

By: Representatives Turner, Hughes

To: Accountability,
Efficiency, Transparency

HOUSE BILL NO. 1095
(As Passed the House)

1 AN ACT TO AMEND SECTION 25-9-129, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE APPOINTEES TO THE EMPLOYEE APPEALS BOARD; TO PROVIDE
3 THAT THE HEARING OFFICERS OF THE EMPLOYEE APPEALS BOARD SHALL
4 CONSIST OF A POOL OF ROTATING INDEPENDENT, LICENSED ATTORNEYS; TO
5 PROVIDE THAT THE STATE PERSONNEL BOARD SHALL SET THE FEE FOR THE
6 HEARING OFFICERS OF THE EMPLOYEE APPEALS BOARD; TO REMOVE THE
7 PROVISION THAT AUTHORIZED MEMBERS OF THE EMPLOYEE APPEALS BOARD
8 SHALL BE REIMBURSED FOR ANY ACTUAL AND NECESSARY EXPENSES INCURRED
9 WHILE HEARING AN APPEAL; TO AMEND SECTIONS 25-9-131 AND 25-9-132,
10 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY PARTY, AS OPPOSED TO
11 ANY EMPLOYEE, AGGRIEVED BY A FINAL DECISION OF THE EMPLOYEE
12 APPEALS BOARD SHALL BE ENTITLED TO JUDICIAL REVIEW OF THE
13 DECISION; AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** Section 25-9-129, Mississippi Code of 1972, is
16 amended as follows:

17 25-9-129. The State Personnel Board shall appoint an
18 Employee Appeals Board * * * for the purpose of holding hearings,
19 compiling evidence and rendering decisions on appeals of state
20 agency action adversely affecting the employment status or
21 compensation of any employee in the state service. Hearings
22 before the Employee Appeals Board * * * shall be conducted * * *
23 as provided in State Personnel Board Rules. * * *



24 The hearing officers of the Employee Appeals Board shall
25 consist of a pool of rotating independent, licensed attorneys.
26 The * * * hearing officers of the Employee Appeals Board shall be
27 paid an appropriate fee, to be established by the * * * State
28 Personnel Board.

29 **SECTION 2.** Section 25-9-131, Mississippi Code of 1972, is
30 amended as follows:

31 25-9-131. (1) Any employee in the state service may appeal
32 his or her dismissal or other action adversely affecting his or
33 her employment status to the Employee Appeals Board created
34 herein. The proceedings before the Employee Appeals Board shall
35 be de novo, and the employee shall be afforded all applicable
36 safeguards of procedural due process. The Employee Appeals Board
37 shall have the authority to administer oaths and affirmations and
38 to issue subpoenas to compel the attendance of witnesses and the
39 production of books, papers, records or other documentary evidence
40 upon a showing of relevancy or materiality of the witnesses or
41 documents to an appeal pending before the board. Subpoenas so
42 issued shall be delivered to the sheriff of the county where they
43 are to be executed, and the sheriff shall cause them to be served.
44 In case of the failure of any person to comply with any subpoena
45 issued by the board, the board or its authorized representative
46 may invoke the aid of any court of this state of general
47 jurisdiction. The court may thereupon order such person to comply
48 with the requirements of the subpoena. Failure to obey the order



49 of the court may be punished by the court as a contempt thereof.
50 The Employee Appeals Board may modify the action of the
51 department, agency or institution but may not increase the
52 severity of such action on the employee. Such appointing
53 authority shall promptly comply with the order issued as a result
54 of the appeal to the Employee Appeals Board.

55 (2) Any * * * party aggrieved by a final decision of the
56 Employee Appeals Board shall be entitled to judicial review
57 thereof in the manner provided by law.

58 (3) It is the intent of Sections 25-9-127 through 25-9-131
59 to supercede and replace any existing statutory procedure
60 conflicting in whole or in part which provides for the discharge
61 of state employees in any state agency.

62 **SECTION 3.** Section 25-9-132, Mississippi Code of 1972, is
63 amended as follows:

64 25-9-132. Any * * * party aggrieved by a final decision of
65 the Employee Appeals Board shall be entitled to judicial review
66 thereof in the manner provided in this section.

67 (1) An appeal may be taken * * * to the circuit court of the
68 principal county of the * * * party's employment or the Circuit
69 Court of the First Judicial District of Hinds County, by filing a
70 petition with the clerk of such court and executing and filing
71 bond payable to the State of Mississippi with sufficient sureties
72 to be approved by the clerk of the court, in the penalty of Five
73 Hundred Dollars (\$500.00), conditioned upon the payment of all



74 costs of appeal, including the cost of preparing the transcript of
75 the hearing before the Employee Appeals Board. The petition and
76 bond shall be filed within thirty (30) days of the receipt of the
77 final decision of the Employee Appeals Board. Upon approval of
78 the bond, the clerk of the court shall notify the Employee Appeals
79 Board, which shall prepare its record in the matter and transmit
80 it to the circuit court.

81 (2) The scope of review of the circuit court in such cases
82 shall be limited to a review of the record made before the
83 Employee Appeals Board * * * to determine if the action of the
84 Employee Appeals Board is unlawful for the reason that it was:

- 85 (a) Not supported by any substantial evidence;
86 (b) Arbitrary or capricious; or
87 (c) In violation of some statutory or constitutional
88 right of the * * * party.

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

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

97 (5) In each controversy in which the Employee Appeals Board
98 assumes jurisdiction, the State Personnel Board shall assess the



99 respondent state agency a reasonable fee to defray the cost of
100 recording the hearing. The State Personnel Board is hereby
101 authorized to contract with certified court reporters to record
102 hearings before the Employee Appeals Board.

103 **SECTION 4.** This act shall take effect and be in force from
104 and after July 1, 2018.

