

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

HB211

WHY SHOULD YOU CARE ABOUT THIS BILL?

You should care because Attorney General Jim Hood is the only one standing up for victims and the integrity of the law in the face of unlawful pardons. You should care because Attorney General Jim Hood is the only one willing to take on companies like Entergy, State Farm and BP and big drug companies for the damages they have inflicted on Mississippians. You should care because the Attorney General is the only state official in Mississippi taking the nation's top mortgage providers to task for failure to play fair with you in the foreclosure process. You should care because if this legislation passes, there won't be anyone there to look out for your best interests over the interests of big business. You should care because it was Jim Hood, your Attorney General, who stood up for you and our sick and elderly when your own government tried to cut off funding for their nursing home care. You should care because if this legislation passes, the next time your own government decides that it is above the law and releases prisoners or tries to put the sick on the streets, or attempts to allow the rich and powerful to line their pockets at your expense, there won't be anyone to stand for you. You should care because this hits you right in the pocketbook with a projected cost to the State of about \$11 million a year because the average private lawyer is paid \$145/hour and the AG only charges \$65/hour for the same services and that difference has to be made up somewhere and it's going to be from you. Please call your lawmakers TODAY and tell them to vote AGAINST HB211.

WHY THIS IS BAD FOR THE STATE:

First, the State could wind up with two attorneys, one appointed by the agency and one from the Attorney General's office. Of course, this could turn into a dispute over which one of the attorneys was actually "in charge" of handling the case.

Secondly, in situations wherein there is a suit naming numerous agencies and several different agency-appointed attorneys involved, each attorney will represent their own agency's interest rather than work together for the best interest of the State. People suing the State would be able to "pit one agency against the other." This will lead to inconsistent and conflicting defenses of the State agency defendants, and also cause confusion and discord between the various attorneys involved who are defending the different agencies.

Within the Attorney General's office, by contrast, when there are multiple agency defendants, all of the lawyers who are assigned to represent the various defendants will work together in order to establish a common overall defense and to strive for an outcome that is most beneficial to the State as a whole, as opposed to just fostering one agency's position to the detriment of other state agencies.

Third, the AG's office attorneys zealously represent their agency clients. However, when the Law is contrary to what the Agency head wants to hear, The AG will advise the agency head so. This is sometimes not the case with attorneys who are hired by and only answerable to the agency head. Agencies are best served by AG attorneys who provide them with zealous but objective, independent representation.

AG lawyers possess expertise in government law. For example, there are defenses that are unique in government such as sovereign immunity, 11th amendment immunity, qualified good faith immunity, etc. that the private practitioner often has little or no experience in advocating. That is especially true when it comes to representing law enforcement agencies, DEA agents and prison guards.

We sometimes see this when the AG represents a state agency that is sued in the same case alongside a local government. The attorney representing the local government often fails to raise these defenses.

In a situation where there may be more than one agency named as a defendant in a lawsuit, having one agency being represented by one attorney and another agency represented by a totally different attorney from a different law firm would lead to a great deal of duplication of effort and possibly inconsistent defenses

Representation by the Attorney General's office is more economical than agencies hiring their own – due to the efficiencies of having one office with expertise in government law representing the various departments of government, as described above, but ALSO due to our lower rates and lower costs. We routinely have outside counsel, who have been approved to do work for the State, seek to charge rates of \$250 – \$350 per hour. AG representation, when charged to an agency, costs \$65 per hour. When the AG approves outside counsel to represent the State, the AG limits the fees in routine cases to less than \$150 per hour (some minor exceptions exist for specialized areas of practice). This bill imposes no hourly or contingency fee limitations, contrary to AG practice.

99% of state agencies rate the legal services they receive from the Attorney General's office as "Very Good" or "Excellent." (2 agencies rated the AG merely "Good.")

WHAT THE BILL DOES:

Section 3 of the bill takes away the AG's power to "manage all litigation..."

Section 3 also says that "No legal action", including a suit to recover funds, can be taken by the AG on behalf of an agency ("officer") until the AG gives 10 days written notice to that agency. After 10 days, the AG can "institute suit" with or without the agency's consent. Per Section 1 of the bill, that agency could retain its own counsel.

WHY THIS IS BAD FOR THE STATE:

As discussed above, having multiple agencies initiating, defending and controlling litigation without any central oversight from the AG will lead to fractured and counter-productive efforts.

Also, making public the intent to file suit may damage the State's litigation strategy or position. An obvious example is where the AG needs to secure a Temporary Restraining Order to protect the public from an immediate threat, such as where the AG sought a TRO against the Mark Seepe crematorium-funeral home. The AG should not have to wait 10 days to stop an ongoing danger. Also, this section would prohibit the AG from filing any responsive pleading, whether it be an Answer, Motion to Dismiss, or other, after being served with a lawsuit on an agency, until 10 days notice. There may well be cases where an earlier response is required or desirable.

further points:

ATTORNEY GENERAL'S AUTHORITY TO REPRESENT THE CITIZENS OF THE STATE SHOULD NOT BE TAKEN AWAY

This bill attempts to take away the Attorney General's Constitutional Authority to manage all litigation on behalf of the State of Mississippi and hold wrongdoers accountable. It attempts to give state agencies, boards, and commissions the unfettered ability to retain lawyers on contingency fee basis, and takes the ability of the citizens of this state to elect their attorney.

IF THIS BILL WAS LAW.....

There would be no health care trust fund because then Governor Fordice and his Division of Medicaid could have stopped former Attorney General Moore from filing his suit which resulted in a \$4 billion settlement for the state. In fact, this bill could potentially give Medicaid or the Governor's office the ability to go to court to end the settlement and the funds that flow to the state as result of the litigation.

The state would have had to settle the MCI Worldcom case for \$3.5 million instead of the \$100 million because the State Tax Commission wanted to settle the case and not pursue litigation as done by the Attorney General.

THE CURRENT SYSTEM WORKS....

Over the last 7 years the Attorney General has recovered over **\$500 million** for the taxpayers of this state and it did not cost the taxpayers a single dime. In addition, the law of the state already allows state agencies to file suit should the attorney general decline, or to file suit even if the attorney general opposes such.

Since 1890, the State of Mississippi has successfully spoken with one voice in the Courtroom, through the office of the Attorney General

ONLY A HANDFUL OF CASES ARE HANDLED BY OUTSIDE COUNSEL....

The office handles over 3,000 civil cases at the current time, 95% of those cases are handled by Special Assistant Attorneys General who are full-time state employees. Less than 1% of those cases are contingency.

THE PROCESS IS OPEN AND TRANSPARENT....

The process of retaining outside counsel is open and transparent. All outside counsel contingency contracts and the process of retaining counsel are on the attorney general's website for anyone to review.

THE CONSTITUTION GIVES AG THIS AUTHORITY....

The Constitution provides and the Mississippi Supreme Court has consistently held that "the Attorney General alone has the right to represent the state" and the sole authority to protect the public interest of the state in litigation. Dunn Construction v. Craig, 2 So.2d 166, 174 (Miss. 1941).

DON'T CIRCUMVENT THE WILL OF THE VOTERS...

Voters of the state elect an attorney general every 4 years to be their attorney and represent their interests in ALL matters of litigation.

CORPORATE WRONGDOERS DON'T WANT THE AG TO HAVE THIS AUTHORITY...

Don't be fooled, the US Chamber of Commerce and corporate wrongdoers are attempting to prevent the attorney general from protecting the state and recovering funds by taking his ability away to bring lawsuits.

MANY OUTSIDE COUNSEL CASES ARE RECOVERING PERS FUNDS...

A handful of the outside counsel cases have been filed to recover funds for our public employee retirement system that has been defrauded by corporate wrongdoers. If this bill passes, the Attorney General will be prevented from filing a case to recover funds if the PERS does not allow him.