used or make use of any letter, abbreviation, word, symbol, slogan, sign or any combinations or variations thereof which in any manner whatsoever tends or is likely to create any impression with the public or any member thereof that any person is qualified or authorized to practice engineering; or

(c) Receive any fee or compensation or the promise of any fee or compensation for performing, offering or attempting to perform any service, work, act or thing which is any part of the practice of engineering.

Any person, firm, partnership, association or corporation which shall do, offer or attempt to do any one or more of the acts or things set forth in items (a) through (c) of the preceding paragraph shall be conclusively presumed and regarded as engaged in the practice of engineering.

It shall be the duty of all duly constituted officers of the law of this state, or any political subdivision thereof, to enforce the provisions of Sections 73-13-1 through 73-13-45 and to prosecute any persons violating same. Except as otherwise authorized in Section 1 of this act, the Attorney General of the state or his assistant shall act as legal advisor of the board in carrying out the provisions of Sections 73-13-1 through 73-13-45.

SECTION 36. Section 73-13-95, Mississippi Code of 1972, is amended as follows:

73-13-95. Any person who shall practice, or offer to practice, surveying in this state without being licensed in accordance with the provisions of Sections 73-13-71 through



987 73-13-105, or any person presenting or attempting to use as his
988 own the certificate of licensure or the seal of another, or any
989 person who shall give any false or forged evidence of any kind to
990 the board or to any member thereof in obtaining a certificate of
991 licensure, or any person who shall falsely impersonate any other
992 licensee of like or different name, or any person who shall
993 knowingly attempt to use a license which has been expired for more
994 than twelve (12) consecutive months or revoked certificate of
995 licensure, or any person who shall violate any of the provisions
996 of Sections 73-13-71 through 73-13-105, shall be guilty of a
997 misdemeanor, and shall, upon conviction of a first offense of
998 violating this section, be sentenced to pay a fine of not less
999 than One Hundred Dollars (\$100.00), nor more than Five Thousand
1000 Dollars (\$5,000.00), and in addition thereto shall make
1001 restitution to the board for investigative expenses and court
1002 costs, or suffer imprisonment for a period of not exceeding three
1003 (3) months, or both. Upon any second and subsequent conviction of
1004 violating this section, such person shall be sentenced to pay a
1005 fine of not less than Five Thousand Dollars (\$5,000.00), nor more
1006 than Ten Thousand Dollars (\$10,000.00), or by imprisonment in the
1007 county jail for not more than one (1) year, or both. The criminal
1008 penalties provided for in this section may be assessed in addition
1009 to those civil penalties provided for in Section 73-13-37.

1010 Unless licensed in accordance with the provisions of Sections
1011 73-13-71 through 73-13-105, no person shall:

1012 (a) Directly or indirectly employ, use, cause to be
1013 used or make use of any of the following terms or any combination,
1014 variations or abbreviations thereof as a professional, business or
1015 commercial identification, title, name, representation, claim,
1016 asset or means of advantage or benefit: "surveyor," "professional
1017 surveyor," "licensed surveyor," "registered surveyor," "registered
1018 professional surveyor," "licensed professional surveyor,"



1019 "surveyed," "surveying," "professional land surveyor," or
1020 "licensed professional land surveyor";

1021 (b) Directly or indirectly employ, use, cause to be
1022 used or make use of any letter, abbreviation, word, symbol,
1023 slogan, sign or any combinations or variations thereof, which in
1024 any manner whatsoever tends or is likely to create any impression
1025 with the public or any member thereof that any person is qualified
1026 or authorized to practice surveying; or

1027 (c) Receive any fee or compensation or the promise of
1028 any fee or compensation for performing, offering or attempting to
1029 perform any service, work, act or thing which is any part of the
1030 practice of surveying.

1031 Any person, firm, partnership, association or corporation
1032 which shall do, offer or attempt to do any one or more of the acts
1033 or things set forth in items (a) through (c) of the preceding
1034 paragraph shall be conclusively presumed and regarded as engaged
1035 in the practice of surveying.

1036 It shall be the duty of all duly constituted officers of the
1037 law of this state, or any political subdivision thereof, to
1038 enforce the provisions of Sections 73-13-71 through 73-13-105 and
1039 to prosecute any persons violating same. Except as otherwise
1040 authorized in Section 1 of this act, the Attorney General of the
1041 state or his assistant shall act as legal adviser of the board and
1042 render such legal assistance as may be necessary in carrying out
1043 the provisions of Sections 73-13-71 through 73-13-105.

1044 **SECTION 37.** Section 73-15-33, Mississippi Code of 1972, is
1045 amended as follows:

1046 73-15-33. It is unlawful for any person, including a
1047 corporation or association, to:

1048 (a) Sell, fraudulently obtain or furnish any nursing
1049 diploma, license, renewal of license, or record, or to aid or abet
1050 therein;



1051 (b) Practice nursing as defined by this article under
1052 cover of any diploma, license, renewal of license, or record
1053 illegally or fraudulently obtained or signed or issued unlawfully
1054 or under fraudulent representation;

1055 (c) Practice or offer to practice nursing as defined by
1056 this article unless duly licensed or privileged to practice under
1057 the provisions of this article;

1058 (d) Use any title, designation or abbreviation by which
1059 a person presents to the public that he or she is a registered
1060 nurse, a licensed practical nurse or any other type of nurse,
1061 unless the person is duly licensed or privileged to practice under
1062 the provisions of this article; however, this paragraph does not
1063 prohibit a certified nurse assistant or certified nursing
1064 assistant from using the word "nurse" or "nursing" as part of his
1065 or her job title;

1066 (e) Practice as a registered nurse or a licensed
1067 practical nurse during the time his or her license or privilege to
1068 practice issued under the provisions of this article is under
1069 suspension or revocation;

1070 (f) Conduct a nursing education program for the
1071 preparation of registered nurses, unless the program has been
1072 accredited by the Board of Trustees of State Institutions of
1073 Higher Learning, or conduct a nursing education program for the
1074 preparation of licensed practical nurses unless the program has
1075 been accredited by the Department of Education through the
1076 Division of Vocational Education;

1077 (g) Willfully employ unlicensed persons or persons not
1078 holding the privilege to practice, to practice as registered
1079 nurses or licensed practical nurses; or

1080 (h) Willfully aid or abet any person who violates any
1081 provisions of this article.

1082 Any person, firm or corporation who violates any provisions
1083 of this article shall be guilty of a misdemeanor and, upon



1084 conviction thereof, shall be punished by a fine not less than One
1085 Hundred Dollars (\$100.00) nor more than One Thousand Dollars
1086 (\$1,000.00) or by imprisonment in the county jail for not less
1087 than twelve (12) months, or by both such fine and imprisonment.
1088 It shall be necessary to prove, in any prosecution under this
1089 article, only a single act prohibited by law, or a single holding
1090 out or an attempt without proving a general course of conduct in
1091 order to constitute a violation. Each violation may constitute a
1092 separate offense. Except as otherwise authorized in Section 1 of
1093 this act, it shall be the duty of the Attorney General to advise
1094 with the board in preparing charges, to assist in conducting board
1095 disciplinary hearings, to provide assistance with appropriate
1096 affidavits and other charges for filing in the appropriate court,
1097 and to assist the county or district attorney in prosecution, if
1098 any.

1099 **SECTION 38.** Section 73-29-39, Mississippi Code of 1972, is
1100 amended as follows:

1101 73-29-39. Any person dissatisfied with the action of the
1102 board in refusing his application or suspending or revoking his
1103 license, or any other action of the board, may appeal the action
1104 of the board by filing a petition within thirty (30) days
1105 thereafter in the circuit court in the county where the person
1106 resides or in the Circuit Court of Hinds County, Mississippi, and
1107 the court is vested with jurisdiction and it shall be the duty of
1108 the court to set the matter for hearing upon ten (10) days'
1109 written notice to the board and the attorney representing the
1110 board. The court in which the petition of appeal is filed shall
1111 determine whether or not a cancellation or suspension of a license
1112 shall be abated until the hearing shall have been consummated with
1113 final judgment thereon or whether any other action of the board
1114 should be suspended pending hearing, and enter its order
1115 accordingly, which shall be operative when served upon the board,
1116 and the court shall provide the attorney representing the board



1117 with a copy of the petition and order. Except as otherwise
1118 authorized in Section 1 of this act, the board shall be
1119 represented in such appeals by the district or county attorney of
1120 the county or the Attorney General, or any of their assistants.
1121 The board shall initially determine all facts, but the court upon
1122 appeal shall set aside the determination of the board if the
1123 board's determination (1) is not based upon substantial evidence
1124 upon the entire record; (2) is arbitrary or capricious; (3) is in
1125 violation of statutory requirements; or (4) was made without
1126 affording to licensee or applicant due process of law.

1127 Actions taken by the board in suspending a license when
1128 required by Section 93-11-157 or 93-11-163 are not actions from
1129 which an appeal may be taken under this section. Any appeal of a
1130 license suspension that is required by Section 93-11-157 or
1131 93-11-163 shall be taken in accordance with the appeal procedure
1132 specified in Section 93-11-157 or 93-11-163, as the case may be,
1133 rather than the procedure specified in this section.

1134 **SECTION 39.** Section 73-29-43, Mississippi Code of 1972, is
1135 amended as follows:

1136 73-29-43. If any person violates any provisions of this
1137 chapter, the secretary shall, upon direction of a majority of the
1138 board, in the name of the State of Mississippi, through the
1139 Attorney General of the State of Mississippi, except as otherwise
1140 authorized in Section 1 of this act, apply in any chancery court
1141 of competent jurisdiction, for an order enjoining such violation
1142 or for an order enforcing compliance with this chapter. Upon the
1143 filing of a verified petition in the court, the court, or any
1144 judge thereof, if satisfied by affidavit or otherwise that the
1145 person has violated this chapter, may issue a temporary
1146 injunction, without notice or bond, enjoining such continued
1147 violation and if it is established that the person has violated or
1148 is violating this chapter, the court, or any judge thereof, may
1149 enter a decree perpetually enjoining the violation or enforcing



1150 compliance with this chapter. In case of violation of any order
1151 or decree issued under the provisions of this section, the court,
1152 or any judge thereof, may try and punish the offender for contempt
1153 of court. Proceedings under this section shall be in addition to,
1154 and not in lieu of, all other remedies and penalties provided by
1155 this chapter.

1156 **SECTION 40.** Section 73-31-25, Mississippi Code of 1972, is
1157 amended as follows:

1158 73-31-25. The board may, in the name of the people of the
1159 State of Mississippi, through the Attorney General, except as
1160 otherwise authorized in Section 1 of this act, apply for an
1161 injunction in any court of competent jurisdiction to enjoin any
1162 person from committing any act declared to be a misdemeanor by
1163 this chapter.

1164 If it is established that the defendant has been or is
1165 committing an act declared to be a misdemeanor by this chapter,
1166 the court, or any judge thereof, shall enter a decree perpetually
1167 enjoining the defendant from further committing that act. In case
1168 of violation of any injunction issued under the provisions of this
1169 section, the court, or any judge thereof, may summarily try and
1170 punish the offender for contempt of court. Those injunctive
1171 proceedings shall be in addition to, and not in lieu of, all
1172 penalties and other remedies provided for in this chapter.

1173 **SECTION 41.** Section 73-36-35, Mississippi Code of 1972, is
1174 amended as follows:

1175 73-36-35. Any person who practices or offers to practice the
1176 profession of forestry in this state without being registered in
1177 accordance with this chapter, or any person who uses in connection
1178 with his name, or otherwise assumes, uses or advertises any title
1179 or description tending to convey the impression that he is a
1180 registered forester without being registered in accordance with
1181 this chapter, or any person who presents or attempts to use as his
1182 own the license of another, or any person who gives any false or



1183 forged evidence of any kind to the board or any member in
1184 obtaining a license, or any person who attempts to use an expired
1185 or revoked license, or any person, firm, partnership or
1186 corporation who violates any of the provisions of this chapter and
1187 has not been issued an administrative fine by the board for the
1188 violation is guilty of a misdemeanor and, upon conviction, shall
1189 be fined not more than Five Thousand Dollars (\$5,000.00) for each
1190 violation. The board, or any person or persons as may be
1191 designated by the board to act in its stead, is empowered to
1192 prefer charges for any violations of this chapter in any court of
1193 competent jurisdiction. It shall be the duty of all duly
1194 constituted officers of the law of this state to enforce the
1195 provisions of this chapter and to prosecute any persons, firms,
1196 partnerships or corporations violating same. Except as otherwise
1197 authorized in Section 1 of this act, the Attorney General of the
1198 state or his designated assistant shall act as legal advisor of
1199 the board and render such assistance as may be necessary in
1200 carrying out the provisions of this chapter.

1201 **SECTION 42.** Section 73-63-25, Mississippi Code of 1972, is
1202 amended as follows:

1203 73-63-25. Except as otherwise authorized in Section 1 of
1204 this act, the Attorney General shall be counsel and attorney for
1205 the board and shall provide any legal services as may be requested
1206 by the board from time to time. The board * * * may retain
1207 outside counsel and investigators to provide any legal and
1208 investigative assistance as may be necessary in enforcing this
1209 chapter as authorized in Section 1 of this act.

1210 **SECTION 43.** Section 75-76-25, Mississippi Code of 1972, is
1211 amended as follows:

1212 75-76-25. Except as otherwise authorized in Section 1 of
1213 this act, the Attorney General and his assistants shall represent
1214 the commission and the executive director in any proceeding to
1215 which the commission or the executive director is a party under



1216 this chapter. Except as otherwise authorized in Section 1 of this
1217 act, the Attorney General shall also advise the commission and the
1218 executive director in all other matters, including representing
1219 the commission when the commission sits in a quasi-judicial
1220 capacity.

1221 **SECTION 44.** Section 83-1-5, Mississippi Code of 1972, is
1222 amended as follows:

1223 83-1-5. The commissioner shall receive a compensation to be
1224 fixed by law. He is hereby authorized to employ a clerk and
1225 stenographer and an actuary at a salary to be fixed by law; and in
1226 addition shall be allowed a sufficient sum for traveling expenses
1227 and for extra clerical help.

1228 Further, the commissioner may appoint or employ special
1229 counsel pursuant to the provisions of Section 1 of this act.

1230 **SECTION 45.** Section 97-33-109, Mississippi Code of 1972, is
1231 amended as follows:

1232 97-33-109. (1) The commission shall monitor the conduct or
1233 business of licensees, both on a routine scheduled and an
1234 unscheduled basis, to the extent necessary to ensure compliance
1235 with the provisions of charitable bingo game laws and regulations
1236 of the state.

1237 (2) In carrying out its enforcement responsibilities, the
1238 commission may:

1239 (a) Inspect and examine all premises in which
1240 charitable bingo games are conducted or supplies or equipment for
1241 such games are manufactured and distributed;

1242 (b) Inspect all such supplies and equipment in, upon or
1243 about such premises;

1244 (c) Seize and remove from such premises and impound
1245 such supplies and equipment for the purpose of examination and
1246 inspection pursuant to an appropriate court order;



1247 (d) Demand access to and audit and inspect books and
1248 records of licensees for the purpose of determining compliance
1249 with laws and regulations relative to charitable bingo games;

1250 (e) Conduct in-depth audits and investigations; and

1251 (f) Mandate that internal controls be executed in
1252 accordance with the provisions of the Charitable Bingo Law and
1253 other applicable laws and regulations.

1254 (3) The commission shall require licensees to maintain
1255 records and submit reports.

1256 (4) In addition to license revocation or suspension or any
1257 criminal penalty imposed, the commission may assess a fine against
1258 any person who violates any law or regulation relative to
1259 charitable bingo games. Such a fine shall only be assessed after
1260 notice and an opportunity for a hearing to be held.

1261 (5) All departments, commissions, boards, agencies, officers
1262 and institutions of the state, and all subdivisions thereof, shall
1263 cooperate with the commission in carrying out its enforcement
1264 responsibilities.

1265 (6) Except as otherwise authorized in Section 1 of this act,
1266 the Attorney General shall be the attorney for the commission in
1267 regard to its duties to regulate the Charitable Bingo Law and he
1268 shall represent it in all legal proceedings and shall prosecute
1269 any civil action for a violation of the provisions of Sections
1270 97-33-51 through 97-33-203 or the rules and regulations of the
1271 commission.

1272 (7) It is the duty of the sheriffs, deputy sheriffs and
1273 police officers of this state to assist the commission in the
1274 enforcement of the provisions of Sections 97-33-51 through
1275 97-33-203 and to arrest and complain against any person violating
1276 the provisions of Sections 97-33-51 through 97-33-203. It is the
1277 duty of the district attorneys of this state to prosecute all
1278 violations of the provisions of Sections 97-33-51 through
1279 97-33-203 if requested to do so by the commission.



1280 (8) (a) Whenever any person who is a resident of the State
1281 of Mississippi has reason to believe that a person or organization
1282 is or has violated the provisions of Sections 97-33-51 through
1283 97-33-203 and that proceedings would be in the public interest, he
1284 may bring an action in the name of the state against such person
1285 to restrain by temporary or permanent injunction such violation,
1286 upon at least five (5) days' summons before the hearing of the
1287 action. The action shall be brought in the chancery or county
1288 court of the county in which such violation has occurred or, with
1289 consent of the parties, may be brought in the chancery or county
1290 court of the county in which the State Capitol is located. The
1291 said courts are authorized to issue temporary or permanent
1292 injunctions to restrain and prevent violations of Sections
1293 97-33-51 through 97-33-203, and such injunctions shall be issued
1294 without bond.

1295 (b) Any person who violates the terms of an injunction
1296 issued under this subsection shall forfeit and pay to the state a
1297 civil penalty of not more than Five Thousand Dollars (\$5,000.00)
1298 per violation which shall be payable to the General Fund of the
1299 State of Mississippi. For the purposes of this subsection, the
1300 chancery or county court issuing an injunction shall retain
1301 jurisdiction, and the cause shall be continued, and in such cases
1302 the person bringing the action may petition for recovery of civil
1303 penalties.

1304 (c) In any action brought under this subsection, if the
1305 court finds that a person is willfully violating the provisions of
1306 Sections 97-33-51 through 97-33-203, the person bringing the
1307 action, upon petition to the court, may recover on behalf of the
1308 state a civil penalty of not exceeding Five Hundred Dollars
1309 (\$500.00) per violation which shall be payable to the General Fund
1310 of the State of Mississippi.

1311 (d) No penalty authorized by this subsection shall be
1312 deemed to limit the court's powers to insure compliance with its



1313 orders, decrees and judgments, or punish for the violations
1314 thereof.

1315 (e) For purposes of this subsection, a willful
1316 violation occurs when the party committing the violation knew or
1317 should have known that his conduct was a violation of the
1318 provisions of Sections 97-33-51 through 97-33-203.

1319 **SECTION 46.** This act shall take effect and be in force from
1320 and after July 1, 2012.

