

## **Title 8: Education – Institutions of Higher Learning**

### **Part 1: Authorization**

#### **Chapter 1**

##### **101.01 CONSTITUTIONAL**

The state institutions of higher learning now existing in Mississippi, to-wit: University of Mississippi, Mississippi State University of Agriculture and Applied Science, Mississippi University for Women, University of Southern Mississippi, Delta State University, Alcorn State University, Jackson State University, Mississippi Valley State University, and any others of like kind which may be hereafter organized or established by the State of Mississippi, shall be under the management and control of a board of trustees to be known as the Board of Trustees of State Institutions of Higher Learning, the members thereof to be appointed by the Governor of the state with the advice and consent of the Senate.

Miss. Const. Art. VIII, Section 213-A  
(BT Minutes, 9/90; 1/98)

##### **101.02 NAME**

The official name of the Board of Trustees under the constitution (Section 213-A) is the Board of Trustees of State Institutions of Higher Learning.

Miss. Const. Art. VIII, Section 213-A

(For the purposes of these bylaws and policies, the Board of Trustees of State Institutions of Higher Learning shall hereafter be referred to as the "Board.")

(BT Minutes, 9/90; 1/98)

##### **101.03 SEAL**

The Board is hereby authorized and empowered, in its discretion, to adopt and have an official seal in such form as it deems appropriate for its official use. The official seal of the Board shall contain an inner circle and an outer circle. The inner circle shall be a facsimile of the inner circle of the Great Seal of the State of Mississippi. It portrays the great eagle with extended pinions, holding in the right talon a palm branch and a bundle of arrows in the left talon, meaning "by valor

and arms." The outer circle shall have inscribed therein the words "State Institutions of Higher Learning."

Miss. Code Ann., §37-101-11, as amended.  
(BT Minutes 9/90; 1/98)

## **Title 8: Education – Institutions of Higher Learning**

### **Part 2: General Powers**

#### **Chapter 1**

##### **201.0101 APPOINTMENTS**

The Board of Trustees shall be composed of twelve (12) members. Four (4) members of the Board of Trustees shall be appointed from each of the three (3) Mississippi Supreme Court districts and, as such vacancies occur, the Governor shall make appointments from the Supreme Court district having the smallest number of Board members until the membership includes four (4) members from each district.

Miss. Const. Art. VIII, Section 213-A  
(BT Minutes, 9/90; 1/98; 4/2004)

##### **201.0102 TENURE TERMS**

The members of the Board of Trustees as constituted on January 1, 2004, shall continue to serve until expiration of their respective terms of office. Appointments made to fill vacancies created by expiration of members' terms of office occurring after January 1, 2004, shall be as follows: The initial term of the members appointed in 2004 shall be for eleven (11) years; the initial term of the members appointed in 2008 shall be for ten (10) years; and the initial term of the members appointed in 2012 shall be for nine (9) years. After the expiration of the initial terms, all terms shall be for nine (9) years.

Miss. Const. Art. VIII, Section 213-A  
(BT Minutes, 9/90; 1/98; 4/2004)

#### **Chapter 2**

##### **201.03 MEETINGS OF THE BOARD**

The Board shall hold two (2) regular slated meetings annually, one (1) in June and the other in January, and as many special meetings as may be necessary on call of the president or on call of five (5) members. In either case, the call shall be in writing and shall be mailed by registered letter with return receipt requested, or by certified mail, to each and every member at least five (5) days

prior to the date of meeting. Eight (8) members of the Board shall constitute a quorum for transaction of business.

Miss. Code Ann., §37-101-9, as amended.  
(BT Minutes 5/92; 1/98; 3/2011)

### **Chapter 3**

#### **201.0302      *PROCEDURES FOR CHANGING BOARD POLICIES AND ADOPTING NEW POLICIES***

The adoption of new policies or changing existing policies is solely the responsibility of the Board. It is important that sufficient time be given to permit further study and to give interested parties an opportunity to react; therefore, no new policies nor policy revisions introduced for the first time shall be adopted until a subsequent meeting. The Board may temporarily approve a policy to meet emergency conditions. However, discussion and a final vote must be taken before the policy shall be formally adopted.

(BT Minutes, 5/90; 1/98; 3/2011)

#### **201.0303      *PROCEDURES FOR ALTERING, AMENDING OR REPEALING BOARD BYLAWS OR ADOPTING NEW BYLAWS***

These bylaws may be altered, amended or repealed and new bylaws may be adopted by a majority vote of the Board at any regular Board meeting or at any special Board meeting when the proposed amendment has been set out in the notice of such meeting.

(BT Minutes, 5/90; 1/98; 3/2011)

## **Title 8: Education – Institutions of Higher Learning**

### **Part 3: Bylaws**

#### **Chapter 1**

##### **301.01 OFFICERS OF THE BOARD**

###### **A. PRESIDENT:**

There shall be a president elected by the Board from its membership. It is expected that each member of a class of Trustees shall be elected to serve as President, unless a Trustee elects not to serve. A class of Trustees shall consist of those Trustees who take office on the same date, or those whose terms as trustees end on the same date. Each member of the class of Trustees that took office as of May 2004 shall serve eleven months as president, unless he/she elects not to serve. The first Trustee elected as President from the class of Trustees that took office in 2004 shall begin his/her presidential term on May 1, 2011. Each member of the class of Trustees that took office as of May 2008 shall serve ten months as president, unless he/she elects not to serve. Each member of the class of Trustees that shall take office as of May 2012, as well as the members of all subsequent classes, shall serve nine months as president, unless he/she elects not to serve. If a member of a class of Trustees elects not to serve, another member of the class may serve more than one term, if elected. The president of the Board shall preside at all meetings of the Board; he or she shall be an ex officio member of all standing and special committees; he or she shall, with the Commissioner, execute such instruments and contracts as may be ordered by the Board; he or she shall perform such duties as usually pertain to this office and such other duties as may be assigned by the Board; and he or she shall be governed in his action by the usual parliamentary procedure. When the presiding officer has voted and the result is a tie, he cannot vote again to break the tie. The president of the Board may not immediately succeed himself/herself as president after having served a full term.

Miss. Code Ann., §37-101-7, as amended.  
(BT Minutes, 9/90; 1/98; 3/2011)

###### **B. VICE PRESIDENT:**

There shall be a vice president elected by the Board from its membership. A vice president shall serve until completion of the term of the president that the vice president will succeed. The vice president shall preside at meetings of the Board in the absence or disability of the president.

The vice president of the Board shall automatically succeed to the office of president after having served a term as vice president.

The vice president shall become president upon the resignation, removal, death or incapacity of the president.

(BT Minutes, 9/90, 1/98, 3/2011)

### **301.02 ELECTION OF OFFICERS**

The Board of Trustees shall elect its officers at the meeting of the Board held three months before new officers are to take office, unless no meeting is held during that month. However, the Board may vote, if it so chooses, to hold the election of officers at another meeting of the Board.

(BT Minutes, 9/90; 1/98; 3/2011)

## **Chapter 2**

### **301.03 BOARD COMMITTEES**

- A. The Board by formal action and/or the President may establish standing, special or advisory committees as deemed appropriate to carry out the duties, obligations and functions of the Board. The members of each are to be appointed by the President.
- B. These committees may be assisted by the Commissioner and his/her staff.
- C. The committees may meet at such locations as deemed appropriate by the designated chairman of the committee.
- D. The respective committees shall report to the Board their findings of fact and/or their recommendations for the consideration of the Board.
- E. The committee is discharged by the Board's acceptance of its report unless otherwise determined.

(BT Minutes, 5/90; 1/98)

### **301.04 BOARD REGULATIONS**

- A. The Board shall manage and control:
  - 1. Alcorn State University
  - 2. Delta State University
  - 3. Jackson State University
  - 4. Mississippi State University

5. Mississippi University for Women
  6. Mississippi Valley State University
  7. University of Mississippi
  8. University of Southern Mississippi
- B. The Board shall elect the heads of the various institutions of higher learning and contract with faculty and staff members.
- C. The Board shall terminate the contract of any employee at any time for malfeasance, inefficiency, contumacious conduct, or financial exigency but not for political reasons.
- D. The Board shall make any adjustments the Board thinks necessary between the various departments and schools of any institution or between the different institutions.
- E. The Board shall appoint a Commissioner of the Board who will have the highest qualifications as an administrator and research worker, and shall employ such additional personnel and contract for such services as may be necessary to accomplish the purposes for which the Board was established.
- F. It shall be the duty of each member of the Board to:
1. Periodically visit all of the institutions of higher learning under the jurisdiction of the Board.
  2. Attend functions and events at all institutions.
  3. Inspect the buildings and equipment.
  4. Become informed as to the general business administration and instructional programs.
  5. Meet with the personnel of the institutions.
  6. Gather such other information as may be deemed necessary so as to be qualified to perform the duties of the office.
- G. No public officer or member of the legislature shall be interested, directly or indirectly, in any contract with the state, or any district, county, city, or town thereof, authorized by any law passed or order made by any board of which he/she may be or may have been a member, during the term for which he/she shall have been chosen, or within one year after the expiration of such term.

Miss. Const. Art. IV, Section 109

Miss. Code Ann., §25-4-105(2), as amended.

(BT Minutes, 9/90; 1/98)

## **Chapter 3**

### **301.05 BOARD MEETINGS AND AGENDA**

#### ***301.0501 REGULAR MEETINGS***

There shall be two regular slated meetings of the Board annually, one in June and the other in January.

Miss. Code Ann., §37-101-9, as amended.  
(BT Minutes, 5/90; 1/98)

#### ***301.0502 SPECIAL MEETINGS***

There shall be as many special meetings of the Board as may be necessary upon call of the president of the Board or upon call of five members.

Miss. Code Ann., §37-101-9, as amended.  
(BT Minutes, 5/90; 1/98)

#### ***301.0503 CALL TO MEETINGS***

The call shall be in writing and shall be mailed by certified letter with return receipt requested, or by certified mail, to each and every member at least five days prior to the date of meeting.

Miss. Code Ann., §37-101-9, as amended.  
(BT Minutes, 5/90; 1/98)

#### ***301.0504 DATE OF MEETINGS***

It shall be the general policy of the Board to meet the third week of each month.

(BT Minutes, 5/90; 1/98)

#### ***301.0505 OPEN MEETINGS REQUIREMENTS***

It is the policy of the Board to conduct its meetings pursuant to the provisions of the Mississippi Open Meetings Act.

Miss. Code Ann., §25-41-1, as amended.  
(BT Minutes, 5/90; 1/98)



**301.0506 BOARD RECESSES**

The Board may recess itself indefinitely to be reconvened by the president, or it may recess to a time and place designated.

(BT Minutes, 5/90; 1/98; 11/2005)

**301.0507 PLACE OF MEETINGS**

Generally, the Board will hold its meetings at its regular offices; however, the Board may designate as its meeting place any suitable place within the state.

(BT Minutes, 5/90; 1/98; 11/2005)

**301.0508 MINUTES OF MEETINGS**

The Commissioner shall compile and file for safekeeping full and complete minutes of all official acts of the Board. The minutes shall be compiled within a reasonable period after a given action of the Board, bound in a volume, and at the office of the Board made an open document to any citizen of the state during the normal office days and hours of the Board's central office.

(BT Minutes, 5/90; 1/98; 11/2005)

**301.0509 ABBREVIATED MINUTES**

Abbreviated minutes may be used by the Board in dispatching business coming before it, but all official references to the minutes and all transcripts, excerpts, copies, pictures, or quotes shall be made from the full and complete official minutes and the Commissioner shall be the certifying officer thereto for the Board.

(BT Minutes, 5/90; 1/98; 11/2005)

**301.0510 MEETING RULES OF ORDER**

Meetings of the Board and its committees shall be conducted in accordance with controlling statutes and applicable bylaws, regulations, or policies. In the absence of such statutes, bylaws, regulations, or policies, meetings shall be conducted in accordance with the following Rules of Order. Inquiries outside the scope of these Rules and directed at parliamentary procedures will be resolved by reference to *Robert's Rules of Order*. The Board's Meeting Rules of Order are as follows:

Rule 1: Presiding Officer

The President of the Board shall be the presiding officer at official Board functions. In his or her absence, the Vice President of the Board shall preside. In the absence of both, the President of the Board may appoint a President Pro Tempore to preside at a Board function. For committee meetings, the chair of the subject committee shall be the presiding officer. In his or her absence, the President of the Board, who is an ex officio member of all committees, shall preside.

Rule 2: Convening Meetings

The Board and its committees shall convene at the times and places announced by public notice and as required by law, policy, or Board action.

Rule 3: Quorums, Agenda, Rulings of the Presiding Officer, and Delay

A. Quorums

A quorum for the transaction of business shall be a minimum of eight members of the Board. For committees, a quorum shall be a majority of the members. In the absence of a quorum of the appointed members of the committee, the President of the Board may then be counted toward a quorum. No business may be transacted without the presence of a quorum.

B. Agenda

The agenda for each Board and committee meeting shall be submitted to the members and published by the Office of the Commissioner of Higher Education prior to each meeting. Proposed agenda items arriving after the deadline for submission to the Commissioner may only be added by a two-thirds (2/3) vote of the members present. This requirement will apply to consideration of all agenda items including recommendations by Board committees in instances where agenda items relating to such recommendations are not submitted prior to the deadline.

The formal agenda will consist of items submitted on behalf of the various institutions and the Board offices. A Board member may request through the Commissioner that an item be placed on the agenda. Unless otherwise specified on the face of an agenda item, the submission of an agenda item for Board approval by an Institutional Executive Officer or the Commissioner reflects the Institutional Executive Officer's or

Commissioner's determination that: (1) the proposed action is authorized by all applicable laws, (2) all requirements of State law and Board policy relating thereto have been met prior to submission of the item, and, (3) adequate funds are available and have been identified for any expenditures authorized thereunder. The form of agenda items and the deadline for submission will be determined by the Commissioner. The Commissioner may refer agenda items to appropriate Board committees for consideration.

#### C. Rulings of the Presiding Officer

The presiding officer shall have the discretion to move items up or down the agenda with a two-thirds (2/3) vote of the members present. The presiding officer may also remove items from the agenda with a two-thirds (2/3) vote of the members present.

#### D. Delay of Board Consideration

Any member may request a delay in consideration of an agenda item from one meeting to the next, but no agenda item may be so delayed more than once by any member. Such a request shall not be granted if two-thirds (2/3) of the members present vote to proceed immediately with consideration of the matter.

#### Rule 4: Decorum and Speaking

Members of the Board shall observe proper decorum when speaking, shall address the presiding officer, and shall refrain from derogatory and offensive language. The presiding officer shall recognize members to speak in the order in which they seek recognition. To seek recognition, members should raise their hands, or, if necessary, speak to call the attention of the presiding officer. When a member is speaking, other members shall avoid side discussions and make no interruptions. The presiding officer, at his or her discretion, may limit each member to five minutes speaking time on any one issue and after each member has had the opportunity to speak once may call the question. The presiding officer shall have the authority to suspend business to remove members for abusive behavior.

#### Rule 5: Parliamentary Inquiries and Points of Order

It shall always be in order for a member to make a parliamentary inquiry or to raise a point of order to the presiding officer.

Parliamentary inquiries shall be limited to clarification of pending business. A point of order must be raised immediately upon the occurrence of an infraction of the Rules or improper decorum. Inquiries outside the scope of these Rules and directed at parliamentary procedures will be resolved by reference to *Robert's Rules of Order*. The presiding officer should consult with the parliamentarian and the presiding officer will rule based on the parliamentarian's advice.

Rule 6: Voting

The presiding officer shall call for a voice vote to decide motions, but any member may require a vote by show of hands. A vote shall be recorded for each member present, with the exception that a member may, in advance of the vote, abstain, and have such abstention reflected in the minutes. A member may submit a brief written statement explaining his or her vote for inclusion in the minutes.

When the vote results in a tie, it can be broken by the presiding officer unless he or she participated in the primary vote.

Rule 7: Seconding Motions Required

Every motion shall require a second, except that a motion to close the meeting to determine the need for an executive session shall not require a second.

Rule 8: Withdrawal of Motions

After a motion is made and seconded it may be withdrawn by a majority vote of the members present. Additionally, the maker may withdraw a motion with the consent of the member who seconded the motion.

Rule 9: Division of a Question

A member may request and the presiding officer shall then divide any motion which contains two or more distinct and separable elements.

Rule 10: Precedence of Motions

Except where otherwise stated in these Rules, when a motion on a matter of business has been made and properly seconded, the

following motions shall be in order and shall have precedence over each other in order, as listed:

- to adjourn,
- to take a recess,
- to lay on the table subject to the call of the presiding officer,
- the previous question,
- to defer or postpone,
- to refer back to a committee,
- to substitute, and
- to amend.

Motions to adjourn, to recess, to lay on the table subject to call, or for the previous question shall be decided without debate. A motion to adjourn shall always be in order, except when a member is in possession of the floor; when the members are voting; when adjournment was the last preceding motion; and when it has been decided that the previous question shall be taken.

Rule 11: Previous Question

When a member shall move the previous question and upon a proper second, the presiding officer shall suspend all debate and put the motion for the previous question to a vote. If two-thirds (2/3) of the members present approve the previous question, then the presiding officer shall call for a vote on the main question without further discussion or debate.

Rule 12: Motion to Amend

An amendment modifying the intent of a motion shall be in order; but an amendment relating to a different subject shall not be in order. A motion to amend a proposed amendment to a motion shall not be in order. However, after a motion to amend has been adopted, a new motion to amend shall be in order. A motion to amend shall require a majority vote.

Rule 13: Motion to Substitute

When a motion to substitute has been adopted, the substituted question replaces the original question and all prior amendments to said question. A motion to substitute may not be offered in place of an amendment but only for the main question. A motion to substitute shall require a majority vote.

Rule 14: Reconsideration

The last order of public business on the agenda shall be Reconsideration. At this time any member may move that an action taken previously during the same meeting be reconsidered. This motion requires a two-thirds (2/3) vote of the members present. The item of business being reconsidered shall be back before the Board of Trustees for discussion and/or action. No item may be reconsidered twice at the same meeting. No motion to reconsider actions taken at one meeting shall be in order at a subsequent meeting; provided that when a meeting is recessed it shall be deemed to be a continuation of the original meeting when it is reconvened. If an executive session is required, it may follow any reconsideration of business items.

Rule 15: Pending Business

In the event the Board or a committee adjourns before taking action on agenda items or matters pending, the Office of the Commissioner of Higher Education shall at his or her discretion place those items on the agenda for the next meeting.

Rule 16: Motion to Suspend

A member may move to suspend any policies, bylaws or rules. A motion to suspend shall state the matter of business to be considered, must be properly seconded, and shall fail unless at least two-thirds (2/3) of the members present vote in favor of suspension.

(BT Minutes, 5/90; 2/98; 11/2005)

**301.0511 PRESIDENT'S VOTE**

The president of the Board shall be entitled to the same vote as any other member of the Board.

(BT Minutes, 5/90; 1/98; 11/2005)

**301.0512 PERMISSION REQUIRED TO LEAVE MEETINGS**

No member shall absent himself/herself from a meeting of the Board without approved leave from the president.

(BT Minutes, 5/90; 1/98; 11/2005)

**301.0513 APPEARANCES BEFORE THE BOARD**

No person shall be entitled as a matter of right to appear before the Board of Trustees of Institutions of Higher Learning except the following persons:

1. Designated Staff of the Board;
2. Institutional Executive Officers;
3. Official guests invited by the President after consultation with the Board.

Other appearances before the Board are not a matter of right, and will only be considered if the request is material and relevant to any matters then pending before the Board. Any person who desires to be placed on the agenda to address the Board shall submit such request, including justification, in writing to the Commissioner. The request should be at least three weeks prior to the designated Board meeting at which the person desires to appear and set forth the purpose of such appearance. The three week period is necessary to permit referral to the President or appropriate Board committee to rule on such request.

(BT Minutes, 1/91; 1/98; 11/2005)

**Chapter 4**

**301.0804 RECORDS**

Pursuant to the Mississippi Public Records Acts of 1983 (the "Act"), effective from and after July 1, 1983, the Board hereby adopts the following regulations and procedures with respect to such records as may be in its possession, or in the possession of any university or other institution under its jurisdiction or control. Such rules and procedures are applicable to and shall govern the right to inspect, copy, or reproduce or obtain a reproduction of any public records in the possession of the Board, or any institution under its jurisdiction or control.

- A. Any person wishing to inspect or copy public records must make the request in writing to the agency and must clearly identify the specific information sought. All requests should be dated and include the name of requester, address of the requestor, and current contact information for the requestor. Any response by the Board for a request for access to records will be forwarded to the requesting party within seven (7) working days of the receipt of such request. If the Board is unable to produce the requested record within seven working days after the request is made, the Board shall provide a written explanation to requestor(s) stating that the record will be produced and specifying with particularity why the record(s) cannot be produced within the seven-day period. Absent a mutual agreement between the parties, in no event shall the date for the Board's production of requested records be any later than fourteen (14) working days from receipt by the Board of the original request.

- B. Denial by the Board of a request for access to or copies of public records shall be in writing and shall contain a statement of the specific exemption relied upon by the Board for the denial. A file of all denials of requests for public records will be maintained by the Board for a period of no less than three (3) years from the date such denials are made.
- C. Recipient(s) will be assisted by a staff member at a charge not to exceed actual costs. Actual costs for search, review and/or possible redaction of information by a staff member will be based upon the hourly rate of compensation for the lowest paid agency employee qualified to perform the task and multiplied by the actual time utilized to complete the task. Recipient(s) will be charged fifteen cents per page for standard black and white photocopies. For all nonstandard photocopies, actual costs of reproduction will be assessed to recipient(s). Records will be available for inspection and copying by appointment during regular working hours (8:00 a.m. - 5:00 p.m.), Monday through Friday, holidays excluded.
- D. Recipient(s) will deposit cash, check or money order in escrow with the staff accountant prior to receiving material. This estimated amount must be sufficient to cover the estimated cost of the staff member's assistance, copying fees, mailing fees, and/or any associated reproduction fees. Recipient(s) desiring information by mail will be charged actual mailing costs in addition to those costs set forth in subsection C.
- E. Adequate space to inspect requested documents will be provided at no cost, if available. Recipient(s) will be provided requested documents by a staff member but no more than two recipients per organization will be assisted at a time.

Miss. Code Ann., §25-61-1 - 17, as amended.  
(BT Minutes, 9/90; 1/98; 3/2008; 8/2010)

## **Chapter 5**

### **301.0806 UNIVERSITY FOUNDATION/AFFILIATED ENTITY ACTIVITIES**

#### **A. Purpose of Foundations and Similar University Affiliated Entities:**

This policy shall apply to the relationship between Mississippi public universities (“universities”) and university development foundations, research foundations, athletics foundations, alumni associations and all other similar entities affiliated with any of the eight state universities (collectively referred to as the "Foundation/ Affiliated Entities” or “Entities”).

The Board of Trustees (hereinafter “Board” or “IHL”) recognizes that such Entities have played and continue to play an important role in providing



financial and other support for its institutions. This support has assisted the institutions in achieving a level of excellence not possible through state funding and tuition alone. While the Board of Trustees recognizes and appreciates the contributions made to higher education by such foundations and similar entities, the Board of Trustees reaffirms that the goal of the Entities is not to replace necessary support from the state.

The Board of Trustees also acknowledges that the independent nature of the Entities provides flexibility to state universities in fiscal management and responsiveness.

The primary purpose of the foundations and other entities affiliated with the state universities is to engage in raising and managing funds and/or other activities consistent with the mission and priorities of their respective affiliated institutions, as determined by the Institutional Executive Officer (the "IEO") of each. Each Entity is expected to have a mission statement relevant to this purpose and to adopt policies, plans, and budgets designed to achieve that mission.

The Board fully recognizes the importance to the universities and to the Entities of preserving the confidentiality of information related to donors or potential donors. Providing appropriate confidential treatment for information related to donors who have voluntarily provided funds to support the state universities is in the best interests of this state and its citizens. Thus, it is the policy of the Board that its oversight of the relationship between the foundations and the universities shall be accomplished in a manner that will effectively and appropriately preserve and protect the confidentiality of such information to the fullest extent possible which is consistent with the duty of the universities and the IHL to assure that assets intended to benefit the state universities are appropriately and effectively managed and utilized.

## B. Relationship Between Board And Affiliated Entities

As provided in Miss. Const. Art. 8, Section 213-A and Section 31-101-1 of the Miss. Code Ann. of 1972, as amended (the "Miss Code"), the Board of Trustees has governing authority over the eight state universities. Under such authority, the Board of Trustees has responsibility for ensuring that the public interest is served by any individual or organization that is established to support one of the eight state universities.

The Board recognizes that the Entities are not state agencies. The Entities have their own governing authorities. The Board recognizes that it does not have the power to exercise governing control over the Entities.

While the Board of Trustees does not have the power or authority to exercise governing control over the Entities, the Board has the full authority to

establish the terms under which state universities will contract with private organizations. That is particularly necessary with respect to these Entities, since they, or some of them, will solicit and manage funds on behalf of and for the benefit of the state universities, and may use the name, logo, or other insignia identified with the state universities. The Board has the authority to require that any organization that manages funds for any state university, or whose name is associated with a state university under the governance of the Board, must adhere to ethical standards appropriate for such organizations and must properly manage, utilize and account for funds contributed to or for the benefit of the universities.

To ensure the independence of the affiliated Entities, no member or employee of the Board of Trustees of State Institutions of Higher Learning shall hold a voting position on an institutionally affiliated Entity board. The Board of Trustees may allow exceptions to this restriction if needed to comply with NCAA requirements or other proper purposes. Senior administrators of the institution should only participate on the Foundation/ Affiliated Entity's board in an ex-officio capacity.

#### C. Affiliation Agreements Required

Each university must enter into a formal contractual affiliation agreement (the "Affiliation Agreement") with its development foundation(s), research foundation(s), athletics foundation(s), alumni association(s) and any other similar university affiliated Entity in a form submitted to and approved by this Board. The Affiliation Agreement shall be reviewed for approval by the Board of Trustees at least every five (5) years, or whenever the Affiliation Agreement is changed (other than changes for non-substantive, conforming or purely administrative matters).

Each university shall submit all existing or amended Affiliation Agreements to the Board for approval on or before June 30, 2010, in a form that the university believes will fully comply with the requirements of this policy as amended.

In order to appropriately conserve the resources of the universities and the IHL, and to expedite the Board's review of the proposed Affiliation Agreements within the time period set forth above, the IEO's of the universities are expected to direct the resources of their university to work in coordination with the other universities in developing and reviewing templates of proposed affiliation agreements to be used by all similar Entities and universities. Counsel for the Board will be directed to assist in that process. The universities are expected to use those templates insofar as practical, given the acknowledged differences between universities and the Entities, as the basis and pattern for preparing the proposed Affiliation Agreements which are required by this Policy.

#### D. General Requirements of Affiliation Agreements

The Affiliation Agreements for each Entity shall address and comply with the following general requirements and subjects:

1. Outlining the services and benefits the institution and the Entity are to provide to each other and the compensation or other requirements related thereto;
2. Describing the mechanisms by which the institution shall, through its IEO, keep the Entity apprised of the needs and priorities of the institution, and requiring that the Entity, in concert with donor intent or directives, if any, agree to consider and communicate to the university its ability and plans to fund university needs and priorities, as determined by the IEO;
3. Describing whether, and the terms under which, any institutional assets of the institution itself are to be managed by the Entity on behalf of the institution and providing for appropriate rights of inspection and auditing for such funds by the IHL and all appropriate state officials;
4. Delineation of the terms upon which the Entity is authorized to accept gifts, restricted and unrestricted, on behalf of or for the benefit of the institution;
5. Outlining the method under which all gifts, grants, endowments and other assets are accepted and accounted for by the Entity, the methods and procedures to be utilized in determining how the income related to those assets is to be computed and distributed to the universities, and the terms and conditions under which any portion of such assets or the income related thereto may be used for the operating or other expenses of the Entity;
6. Requiring that all gifts made to the university shall be accounted for and ownership maintained by that university, even though they may be managed by the Entity;
7. Requiring that the records of such Entity shall be maintained separately from the records of the respective affiliated institution;
8. Requiring maintenance of financial and accounting records in accordance with Generally Accepted Accounting Principles;
9. Requiring that the Entity must cause to be prepared annual financial statements of the condition of the Entity, which shall include such detail as the IHL Board may from time to time require; The Entity must also engage a Certified Public Accounting (CPA) firm to perform annual audits of the Entity's annual financial statements; The Entity shall submit the audited financial statements, along with a list of Entity officers, directors or trustees, not later than five months following the completion of the Entity's fiscal year, to the affiliated university's IEO and to IHL; However, the annual audited financial statements of some of the Entities will be required for inclusion in the State of Mississippi's Comprehensive Annual Financial Report (CAFR); Those Entities which will be required to

submit annual audited financial statements for inclusion in the CAFR, as determined by the IHL Board's Deputy Commissioner of Finance and Administration and the external auditing firm hired to perform the annual IHL system audit, must submit annual audited financial statements to the affiliated university's IEO and to the IHL, along with a list of Entity officers, directors or trustees, by October 15 of each year; The IHL Board's Deputy Commissioner of Finance and Administration shall notify each such Entity of the applicability of the October 15 deadline to such Entity as far in advance of the deadline as possible each year; The CPA firm to be utilized by the Entity must be approved by the IHL Board and all requests for approval of the CPA firm must be submitted to the IHL Board for approval not later than three months prior to the end of the Entity's fiscal year for which the audit will be conducted; Unless approval is specifically granted for multiple years, approval of a firm by the IHL Board for one year does not constitute approval for other years, and requests for approval of the CPA firm must be submitted on an annual basis; However, at the request of the Entity, the IEO of a university, with the approval of the IHL Board, may grant a request of the Entity to waive the requirement of an annual audit by a CPA firm on a showing of adequate grounds, such as a showing that the assets of the Entity are so limited as to make the expense of engaging a CPA firm to perform an audit financially burdensome to the Entity and unnecessary; Such a waiver may be conditioned upon such other review of the financial records of the Entity in lieu of an audit as the University and the IHL may deem feasible; Such a request for a waiver must be accompanied by (a) the most recent annual audited financial statements of the Entity (if any such statements exist), (b) the financial statements of the most recently completed fiscal year, (c) a written description of how the Entity anticipates that the year-end financial statements for the current year will differ from the financial statements as of the end of the most recently completed fiscal year, and (d) a good faith estimate of the cost of engaging an auditor with respect to the statements; The granting of any request to waive the requirement of an annual audit by a CPA firm approved by the IHL is within the sole discretion of the university and the IHL Board; Any waiver of the audit requirement will apply only for one year, and any request to waive the requirement for the next year should be submitted as outlined above;

10. Requiring that the Entity only accept or solicit gifts for the benefit of the university that are consistent with the university's mission, goals or objectives;
11. Requiring that the Entity manage all funds in its control in a fiscally sound and prudent manner;
12. Requiring that the Entity establish and maintain a conflict-of-interest policy that complies with all requirements of Miss. Code Ann. §79-11-269 (1972) as amended, entitled "Conflict of interest Transaction";
13. Requiring that no form of additional compensation for an IEO or any IHL system office employee be underwritten or increased by the Entity without

the prior approval of the Board; The request for approval shall come through the Commissioner to the IHL Board; As to other university employees, the Affiliation Agreement will provide that no form of additional compensation may be provided or paid by the Entity without the prior approval by the IEO; All such approvals by the IEO must be reported to the Board of Trustees at its next official meeting; This provision does not apply to transfers from the Entity to the supported university for items such as professorships, chairs, and other programmatic support that are paid directly to the university and included in its annual budget;

14. Requiring the Entity to submit to the IHL an annual report providing a detailed list of supplemental compensation provided to administrators, faculty, athletic staff, and other employees; provided however that the Affiliation Agreement may provide for appropriate exceptions for such compensation made by the institution out of funds routinely provided to the institution to be included in its budget; and,
15. Requiring compliance with all state and federal laws applicable to such organizations.
16. Establishing appropriate maximum limits on the period of time for which the Entity shall enter into contracts for professional, advisory, or other personal services.
17. Requiring that the provisions of the affiliation agreement shall apply to any and all entities owned or controlled by the affiliated Entity, with the exception of a special purpose entity created for the sole and specific purpose of utilization as a financing vehicle for the private financing of university auxiliary facilities by a private developer using the alternate dual-phase design-build privately financed construction method, as specially authorized by Miss. Code Ann. Section 37-101-41, et seq. (1972), as amended. If the use/purpose of any such special purpose entity ever changes, the special purpose entity would then be required to comply with any and all provisions of the affiliation agreement between the university and the Entity which owns or controls the special purpose entity.

#### E. Affiliation Agreements Shall Require Notice of Certain Events

In addition to the foregoing general requirements, the Affiliation Agreement shall contain provisions requiring that the IHL be notified of certain events or actions that may affect the operations, reputation, legal status, and assets of any entity or any university. The Affiliation Agreement shall require that the chief executive officer of the Entity and its other governing authorities will immediately notify the IEO and the IHL, in writing, if any of the following events (hereinafter "Reportable Events") occur:

1. The Entity has materially breached any of its contractual obligations under the Affiliation Agreement;

2. The Entity has materially failed to properly receive, apply, manage or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds;
3. The Entity has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations;
4. There has been a failure by the Entity or any of its officers and directors to comply with any conflict of interest requirements created by applicable state or federal law or by the governing documents or procedures of the Entity;
5. Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on the Entity or upon its status as a tax exempt organization; or
6. The Entity has contracted with or entered into any business or pecuniary relationship with any of its board members, other than a full time employee of the Entity, or any Entity controlled directly or indirectly by the board member, which would reasonably be expected to provide for payment or benefits to that person exceeding the value of \$50,000 in any calendar year; The previous sentence creates a duty for the Entity to report any such transaction but does not suggest or imply that all such transactions are either prohibited or permitted.

The Affiliation Agreement shall require that the chief executive officer of the Entity shall submit to the IEO of the supported university and the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that the Entity has examined its donor records and business transactions occurring during its fiscal year ending within the prior calendar year, and that to the best of its knowledge, there is no evidence that any Reportable Events occurred, other than those which have been duly reported to the IEO and the IHL as required above. The chief executive officer of each Entity shall re-affirm that, in the event he/she becomes aware of any such Reportable Events, the chief executive officer will immediately notify, in writing, the IEO of the university.

F. Affiliation Agreements must Require Entity to Provide Certain Additional Information to IEO upon Request

In addition to the foregoing general requirements, the Affiliation Agreement of each Entity will contain provisions requiring that the Entity furnish to the IEO of the corresponding university, or such person as the IEO may designate, any and all information relating to the operation or management of the Entity or any funds contributed to, received by, expended by, or managed by the Entity.

It is the policy of the Board that to the extent that information is inspected, reviewed or received by the IEO or his designees with respect to the identity

of donors who have expressly stated they wish to remain anonymous, or with respect to any information relating to the identification, cultivation and solicitation of donors, or with respect to personal information relating to a donor or his/her family business, such information shall be treated as confidential by the IEO and any designee who may acquire such information. The IEO is expected to take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the circumstances.

The IEO shall promptly notify the Board and Commissioner of Higher Education if the Entity refuses or fails to produce any information requested by the IEO.

G. Affiliation Agreement must Provide for Right of Board to Require Information from Entity or to Examine Records of Entity

Ordinarily, the Board will not request information from any Entity and will allow the IEO to oversee the compliance by the Entity with the Affiliation Agreement and to determine that funds are being appropriately received, managed, and expended. In some circumstances, however, the Board may determine it to be necessary to secure additional information from the Entity or to review appropriate records of the Entity. The Entities hold funds that are intended to benefit the institutions of the state, and the Board has an interest in the proper administration of those funds. Thus, the Affiliation Agreement will provide that the Board may require the Entity to provide information or allow inspection of its records as required by the Board to determine that the Entity is in compliance with the Affiliation Agreement and that the funds held for the institution or for its benefit are appropriately utilized and protected. No such request for information will be made by individual Board members to any Entity or to any IEO.

As a matter of general policy, the Board will attempt, when appropriate, to resolve any issues or concerns about the activities of any Entity informally. Examples of such informal methods include responses by the Entities to requests from the auditors employed by the Board or a report from an accounting firm approved by the Board to review records related to the matters at issue. The decision of any entity as to whether and how to comply with such informal requests is within the discretion of the governing authorities of the entities. The Board anticipates that, normally, any questions related to the Entities can be resolved through such informal procedures.

The Affiliation Agreement shall provide, however, that the Board may determine by appropriate action, at a duly called meeting of the Board, that informal measures are or will be untimely, insufficient, or inappropriate to secure information necessary to allow the Board to determine that the Entity is appropriately complying with the Affiliation Agreement and that funds

intended to be used for the benefit of the institution are appropriately maintained and expended. The Affiliation Agreement will provide that, if the Board makes such a finding, the Entity will permit an audit, inspection or review of the financial and other records of the entity by persons selected by the Board, which persons shall have the power to determine the appropriate scope of the investigation and the records to be examined, and that the Entity will fully cooperate with any such inquiries.

As noted above, it is the policy of the Board that it will not unnecessarily disclose or disseminate any information relating to the Entities, and in particular, any information related to donors to the Entity. In some circumstances, however, such as those involving alleged misuse or misappropriation of funds, appropriately limited disclosure of information related to donors may be necessary in order to conduct the investigation and to recover the funds, or to allow prosecution with respect to any misappropriation of funds. Thus, the Affiliation Agreement must specifically recognize that the final determination as to the appropriate extent of any disclosure or other use of the information is in the discretion of the Board. Any decision to release any information that would identify any particular donor shall be made by the Board. No individual Board member or employee of the IHL will release such information without authorization from the Board.

#### H. Required Termination Provisions to Be Included in Affiliation Agreement

The Affiliation Agreement will provide that the Affiliation Agreement may be terminated by the IEO, with the prior approval of the IHL, for cause with no notice or without cause upon thirty days notice. Upon termination, (1) the Entity shall cease to use and shall not assign or delegate the authority to use the respective university's name or registered marks or logos to any person or entity without the written approval of the IEO, (2) the Entity shall remit any and all unrestricted funds held for the benefit of the university to such entity as designated in writing by the IEO on behalf of the university, (3) the Entity shall work in concert with its donors, to the extent practicable and allowed by law, to move any restricted funds held for the benefit of the university to such entity as designated in writing by the IEO on behalf of the university, (4) the Entity shall work in concert with persons or entities with which it had contractual relations to the extent practical and allowed by law, to assign any contracts to such entity as designated by the university IEO; and (5) the Entity shall work in concert with the university to provide the university or its designee with records and materials of the Entity as are necessary to continue the business and/or wind up the affairs of the Entity.

Because an Entity may hold assets intended to benefit the universities, the Affiliation Agreement will provide that the Entity will have no right to



terminate the Affiliation Agreement without the consent of the IEO and the Board.

#### I. Restructuring Relationship in Event of Irreconcilable Differences

The Board expects there to exist a cooperative relationship between the Entities and the universities. The Board is aware of situations in other states where foundations have attempted to use the leverage provided by control of funds contributed for the benefit of the universities to require the university to take action desired by the foundation. Exercise of such power would interfere with the power of the IEO's and, ultimately, the power of the Board. To provide for the eventuality in which it appears that the IEO and the Entity have irreconcilable differences that interfere with the Entity serving the purposes for which it is intended, the Affiliation Agreement must provide for some mechanism to allow a resumption of normal relationships to benefit the university. In such a case, it would be detrimental to the university to allow the Entity to simply terminate the relationship – since it may hold funds and other assets intended for the benefit of the university. Thus the Affiliation Agreement shall provide for a mechanism to deal with that possibility that will effectively accomplish the purpose of insuring that the Entity's goals remain appropriately aligned with those of the university.

The Affiliation Agreement must therefore provide for such a mechanism. The universities are expected to finalize the relationship with the Entities to accomplish the purpose on or before December 31, 2010.

Any university, after consultation with an affiliated Entity, may propose, on or before December 31, 2009, to include an appropriate plan to accomplish this purpose in the Affiliation Agreement for that Entity.

For example, a university may choose to propose a mechanism to allow the Entity to restructure its governing board. As an illustration of such a mechanism, such a plan might provide as follows:

In the event that the IEO notifies the IHL that the relationship between the IEO and the Entity's governing authorities is detrimental to the well being of the university, then IHL shall attempt to reconcile the parties. However, if the IHL determines that it is in the best interests of the university to substitute new governing authorities of the Entity, and unless the matters are resolved, the IHL Board may direct, in its sole discretion, that at the expiration of a 90 days notice period, the terms of office of the then existing board of directors of the affiliated Entity (or the persons serving that role in governance of the Entity, regardless of title) shall be deemed to have expired. Those persons shall be replaced by a nine member board selected by the following persons: 1) one member appointed by the mayor of the municipality in which the subject university is located or to which it is nearest, 2) one member appointed

by the subject university's IEO, 3) one member appointed by the subject university's chief academic officer, 4) one member appointed by the president of the board of supervisors of the county in which the subject university is located, 5) one member appointed by the governor, 6) one member appointed by the Commissioner of Higher Education, 7) such other person, as the Affiliation Agreement may provide, who is affiliated with another Entity associated with the affected university; 8) one member appointed by the current president of the subject university's student body, and 9) one member appointed by the most recent past president of the subject university's student body.

However, each university and Entity may choose to agree upon some different arrangement which would accomplish the same end. Because of the differences in the various Entities, the types and amounts of assets held by the Entities, the debt obligations of some Entities, ongoing contractual obligations, and other similar factors, the Board will address such proposals on an individual basis to determine their effectiveness, feasibility and practicality. Any such proposal must be submitted with all of the information necessary to fully evaluate the proposal. The exact language of all documents required to implement such a proposal shall be included in the submission to the Board.

Any such proposals will be considered by the Board and acted upon before March 31, 2010. Failure to submit sufficient information to allow a full understanding as to the effectiveness and practicality of such a plan will prevent the Board from considering the proposal. In the absence of approval by the Board of some other alternative provisions to accomplish such purpose by March 31, 2010, or any extension granted by the Board, it is expected that each university will enter into a contract with all related Entities under terms similar to those in the illustration set out above.

If the Entity is a university research foundation formed pursuant to Miss. Code Ann. Section 37-147-15 (1972), as amended, the new board of directors shall be appointed by the subject university's IEO, in accordance with applicable state law.

(BT Minutes, 9/93; 1/98; 3/2005; 8/2006; 10/2009; 9/2010)

## **Title 8: Education – Institutions of Higher Learning**

### **Part 7: Finance & Business**

#### **Chapter 1**

##### **703.03 PUBLIC DISCLOSURE**

Each Institutional Executive Officer shall ensure that the public is notified that a portion of student tuition and fee charges is used for scholarships, tuition waivers, and other operating costs and that the notification is clearly and prominently displayed in official publications such as the catalog and/or application for admission.

(BT Minutes, 3/99)

## **Title 8: Education – Institutions of Higher Learning**

### **Part 8: Personnel**

#### **Chapter 1**

##### **801.01 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND AFFIRMATIVE ACTION STATEMENT**

The Board shall administer its policies and programs without regard for race, age, sex, religion, national origin, handicapped, or veteran status. The Board has been and remains committed to the maintenance of equal opportunity for all people. Affirmative Action shall be taken to ensure that the Board does not discriminate in any aspect of employment including advertisement, recruitment, selection, promotion, demotion, transfer, compensation, and selection for training.

Students are also assured that access to educational opportunities, financial assistance, and social and recreational programs will be free from discrimination.

(BT Minutes, 9/90; 1/98)

##### **801.02 NONDISCRIMINATION OF DISABLED INDIVIDUALS**

No otherwise qualified individual with a disability as defined in [29 USCS Section 706(8)], shall, solely by reason of his\her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Institutions governed by the Board of Trustees of Institutions of Higher Learning shall promulgate such directives and regulations as may be necessary to carry out this policy.

(BT Minutes, 6/91; 1/98)

##### **801.03 EMPLOYMENT OF RELATIVES**

- A. No individual shall be employed in a department or unit under the supervision of a relative who has or may have a direct effect on the individual's progress, performance or welfare.
- B. For the purpose of this policy, relatives are defined as husbands, wives, parents and children, brothers, sisters, and any in-laws of any of the foregoing within the third degree.

- C. This section does not apply to any employee who shall have been in said Department or institution prior to the time his or her kinsman, within the third degree, became the head of said department or institution or member of the board of trustees.

Miss. Code Ann., §25-1-53, as amended

- D. An employee who falls within (C) shall have all matters dealing with the individual's progress, performance, welfare, assignment, salary, tenure or promotion decided by the next highest administrative officer upon approval of the Board.

(BT Minutes, 10/90; 1/98)

#### **801.05 FAIR LABOR STANDARDS ACT**

The policy of the Board requires that the institutions under its direction abide by the provisions of the Fair Labor Standards Act which address the definition of exempt and non-exempt personnel and the handling of overtime hours worked by non-exempt personnel. Provisions of the Fair Labor Standards Act shall be on file within each institution's personnel department.

(BT Minutes, 9/90; 1/98; 11/2005)

#### **801.06 HIRING PROCEDURES**

The Board requires that each institution develop, maintain, and follow written employment and/or hiring procedures for both faculty and staff. Such procedures shall conform to all applicable state and federal laws and shall be on file within each institution's human resources department.

(BT Minutes, 9/90; 1/98; 11/2005; 3/2008)

### **Chapter 2**

#### **801.14 POLICY AGAINST SEXUAL HARASSMENT**

IHL seeks to foster an atmosphere of respect and dignity for all members of the IHL community. To this end, IHL is committed to maintaining a work and learning environment free of sexual harassment. It shall be the policy of this Board to prevent sexual harassment and that allegations of sexual harassment at

its Board offices and the governed institutions are promptly and appropriately addressed. Accordingly, the IHL Board offices and each of the governed institutions shall maintain and disseminate or otherwise publicize, a sexual harassment policy and procedure.

(BT Minutes, 11/2001; 11/2005)

## **Title 8: Education – Institutions of Higher Learning**

### **Part 11: Legal Matters**

#### **Chapter 1**

#### **1109 Rules for Oral Proceedings**

The Board hereby adopts the following Model Rule on Rulemaking Oral Proceedings which applies to all oral proceedings held before the Board for the purpose of providing the public with an opportunity to make oral presentations on proposed new policies and bylaws and any amendments to the Board's *Policies and Bylaws* pursuant to the Administrative Procedures Law.

1. Scope  
These rules apply to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations on proposed new rules and amendments to rules before the Board pursuant to the Administrative Procedures Law.
2. When an Oral Proceeding will be Scheduled on a Proposed Rule  
Where an oral proceeding has not previously been held or scheduled, the Board will conduct an oral proceeding on a proposed rule or amendment if requested by a political subdivision, an agency or ten (10) persons in writing within twenty (20) days after the filing of the notice of the proposed rule.
3. Format of Request
  - a. Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8-1/2 inches by 11 inches).
  - b. The request may be in the form of a letter addressed to the Board or as a pleading filed with a court.
  - c. Each request must include the full name, telephone number, and mailing address of the requestor(s).
  - d. All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request.
4. Notification of Oral Proceeding  
The date, time and place of all oral proceedings shall be filed with the Secretary of State's office and mailed to each requestor. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of this information with the Secretary of State.

5. Presiding Officer

The Agency Head or designee, who is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.

6. Public Presentations and Participation

- a. Public participation shall be permitted at oral proceedings in accordance with the following sections.
- b. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule.
- c. Persons wishing to make oral presentations at such a proceeding shall notify the Board at least three business days prior to the proceeding and indicate the general subject of their presentations. The presiding officer in his or her discretion may allow individuals to participate that have not previously contacted the Board.
- d. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.
- e. The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.
- f. Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing. Written materials may, however, be submitted at the oral proceeding.
- g. There shall be no interruption of a participant who has been given the floor by the presiding officer, except that the presiding officer may in his or her discretion interrupt or end the participant's time where the orderly conduct of the proceeding so requires.

7. Conduct of Oral Proceeding

a. Presiding Officer

The presiding officer shall have authority to conduct the proceeding in his or her discretion for the orderly conduct of the proceeding. The presiding officer shall (i) call proceeding to order; (ii) give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons provided by the Board for the proposed rule; (iii) call on those individuals who have contacted the Board about speaking on or against the proposed rule; (iv) allow for rebuttal statements following all participants' comments; (v) adjourn the proceeding.

b. Questions

The presiding officer, where time permits and to facilitate the exchange of information, may open the floor to questions or general discussion. The



presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

c. Physical and Documentary Submissions

Physical and Documentary Submissions. Submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the Board, part of the rulemaking record, and are subject to the Board's public records request procedure.

d. Recording

The presiding officer may record oral proceedings by stenographic or electronic means.

(BT Minutes, 9/2006)

## Chapter 2

### 1110 Requests for Declaratory Opinions

1. Scope of Rules

These sections set forth the Board's rules governing the form and content of requests for declaratory opinions and the Board's procedures regarding the requests as required by Mississippi Code § 25-43-2.103.

2. Persons Who May Request Declaratory Opinions

- a. Any person with a substantial interest in the subject matter may make a request to the Board for a declaratory opinion by following the specified procedures.
- b. "Substantial interest in the subject matter" as used in this policy means: that a party is directly affected by the Board's administration of the laws within the Board's primary jurisdiction.
- c. "Primary jurisdiction of the Agency" as used in this policy means the Board has a constitutional or statutory grant of authority in the subject matter at issue.

3. Subjects Which May Be Addressed In Declaratory Opinions

- a. The Board will issue declaratory opinions regarding the applicability to specified facts of:
  1. a statute administered or enforceable by the Board,
  2. a rule promulgated by the Board, or
  - an order issued by the Board.

4. Circumstances In which Declaratory Opinions Will Not Be Issued

- a. The Board may, for good cause, refuse to issue a declaratory opinion. Without limiting the generality of the foregoing, the circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:
  1. the matter is outside the primary jurisdiction of the Board;
  2. lack of clarity concerning the question presented;
  3. there is pending or anticipated litigation, administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;
  4. the statute, rule, or order on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
  5. the facts presented in the request are not sufficient to answer the question presented;
  6. the request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;
  7. the request seeks to resolve issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the rule, statute or order on which a declaratory opinion is sought;
  8. no controversy exists concerning the issue as the requestor is not faced with existing facts or those certain to arise which raise a question concerning the application of the statute, rule, or order;
  9. the question presented by the request concerns the legal validity of a statute, rule or order;
  10. the request is not based upon facts calculated to aid in the planning of future conduct, but is, instead, based on past conduct in an effort to establish the effect of that conduct;
  11. no clear answer is determinable;
  12. the question presented by the request involves the application of a criminal statute or sets forth facts which may constitute a crime;
  13. the answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
  14. the question is currently the subject of an Attorney General's opinion request; or
  15. the question has been answered by an Attorney General's opinion.
- b. A declaratory opinion will not be issued where a similar request is pending before this agency, or any other agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law.
- c. A declaratory opinion will not be issued if it may adversely affect the interests of the State, the Board, or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise.

- d. Where a request for a declaratory opinion involves a question of law, the Board may refer the matter to the State Attorney General.
  - e. A declaratory opinion will not be issued where the question involves eligibility for a license, permit, certificate or other approval by the Board or some other agency and there is a statutory or regulatory application process by which eligibility for said license, permit, or certificate or other approval may be determined.
5. Form of the Request for a Declaratory Opinion
- a. Written Requests Required. Each request must be printed, typewritten or in legible handwriting. Each request must be submitted on standard business letter-size paper (8 1/2" by 11"). Requests may be in the form of a letter addressed to the Board or in the form of a pleading as might be addressed to a court.
  - b. Where to Send Requests. All requests must be mailed or delivered to the Board at 3825 Ridgewood Road, Jackson, Mississippi 39211. The request and its envelope shall clearly state that it is a request for a declaratory opinion. Oral and telephone requests are unacceptable.
  - c. Name, Address and Signature of Requestor. Each request must include the full name, telephone number, and mailing address of the requestor. All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request. The signing party shall attest that the request complies with the requirements set forth in these rules, including but not limited to a full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any agency, administrative or judicial tribunal.
  - d. Single transaction. A request must be limited to a single transaction or occurrence.
  - e. Question Presented. Each request must contain the following:
    - 1. a clear identification of the statute or rule at issue;
    - 2. the question for the declaratory opinion;
    - 3. a clear and concise statement of all facts relevant to the question presented;
    - 4. the identify of all other known persons involved in or impacted by the factual situation causing the request including their relationship to the facts, name, mailing address and telephone number; and
    - 5. a statement sufficient to show that the person seeking relief has a substantial interest in the subject matter.
  - f. The terms of the proposed opinion suggested by the requestor may be submitted with the request or may be requested by the agency;
  - g. Memorandum of Authorities. A request may contain an argument by the requestor in support of the terms of the proposed opinion suggested by the requestor. The argument may be submitted in the form of a memorandum of authorities, containing a full discussion of the reasons and any legal authorities, in support of such position of the requestor. The agency may

request that the argument and memorandum of authorities be submitted by any interested party.

6. Time for Agency's Response
  - a. Agency's Response. Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Board shall, in writing:
    1. issue an opinion declaring the applicability of the specified statute, rule, or order to the specified circumstances;
    2. decline to issue a declaratory opinion, stating the reasons for its action; or
    3. agree to issue a declaratory opinion or a written statement declining to issue a declaratory opinion, by a specified time but no later than ninety (90) days after receipt of the written request.
  - b. When Period Begins. The forty-five (45) day period shall begin on the first State of Mississippi business day that the request is received by the Board.
  - c. Opinion Not Final for Sixty Days. A declaratory opinion shall not become final until the expiration of sixty (60) days after the issuance of the opinion. Prior to the expiration of sixty (60) days, the Board may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed to meet the requirements of these rules or that the opinion issued contains a legal or factual error.
7. Procedure after Request for Declaratory Opinion Received
  - a. Notice by Agency. The Board may give notice to any person that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from persons other than the requestor.
  - b. Notice by Requestor. The requestor, or his attorney, shall append to the request for a declaratory opinion a listing of all persons, with addresses, known to the requestor who may have an interest in the declaratory opinion sought to be issued, and shall mail a copy of the request to all such persons. The requestor or his attorney shall certify that a copy of the request was mailed to all such persons together with this statement: "Should you wish to participate in the proceedings of this request, or receive notice of such proceedings or the declaratory opinion issued as a result of this request, you should contact the Board within twenty days of the date of this request."
8. Hearings at the Discretion of the Agency
  - a. Provision for Hearing. If the Board in its sole discretion deems a hearing necessary or helpful in determining any issue concerning a request for a declaratory opinion, the Board may schedule such a hearing. Notice of the hearing shall be given to all interested parties unless waived. Notice

mailed by first class mail 7 calendar days prior to the hearing shall be deemed appropriate.

- b. Proceedings at the Hearing. The procedure for conducting a hearing, including but not limited to the manner of presentation, the time for presentation, and whether and how evidence may be taken, shall be within the discretion of the Board.
- c. Persons Appearing at the Hearing. The Board shall allow the requestor to participate in any hearing. The Board may allow any other persons or entities to participate in the hearing.

9. Public Availability of Requests and Declaratory Opinions.

Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying at the expense of the viewer during normal business hours. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

(BT Minutes, 9/2006)