

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.

