

By: Representative Frierson

To: Education

HOUSE BILL NO. 691

1 AN ACT TO AMEND THE SCHOOL EMPLOYMENT PROCEDURES LAW OF 1977;
2 TO AMEND SECTION 37-9-101, MISSISSIPPI CODE OF 1972, TO REQUIRE
3 ALL DECISIONS OF NONREEMPLOYMENT OF SCHOOL EMPLOYEES TO BE BASED
4 ON GOOD CAUSE WITH RESPECT TO EMPLOYMENT; TO AMEND SECTION
5 37-9-103, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE SCHOOL
6 EMPLOYMENT PROCEDURES LAW SHALL APPLY TO ALL PERSONNEL EMPLOYED BY
7 A SCHOOL DISTRICT; TO AMEND SECTION 37-9-105, MISSISSIPPI CODE OF
8 1972, TO REQUIRE THE WRITTEN NOTICE OF A PROPOSED NONRENEWAL TO
9 STATE THE SPECIFIC REASONS FOR NONRENEWAL AND TO INCLUDE A LIST OF
10 WITNESSES AND EVIDENCE; TO AMEND SECTION 37-9-109, MISSISSIPPI
11 CODE OF 1972, TO PRESCRIBE THE RIGHTS OF EMPLOYEES AT HEARINGS; TO
12 AMEND SECTION 37-9-111, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
13 THE APPOINTMENT OF A HEARING OFFICER AT ANY SUCH HEARING ON THE
14 NONREEMPLOYMENT OF A SCHOOL EMPLOYEE, TO PROVIDE FOR THE
15 PRESENTATION OF EVIDENCE AT THE HEARING, AND TO PRESCRIBE THE
16 BURDEN OF PROOF AT THE HEARING FOR UPHOLDING THE PROPOSED
17 NONREEMPLOYMENT; TO AMEND SECTION 37-9-113, MISSISSIPPI CODE OF
18 1972, TO ESTABLISH THE STANDARD OF JUDICIAL REVIEW OF THE SCHOOL
19 BOARD ACTION ON APPEAL IN SUCH CASES; AND FOR RELATED PURPOSES.
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

21
22 SECTION 1. Section 37-9-101, Mississippi Code of 1972, is
23 amended as follows:

24 37-9-101. Sections 37-9-101 through 37-9-113 shall be known
25 as and cited as the "School Employment Procedures Law of 1977."

26 It is the intent of the Legislature to: provide procedural
27 and substantive due process of law for nonreemployment and to
28 require that all decisions of nonreemployment be based upon just
29 cause with respect to employment in the school district; establish
30 procedures for providing public school employees with notice of
31 the reasons for not offering an employee a renewal of his
32 contract; provide an opportunity for the employee to present
33 matters in extenuation or exculpation and to provide the employee
34 with an opportunity for a hearing in order to enable the board to
35 determine whether the recommendation of nonemployment is a proper

36 employment decision and not contrary to law; and not to establish
37 a system of tenure * * *.

38 SECTION 2. Section 37-9-103, Mississippi Code of 1972, is
39 amended as follows:

40 37-9-103. As used in Sections 37-9-101 through 37-9-113, the
41 word "employee" shall include any teacher, principal,
42 superintendent elected by a board of trustees or other * * *
43 personnel employed by any public school district of this
44 state * * *.

45 SECTION 3. Section 37-9-105, Mississippi Code of 1972, is
46 amended as follows:

47 37-9-105. In the event that a recommendation is made by the
48 superintendent of a school district not to offer an employee a
49 renewal contract for a successive year, written notice of the
50 proposed nonrenewal stating the specific reasons for the proposed
51 nonrenewal and including a list of witnesses and/or documentary
52 evidence substantiating such reasons shall be given within seven
53 (7) days of the date when the recommendation to reemploy would
54 have been made under * * * Sections 37-9-15 and 37-9-17, * * * but
55 in any event, no later than the following:

56 (a) If the employee is a superintendent, the school
57 district shall give notice of nonreemployment on or before
58 February 1;

59 (b) If the employee is a principal, the school district
60 shall give notice of nonreemployment on or before March 1;

61 (c) If the employee is a teacher or other professional
62 educator, the school district shall give notice of nonreemployment
63 on or before April 8.

64 * * *

65 SECTION 4. Section 37-9-109, Mississippi Code of 1972, is
66 amended as follows:

67 37-9-109. An employee who has received notice under Section
68 37-9-105, upon written request, shall be entitled to:

69 (a) Written notice of the specific reasons for
70 nonreemployment, together with a summary of the factual basis
71 therefor, a list of witnesses, and a copy of any and all
72 documentary evidence substantiating such reasons, which notice

73 shall be given at least ten (10) days prior to any hearing;

74 (b) An opportunity for a hearing at which to present
75 matters relevant to the reasons given for the proposed
76 nonreemployment and at which the decision will be based solely
77 upon the evidence presented specifically addressing the reasons
78 presented in the notice made under Section 37-9-105, and any
79 reasons alleged by the employee to be the reason for
80 nonreemployment;

81 (c) Receive a fair and impartial hearing before the
82 board or hearing officer;

83 (d) Be represented by legal counsel or a representative
84 of the employee's choosing, at his own expense.

85 If the employee does not request a hearing, the decision of
86 the board with regard to the reemployment of the employee shall be
87 final.

88 SECTION 5. Section 37-9-111, Mississippi Code of 1972, is
89 amended as follows:

90 37-9-111. (1) The school board, upon request for a hearing
91 from an employee under the terms of Sections 37-9-101 through
92 37-9-113, shall set the time, place and date of such hearing and
93 notify the employee in writing of same. The date shall be set not
94 sooner than five (5) days nor later than thirty (30) days from the
95 date of the request, unless otherwise agreed. The hearing may be
96 held before the board or before a hearing officer appointed for
97 such purpose by the board, either from among its own
98 membership * * * or some other qualified and impartial person who
99 is not an employee, school board member or school board attorney
100 of a public school district.

101 (2) The employee shall be afforded an opportunity to present
102 matters at the hearing relevant to the reasons given for the
103 proposed nonreemployment * * * and to the reasons the employee
104 alleges to be the reasons for nonreemployment. The employee also
105 shall be afforded an opportunity to be represented by counsel or a

106 representative of the employee's choice at such a hearing. Such
107 hearing shall be conducted in such a manner as to afford the
108 employee a fair and reasonable opportunity to present witnesses
109 and other evidence pertinent to the issues in his behalf and to
110 cross-examine witnesses against the employee. * * *

111 (3) The board shall cause to be made stenographic notes of
112 the proceedings. In the event of a judicial appeal of the board's
113 decision, the entire expense of the transcript and notes shall be
114 assessed as court costs.

115 (4) The board shall review the matters presented before it,
116 or, if the hearing is conducted by a hearing officer, the record
117 of the proceedings and, based solely thereon, conclude whether the
118 proposed nonreemployment * * * is a proper employment decision,
119 for just cause and based solely upon the evidence presented
120 specifically addressing the reasons presented in the notice made
121 under Section 37-9-105. The board shall notify the employee in
122 writing of its final decision and reasons therefor. Such
123 notification shall be within thirty (30) days of the conclusion of
124 the hearing if the hearing is conducted by a hearing officer and
125 within ten (10) days of the conclusion of the hearing if the
126 hearing is initially conducted by the board. If the matter is
127 heard before a hearing officer, the board also shall grant the
128 employee the opportunity to appear before the board to present a
129 statement in his own behalf, either in person or by his attorney,
130 prior to a final decision by the board.

131 (5) In conducting a hearing, the board or hearing officer
132 shall not be bound by common law or by statutory rules of evidence
133 or by technical or formal rules of procedure except as provided in
134 Sections 37-9-101 through 37-9-113, but may conduct such hearing
135 in such manner as best to ascertain the rights of the
136 parties; * * * however, hearsay evidence, if admitted, shall not
137 be the sole basis for the determination of facts by the board or
138 hearing officer. The burden of proof shall be on the employer to

139 provide evidence to substantiate the specific reasons for
140 nonreemployment presented in the notice made under Section
141 37-9-105.

142 (6) In the event the decision of the school board is in
143 favor of the employee, the board shall have the authority to order
144 the execution of a contract with the employee for an additional
145 period of one (1) year.

146 (7) For purposes of conducting hearings under Sections
147 37-9-101 through 37-9-113, the board or hearing officer shall have
148 the authority to issue subpoenas for witnesses and to compel their
149 attendance and the giving of evidence. Any expense connected
150 therewith shall be borne by the party requesting the subpoenas,
151 which shall include an appearance fee for each witness so
152 subpoenaed not inconsistent with state laws governing payments to
153 witnesses. In the event it is necessary to enforce or to quash a
154 subpoena issued to compel the attendance of a witness, application
155 shall be made with the chancery court of the county where the
156 school board is located.

157 SECTION 6. Section 37-9-113, Mississippi Code of 1972, is
158 amended as follows:

159 37-9-113. (1) Any employee aggrieved by a final decision of
160 the school board is entitled to judicial review the decision,
161 as * * * provided for in this section.

162 (2) An appeal may be taken by such employee to the chancery
163 court of the judicial district in which the school district is
164 located, by filing a petition with the clerk of that court and
165 executing and filing bond payable to the school board with
166 sufficient sureties, in the penalty of not less than Two Hundred
167 Dollars (\$200.00), conditioned upon the payment of all of the
168 costs of appeal, within twenty (20) days of the receipt of the
169 final decision of the board.

170 (3) The scope of review of the chancery court in such cases
171 shall be limited to a review of the record made before the school

172 board or hearing officer to determine if the action of the school
173 board is unlawful for the reason that it was:

174 (a) Not supported by a preponderance of the evidence;

175 (b) Arbitrary or capricious; or

176 (c) In violation of some statutory or constitutional
177 right of the employee.

178 * * *

179 (4) Any party aggrieved by action of the chancery court may
180 appeal to the Supreme Court in the manner provided by law.

181 SECTION 7. This act shall take effect and be in force from
182 and after July 1, 1999.