MISSISSIPPI LEGISLATURE

By: Representatives Ford, Guice

REGULAR SESSION 2003

To: Fees and Salaries of Public Officers

HOUSE BILL NO. 773
(As Sent to Governor)


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

SECTION 1. Section 25-9-115, Mississippi Code of 1972, is amended as follows:

25-9-115. It shall be the specific duty and function of the State Personnel Board to:

(a) Represent the public interest in the improvement of personnel administration in the state departments, agencies and institutions covered by the State Personnel System;

(b) Determine appropriate goals and objectives for the State Personnel System and prescribe policies for their accomplishment, with the assistance of the Mississippi Personnel Advisory Council;
(c) Adopt and amend policies, rules and regulations establishing and maintaining the State Personnel System. Such rules and regulations shall not be applicable to the emergency hiring of employees by the Public Employees' Retirement System pursuant to Section 25-11-15(7). The rules and regulations of the Mississippi Classification Commission and the Mississippi Coordinated Merit System Council serving federal grant-aided agencies in effect on February 1, 1981, shall remain in effect until amended, changed, modified or repealed by the board;

(d) Ensure uniformity in all functions of personnel administration in those agencies required to comply with the provisions of this chapter. The board may delegate authority to the State Personnel Director as deemed necessary for the timely, effective and efficient implementation of the State Personnel System;

(e) Appoint an employee appeals board, consisting of three (3) hearing officers, for the purpose of holding hearings, compiling evidence and rendering decisions on employee dismissals and other personnel matters as provided for in Sections 25-9-127 through 25-9-131. Hearing officers are not entitled to serve beyond their appointed term unless reappointed by the State Personnel Board;

(f) Assure uniformity in the administration of state and federal laws relating to merit administration;

(g) Establish an annual budget covering all the costs of board operations;

(h) With the assistance of the Mississippi Personnel Advisory Council, promote public understanding of the purposes, policies and practices of the State Personnel System and advise and assist the state departments, agencies and institutions in fostering sound principles of personnel management and securing the interest of institutions of learning and of civic,
professional and other organizations in the improvement of personnel standards under the State Personnel System;

(i) Recommend policies and procedures for the establishment and abolishment of employment positions within state government and develop a system for the efficient use of personnel resources;

(j) Cooperate with state institutions of higher learning in implementing a career management program in state agencies for graduate students in public administration in order to provide state government with a steady flow of professional public managerial talent;

(k) Prescribe rules which shall provide that an employee in state service is not obliged, by reason of his employment, to contribute to a political fund or to render political service, and that he may not be removed or otherwise prejudiced for refusal to do so;

(l) Prescribe rules which shall provide that an employee in state service shall not use his official authority or influence to coerce the political action of a person or body;

(m) Annually report to the Governor and Legislature on the operation of the State Personnel System and the status of personnel administration in state government;

(n) Require submission and approve organization and staffing plans of departments and agencies in state and nonstate service on such forms and according to such regulations as the board may prescribe to control and limit the growth of subordinate executive and administrative units and positions and to provide for agency staff reorganization without prior board approval when authority to reorganize has been delegated to an agency as provided in paragraph (p);

(o) In coordination with appointing authorities, set the annual salaries of those appointed officials whose salaries are not otherwise set by statute who work on a full-time basis in
the capacity of agency head, executive director or administrator of any state department, agency, institution, board or commission under the jurisdiction of the State Personnel Board as provided in Section 25-9-101 et seq., in conformity with the State Personnel Board's compensation plan. Salaries of incumbents required by law to serve in their professional capacity as a physician, dentist, veterinarian or attorney shall be set in accordance with Section 25-9-107(c)(xiii);

(p) Authorize the director to enter into formal agreements with department executive directors and agency directors in which employment positions within their agencies may be reallocated and organization charts amended without prior State Personnel Board approval; however, such agreements shall be revocable by the State Personnel Board and continuation shall be contingent upon the reallocations and reorganizations being conducted in accordance with rules and regulations promulgated by the State Personnel Board. In the event the State Personnel Board has delegated reallocation authority to an agency, this delegation does not remove the requirement that agencies submit personal services budget requests each fiscal year for the purpose of preparing personal services continuation budget projections. Such budget requests shall be prepared in accordance with the policies, rules and regulations promulgated by the Department of Finance and Administration, the Legislative Budget Office and the State Personnel Board. Prior to making any reallocation or reorganization effective, each appointing authority who has entered into an agreement as provided in this paragraph shall certify to the State Personnel Board that the total annualized cost of any reallocation or reorganization shall be equal to or less than the cost savings generated through downward reallocation or position abolishment of vacant positions.

The personnel board shall maintain a record of every personnel transaction executed under authority delegated pursuant
to this paragraph and shall annually report the total cost of these transactions, by agency, to the Legislative Budget Office and the Department of Finance and Administration.

The State Personnel Board shall prescribe rules requiring the State Personnel Director to perform a compliance audit and evaluation of personnel transactions executed under authority delegated pursuant to this paragraph and to publish a report of the audit listing exceptions taken by the State Personnel Director not later than the first of October each year. In the event the State Personnel Board determines that an agency has misclassified an employee or position as a result of this delegated authority, the State Personnel Board shall be authorized to correct such misclassification regardless of the state service status of the employee holding such position. Authority to correct such misclassifications of filled positions shall be limited to one (1) year from the date which the State Personnel Board receives written notice of the reallocation;

(q) Require that if an employment position has been determined to be in need of reallocation from one (1) occupational class to another, the employee occupying the position shall meet the minimum qualifications for the occupational class to which the position is being reallocated in order for the position to be eligible for the reallocation. However, when a reallocation is based upon an agency reorganization due to documented funds constraints, documented change in agency function, or legislative mandate, a position may be reallocated with prior approval of the State Personnel Board;

(r) Implement a reduction-in-force policy which shall apply uniformly to all state agencies and which shall require that the appointing authority develop an equitable and systematic plan for implementation of an agency-wide reduction-in-force. If a proposed reduction-in-force is the result of a curtailment of general funds, the State Personnel Board shall review the proposed
reduction-in-force plan only upon written certification of a
general funds shortage from the Department of Finance and
Administration. If a proposed reduction-in-force is the result of
a curtailment of special funds, the State Personnel Board shall
review the proposed reduction-in-force plan only upon written
certification of a special funds shortage from the agency.

Further, the State Personnel Board shall ensure that any
reduction-in-force plan complies with all applicable policies,
rules and regulations of the State Personnel Board;

(s) Implement a furlough (involuntary leave without
pay) policy which shall apply uniformly to all executive and
subordinate employees within an agency, regardless of job class.
The State Personnel Board shall review furlough plans only upon
written certification of a general funds shortage from the
Department of Finance and Administration or written certification
of a special funds shortage from the agency. The State Personnel
Board shall ensure that any furlough plan complies with all
applicable policies, rules and regulations of the State Personnel
Board;

(t) Establish policies which preclude any employee
under the salary setting authority of the State Personnel Board
from receiving an annual salary greater than the amount authorized
under Section 25-3-39.

* * *

SECTION 2. Section 37-3-9, Mississippi Code of 1972, is
amended as follows:

37-3-9. (1) From and after July 1, 1984, there shall be a
State Superintendent of Public Education who shall be appointed by
the State Board of Education, with the advice and consent of the
Senate, and serve at the board's will and pleasure. He shall be
the chief administrative officer for the State Department of
Education and shall administer the department in accordance with
the policies established by the State Board of Education. From
and after the effective date of House Bill No. 773, 2003 Regular Session, the State Superintendent of Public Education shall receive the salary that he was receiving on January 1, 2003. Such salary may be increased to an amount established by the State Board of Education but only upon the approval of the State Personnel Board. The State Superintendent of Public Education shall have at least a master's degree in any field and a minimum of five (5) years' experience in administration in the educational field.

(2) The State Superintendent shall give bond in the penalty of Seventy-five Thousand Dollars ($75,000.00), with sureties to be approved by the Governor, conditioned according to law. Said bond when approved shall be filed and recorded in the Office of the Secretary of State.

SECTION 3. Section 37-3-13, Mississippi Code of 1972, is amended as follows:

37-3-13. (1) Until July 1, 1984, the Assistant State Superintendent of Public Education, the directors, supervisors, clerical assistants, and employees shall be selected by, and hold office subject to the will of, the State Superintendent, except as provided in Section 37-3-17. The Assistant State Superintendent may be authorized to act in the absence or disability of the State Superintendent and shall perform such other duties as may be assigned to him by the State Superintendent. The State Superintendent shall have the power to assign to any division such clerical help as he may deem necessary and to discharge such clerical help among the divisions at any time necessity requires, except as provided in Section 37-3-17.

(2) From and after July 1, 1984, the deputy superintendents, associate superintendents and directors shall be selected by and hold office subject to the will of the State Superintendent of Public Education subject to the approval of the State Board of Education. All other personnel shall be competitively appointed
by the State Superintendent and shall be dismissed only for cause
in accordance with the rules and regulations of the State
Personnel Board. The State Superintendent, subject to the
approval of the State Personnel Board, shall fix the amount of
compensation of all employees of the State Department of
Education. All salaries, compensation or expenses of any of the
personnel of the department shall be paid upon the requisition of
the State Superintendent of Public Education and warrant issued
thereunder by the State Auditor out of funds appropriated by the
Legislature in a lump sum upon the basis of budgetary requirements
submitted by the Superintendent of Education or out of funds
otherwise made available. The entire expense of administering the
department shall never exceed the amount appropriated therefor,
plus funds received from other sources other than state
appropriations. For a violation of this provision, the
superintendent shall be liable, and he and the sureties on his
bond shall be required to restore any such excess.

SECTION 4. Section 25-3-39, Mississippi Code of 1972, as
amended by House Bill No. 99, 2003 Regular Session, and by Senate
Bill No. 2794, 2003 Regular Session, is amended as follows:

[Until July 1, 2003, this section shall read as follows:]

25-3-39. (1) No public officer, public employee,
administrator, or executive head of any arm or agency of the
state, in the executive branch of government, shall be paid a
salary or compensation, directly or indirectly, in excess of the
maximum salary fixed in Section 25-3-31 for the Governor. All
academic officials, members of the teaching staffs and employees
of the state institutions of higher learning, the State Board for
Community and Junior Colleges, community and junior
colleges, the State Superintendent of Public Education, and
licensed physicians who are public employees, shall be exempt from
this subsection. In addition, the Executive Director of the
Mississippi Development Authority and the Chief of Staff of the
Governor's Office shall be exempt from this subsection. The Governor shall fix the annual salary of the Executive Director of the Mississippi Development Authority and the annual salary of the Chief of Staff of the Governor's Office, which salaries shall be completely paid by the state and may not be supplemented with any funds from any source, including federal or private funds.

Provided, however, that the salary of the Executive Director of the Mississippi Development Authority and the Governor's Chief of Staff shall not be greater than fifty percent (50%) in excess of the salary of the Governor.

(2) No public officer, employee or administrator shall be paid a salary or compensation, directly or indirectly, in excess of the salary of the executive head of the state agency or department in which he is employed. The State Personnel Board, based upon its findings of fact, may exempt physicians and actuaries from this subsection when the acquisition of such professional services is precluded based on the prevailing wage in the relevant labor market.

[From and after July 1, 2003, this section shall read as follows:]

25-3-39. (1) No public officer, public employee, administrator, or executive head of any arm or agency of the state, in the executive branch of government, shall be paid a salary or compensation, directly or indirectly, greater than one hundred fifty percent (150%) of the maximum salary fixed in Section 25-3-31 for the Governor. All academic officials, members of the teaching staffs and employees of the state institutions of higher learning, the State Board for Community and Junior Colleges, * * * community and junior colleges, the State Superintendent of Public Education, and licensed physicians who are public employees, shall be exempt from this subsection. * * *

The Governor shall fix the annual salary of the Executive Director of the Mississippi Development Authority and the annual salary of
the Chief of Staff of the Governor's Office, which salaries shall be completely paid by the state and may not be supplemented with any funds from any source, including federal or private funds. Provided, however, that the salary of the Executive Director of the Mississippi Development Authority and the Governor's Chief of Staff shall not be greater than one hundred fifty percent (150%) of the salary of the Governor. Furthermore, all professional employees who hold a bachelor's degree or more advanced degree from an accredited four-year college or university or a certificate or license issued by a state licensing board, commission or agency and who are employed by the Department of Mental Health shall be exempt from this subsection if the State Personnel Board approves the exemption.

(2) No public officer, employee or administrator shall be paid a salary or compensation, directly or indirectly, in excess of the salary of the executive head of the state agency or department in which he is employed. The State Personnel Board, based upon its findings of fact, may exempt physicians and actuaries from this subsection when the acquisition of such professional services is precluded based on the prevailing wage in the relevant labor market.

SECTION 5. Section 37-4-3, Mississippi Code of 1972, is amended as follows:

37-4-3. (1) From and after July 1, 1986, there shall be a State Board for Community and Junior Colleges which shall receive and distribute funds appropriated by the Legislature for the use of the public community and junior colleges and funds from federal and other sources that are transmitted through the state governmental organization for use by said colleges. This board shall provide general coordination of the public community and junior colleges, assemble reports and such other duties as may be prescribed by law.
(2) The board shall consist of ten (10) members of which none shall be an elected official and none shall be engaged in the educational profession. The Governor shall appoint two (2) members from the First Mississippi Congressional District, one (1) who shall serve an initial term of two (2) years and one (1) who shall serve an initial term of five (5) years; two (2) members from the Second Mississippi Congressional District, one (1) who shall serve an initial term of five (5) years and one (1) who shall serve an initial term of three (3) years; and two (2) members from the Third Mississippi Congressional District, one (1) who shall serve an initial term of four (4) years and one (1) who shall serve an initial term of two (2) years; two (2) members from the Fourth Mississippi Congressional District, one (1) who shall serve an initial term of three (3) years and one (1) who shall serve an initial term of four (4) years; and two (2) members from the Fifth Mississippi Congressional District, one (1) who shall serve an initial term of five (5) years and one (1) who shall serve an initial term of two (2) years. All subsequent appointments shall be for a term of six (6) years and continue until their successors are appointed and qualify. An appointment to fill a vacancy which arises for reasons other than by expiration of a term of office shall be for the unexpired term only. No two (2) appointees shall reside in the same junior college district. All members shall be appointed with the advice and consent of the Senate.

(3) There shall be a chairman and vice chairman of the board, elected by and from the membership of the board; and the chairman shall be the presiding officer of the board. The board shall adopt rules and regulations governing times and places for meetings and governing the manner of conducting its business.

(4) The members of the board shall receive no annual salary, but shall receive per diem compensation as authorized by Section 25-3-69, Mississippi Code of 1972, for each day devoted to the
discharge of official board duties and shall be entitled to
reimbursement for all actual and necessary expenses incurred in
the discharge of their duties, including mileage as authorized by
Section 25-3-41, Mississippi Code of 1972.

(5) The board shall name a director for the state system of
public junior and community colleges, who shall serve at the
pleasure of the board. Such director shall be the chief executive
officer of the board, give direction to the board staff, carry out
the policies set forth by the board, and work with the presidents
of the several community and junior colleges to assist them in
carrying out the mandates of the several boards of trustees and in
functioning within the state system and policies established by
the State Board for Community and Junior Colleges. The State
Board for Community and Junior Colleges shall set the salary of
the Director of the State System of Community and Junior Colleges.
The State Board for Community and Junior Colleges shall annually
submit to the State Personnel Board a list of salaries for its
employees and the State Personnel Board shall give a nonbinding
advisory opinion on the amount of the salaries for the director
and other employees of the board. The Legislature shall provide
adequate funds for the State Board for Community and Junior
Colleges, its activities and its staff.

(6) The powers and duties of the State Board for Community
and Junior Colleges shall be:

(a) To authorize disbursements of state appropriated
funds to community and junior colleges through orders in the
minutes of the board.

(b) To make studies of the needs of the state as they
relate to the mission of the community and junior colleges.

(c) To approve new, changes to and deletions of
vocational and technical programs to the various colleges.

(d) To require community and junior colleges to supply
such information as the board may request and compile, publish and
make available such reports based thereon as the board may deem advisable.

(e) To approve proposed new attendance centers (campus locations) as the local boards of trustees should determine to be in the best interest of the district. Provided, however, that no new community/junior college branch campus shall be approved without an authorizing act of the Legislature.

(f) To serve as the state approving agency for federal funds for proposed contracts to borrow money for the purpose of acquiring land, erecting, repairing, etc. dormitories, dwellings or apartments for students and/or faculty, such loans to be paid from revenue produced by such facilities as requested by local boards of trustees.

(g) To approve applications from community and junior colleges for state funds for vocational-technical education facilities.

(h) To approve any university branch campus offering lower undergraduate level courses for credit.

(i) To appoint members to the Post-Secondary Educational Assistance Board.

(j) To appoint members to the Authority for Educational Television.

(k) To contract with other boards, commissions, governmental entities, foundations, corporations or individuals for programs, services, grants and awards when such are needed for the operation and development of the state public community and junior college system.

(l) To fix standards for community and junior colleges to qualify for appropriations, and qualifications for community and junior college teachers.

(m) To have sign-off approval on the State Plan for Vocational Education which is developed in cooperation with appropriate units of the State Department of Education.
(n) To approve or disapprove of any proposed inclusion within municipal corporate limits of state-owned buildings and grounds of any community college or junior college and to approve or disapprove of land use development, zoning requirements, building codes and delivery of governmental services applicable to state-owned buildings and grounds of any community college or junior college. Any agreement by a local board of trustees of a community college or junior college to annexation of state-owned property or other conditions described in this paragraph shall be void unless approved by the board and by the board of supervisors of the county in which the state-owned property is located.

SECTION 6. Section 37-101-7, Mississippi Code of 1972, is amended as follows:

37-101-7. Within ten (10) days after the beginning of the terms of office of its members, upon call of the Governor, the Board of Trustees of State Institutions of Higher Learning shall meet in the City of Jackson and organize by electing one (1) of its number as president, whose term of office shall be for one (1) year or until a successor shall be elected, and shall transact such other business as may come before the meeting. When the presiding officer has voted and the result is a tie, he cannot vote again to break the tie.

The trustees shall have authority to appoint a nonmember as Commissioner of Higher Education, who shall possess the highest qualifications as an administrator and research worker. The Commissioner of Higher Education shall maintain an office and be responsible to the board for the efficient functioning of the staff which the board may from time to time establish. It shall be the duty of the Commissioner of Higher Education to make constant inquiry into the problems of higher education, to survey and study carefully the organization, management and all other affairs of each institution under the control of said trustees, to make report of all findings and recommend such changes as will
increase efficiency and economy in the operation of each institution, and to perform such other duties as the board may prescribe. The Commissioner of Higher Education shall be responsible for compiling all laws and all rules and regulations of a general nature adopted by the board for the governance of the various institutions of higher learning in pamphlet or loose-leaf form. Current copies of such compilations shall be furnished to all officials directly responsible for the carrying out of such laws, rules and regulations. The expenses for such compilation and publication shall be paid by the board out of any funds available for the operation of said board.

The trustees shall authorize the employment of such other personnel as may be required from time to time to carry out the functions of the board and may assign to the personnel so employed such functions and duties and may delegate to the commissioner or other personnel such powers of the board as may be necessary to accomplish the purposes for which the board was established. All such personnel shall be employed by the commissioner with the approval of the board and shall hold office at the pleasure of the commissioner. The board shall also have the authority to employ on a fee basis such technical and professional assistance as may be necessary to carry out the powers, duties and purposes of the board.

The Commissioner of Higher Education and other personnel employed by the board shall receive reasonable salaries commensurate with their duties and functions, the amount of which shall be fixed by the board. The Board of Trustees of State Institutions of Higher Learning shall annually submit to the State Personnel Board a list of salaries for its employees and the State Personnel Board shall give the Board of Trustees of State Institutions of Higher Learning a nonbinding advisory opinion on the amount of the salaries for the director and other personnel employed by the board. The reasonable traveling expenses and
other authorized expenses incurred by the commissioner and other personnel in the performance of their duties, together with other expenses of the operation of the executive office, shall be prorated and deducted from the appropriations for the current expenses of the several institutions.

SECTION 7. Section 57-1-5, Mississippi Code of 1972, is amended as follows:

57-1-5. (1) The Governor shall, with the advice and consent of the Senate, appoint an executive director who:

(a) Shall have at least a bachelor's degree, and
(b) Shall be an experienced administrator and have at least five (5) years' experience in at least one (1) of the following areas:

(i) Industrial development, or
(ii) Economic development.

(2) The executive director shall be the executive officer of the department in the execution of any and all provisions of this chapter, and his salary shall be fixed by the Governor.

(3) The executive director shall have the following powers and duties:

(a) To formulate the policy of the department regarding the economic and tourist development of the state.

(b) To use and expend any funds from state, federal or private sources coming into the department for the purposes herein provided. State funds appropriated for the department shall be expended in accordance with the regulations governing the expenditures of other state funds.

(c) To implement the duties assigned to the department and consistent with specific requirements of law, including, but not limited to:

(i) Support services to include legal, finance, data processing, personnel, communications and advertising,
(ii) Research and planning;

(iii) Outreach, agency liaison and community development;

(iv) Tourism, business travel, and film;

(v) Programs and assistance for existing state business and industry;

(vi) Recruiting new business and industry into the state;

(vii) Fostering and promoting of entrepreneurship and the creation of new business in the state;

(viii) Programs aimed at competing effectively in the international economy by increasing exports of state products and services and by promoting, developing and creating the conditions and programs that will bring about significant increases in investment in the state from other countries;

(ix) Programs relating to the development of ports;

(x) Such other areas as are within the jurisdiction and authority of the department and will foster and promote the economic development of this state;

(xi) Salaries of the associate directors, deputy directors and bureau directors may be set by the executive director of the department. The positions of associate directors, deputy directors and bureau directors shall not be state service positions. The Mississippi Development Authority shall annually submit to the State Personnel Board a list of salaries for its employees and the State Personnel Board shall give the Mississippi Development Authority a nonbinding advisory opinion on the amount of the salaries for the executive director and other employees of the authority.

SECTION 8. The State Personnel Board is authorized to accept and expend funds from any available source, private and public, for the purpose of strategic planning and development of the
public sector workforce. The board shall be authorized to select
and enter into contracts for the purpose of strategic planning and
development of the public sector workforce. Any such contracts
shall be executed through the Statewide Payroll and Human
Resources System and may be exempted from the competitive process.
However, no state agency shall be assessed for charges for the
implementation of this section unless the agency receives the
benefit of the strategic planning and development of the
workforce.

SECTION 9. This act shall take effect and be in force from
and after its passage.