

By: Senator(s) Thames

To: Fees, Salaries and Administration

SENATE BILL NO. 2854

1 AN ACT TO AMEND SECTION 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 FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 25-9-131, Mississippi Code of 1972, is  
7 amended as follows:

8 25-9-131. (1) Any employee in the state service may appeal  
9 his dismissal or other action adversely affecting his employment  
10 status to the Employee Appeals Board created herein. The  
11 proceedings before the Employee Appeals Board shall be de novo,  
12 and the employee shall be afforded all applicable safeguards of  
13 procedural due process. The Employee Appeals Board shall have the  
14 authority to administer oaths and affirmations and to issue  
15 subpoenas to compel the attendance of witnesses and the production  
16 of books, papers, records or other documentary evidence upon a  
17 showing of relevancy or materiality of the witnesses or documents  
18 to an appeal pending before the board. Subpoenas so issued shall  
19 be delivered to the sheriff of the county where they are to be  
20 executed, and the sheriff shall cause them to be served. In case  
21 of the failure of any person to comply with any subpoena issued by  
22 the board, the board or its authorized representative may invoke  
23 the aid of any court of this state of general jurisdiction. The  
24 court may thereupon order such person to comply with the  
25 requirements of the subpoena. Failure to obey the order of the  
26 court may be punished by the court as a contempt thereof. The  
27 Employee Appeals Board may modify the action of the department,  
28 agency or institution but may not increase the severity of such



29 action on the employee. Such appointing authority shall promptly  
30 comply with the order issued as a result of the appeal to the  
31 Employee Appeals Board.

32 (2) Any employee or agency aggrieved by a final decision of  
33 the Employee Appeals Board shall be entitled to judicial review  
34 thereof in the manner provided by law.

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

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

41 25-9-132. Any employee or agency aggrieved by a final  
42 decision of the Employee Appeals Board shall be entitled to  
43 judicial review thereof in the manner provided in this section.

44 (1) An appeal may be taken by such employee or agency to the  
45 circuit court of the principal county of the employee's employment  
46 or the Circuit Court of the First Judicial District of Hinds  
47 County, by filing a petition with the clerk of such court and  
48 executing and filing bond payable to the State of Mississippi with  
49 sufficient sureties to be approved by the clerk of the court, in  
50 the penalty of Five Hundred Dollars (\$500.00), conditioned upon  
51 the payment of all costs of appeal, including the cost of  
52 preparing the transcript of the hearing before the Employee  
53 Appeals Board. The petition and bond shall be filed within thirty  
54 (30) days of the receipt of the final decision of the Employee  
55 Appeals Board. Upon approval of the bond, the clerk of the court  
56 shall notify the Employee Appeals Board, which shall prepare its  
57 record in the matter and transmit it to the circuit court.

58 (2) The scope of review of the circuit court in such cases  
59 shall be limited to a review of the record made before the  
60 Employee Appeals Board or hearing officer to determine if the



61 action of the Employee Appeals Board is unlawful for the reason  
62 that it was:

- 63 (a) Not supported by any substantial evidence;
- 64 (b) Arbitrary or capricious; or
- 65 (c) In violation of some statutory or constitutional  
66 right of the employee.

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

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

75 (5) In each controversy in which the Employee Appeals Board  
76 assumes jurisdiction, the State Personnel Board shall assess the  
77 respondent state agency a reasonable fee to defray the cost of  
78 recording the hearing. The State Personnel Board is hereby  
79 authorized to contract with certified court reporters to record  
80 hearings before the Employee Appeals Board.

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

