

*****Adopted*****

AMENDMENT No. 1 PROPOSED TO

Senate Bill NO. 2854

By Representative(s) Committee

**Amend by striking all after the enacting clause and inserting
in lieu thereof the following:**

8 **SECTION 1.** Section 25-9-131, Mississippi Code of 1972, is
9 amended as follows:
10 25-9-131. (1) Any employee in the state service may appeal
11 his dismissal or other action adversely affecting his employment
12 status to the Employee Appeals Board * * *. The proceedings
13 before the Employee Appeals Board shall be de novo, and the
14 employee shall be afforded all applicable safeguards of procedural
15 due process. The Employee Appeals Board shall have the authority
16 to administer oaths and affirmations and to issue subpoenas to
17 compel the attendance of witnesses and the production of books,
18 papers, records or other documentary evidence upon a showing of
19 relevancy or materiality of the witnesses or documents to an
20 appeal pending before the board. Subpoenas so issued shall be
21 delivered to the sheriff of the county where they are to be
22 executed, and the sheriff shall cause them to be served. In case
23 of the failure of any person to comply with any subpoena issued by
24 the board, the board or its authorized representative may invoke
25 the aid of any court of this state of general jurisdiction. The
26 court may thereupon order such person to comply with the
27 requirements of the subpoena. Failure to obey the order of the

28 court may be punished by the court as a contempt thereof. The
29 Employee Appeals Board may modify the action of the department,
30 agency or institution but may not increase the severity of such
31 action on the employee. Such appointing authority shall promptly
32 comply with the order issued as a result of the appeal to the
33 Employee Appeals Board.

34 (2) In any case involving a termination or a suspension of
35 ten (10) or more calendar days of an employee, if the employee
36 prevails on appeal on the merits of the case, a hearing officer or
37 the Employee Appeals Board shall award the employee all reasonable
38 costs of the appeal and may award the employee reasonable
39 attorneys fees incurred from the commencement date of the action
40 by the agency.

41 (3) Any employee or agency aggrieved by a final decision of
42 the Employee Appeals Board shall be entitled to judicial review
43 thereof in the manner provided by law.

44 (4) It is the intent of Sections 25-9-127 through 25-9-131
45 to supercede and replace any existing statutory procedure
46 conflicting in whole or in part which provides for the discharge
47 of state employees in any state agency.

48 **SECTION 2.** Section 25-9-132, Mississippi Code of 1972, is
49 amended as follows:

50 25-9-132. Any employee or agency aggrieved by a final
51 decision of the Employee Appeals Board shall be entitled to
52 judicial review thereof in the manner provided in this section.

53 (1) An appeal may be taken by such employee or agency to the
54 circuit court of the principal county of the employee's employment
55 or the Circuit Court of the First Judicial District of Hinds
56 County, by filing a petition with the clerk of such court and
57 executing and filing bond payable to the State of Mississippi with
58 sufficient sureties to be approved by the clerk of the court, in
59 the penalty of Five Hundred Dollars (\$500.00), conditioned upon
60 the payment of all costs of appeal, including the cost of
61 preparing the transcript of the hearing before the Employee
62 Appeals Board. The petition and bond shall be filed within thirty

63 (30) days of the receipt of the final decision of the Employee
64 Appeals Board. Upon approval of the bond, the clerk of the court
65 shall notify the Employee Appeals Board, which shall prepare its
66 record in the matter and transmit it to the circuit court.

67 (2) The scope of review of the circuit court in such cases
68 shall be limited to a review of the record made before the
69 Employee Appeals Board or hearing officer to determine if the
70 action of the Employee Appeals Board is unlawful for the reason
71 that it was:

- 72 (a) Not supported by any substantial evidence;
- 73 (b) Arbitrary or capricious; or
- 74 (c) In violation of some statutory or constitutional
75 right of the employee.

76 (3) No relief shall be granted based upon the court's
77 finding of harmless error by the board in complying with the
78 procedural requirements of Sections 25-9-127 through 25-9-129;
79 provided, however, in the event that there is a finding of
80 prejudicial error in the proceedings, the cause may be remanded
81 for a rehearing consistent with the findings of the court.

82 (4) Any party aggrieved by action of the circuit court may
83 appeal to the Supreme Court in the manner provided by law.

84 (5) In each controversy in which the Employee Appeals Board
85 assumes jurisdiction, the State Personnel Board shall assess the
86 respondent state agency a reasonable fee to defray the cost of
87 recording the hearing. The State Personnel Board is hereby
88 authorized to contract with certified court reporters to record
89 hearings before the Employee Appeals Board.

90 (6) In any case involving a termination or a suspension of
91 ten (10) or more calendar days of an employee, if the employee
92 prevails on the merits of the case on appeal before the circuit
93 court or the Supreme Court, the court shall award the employee all
94 reasonable costs of the appeal and reasonable attorneys fees
95 incurred from the commencement date of the action by the agency.

96 **SECTION 3.** This act shall take effect and be in force from
97 and after July 1, 2002.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTIONS 25-9-131 AND 25-9-132, MISSISSIPPI
2 CODE OF 1972, TO PROVIDE THAT STATE AGENCIES AGGRIEVED BY A FINAL
3 DECISION OF THE EMPLOYEE APPEALS BOARD SHALL BE ENTITLED TO
4 JUDICIAL REVIEW AND TO PROVIDE FOR THE PAYMENT BY STATE AGENCIES
5 OF REASONABLE COSTS AND ATTORNEYS FEES WHEN THE EMPLOYEE PREVAILS
6 IN CERTAIN CASES; AND FOR RELATED PURPOSES.