

By: Blackmon

To: Education

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 810

1 AN ACT TO PROVIDE FOR ACCOUNTABILITY IN THE TEACHING  
2 PROFESSION; TO PROVIDE A MECHANISM FOR THE NONRENEWAL OF LICENSED  
3 EDUCATION EMPLOYEES IN A TIMELY, COST-EFFICIENT AND FAIR MANNER;  
4 TO PROVIDE UNIFORM STANDARDS FOR EMPLOYMENT PRACTICES; TO CORRECT  
5 DEFICIENCIES IN CURRENT STATUTORY PROVISIONS RELATED TO  
6 NONREEMPLOYMENT OF LICENSED EMPLOYEES; TO AMEND SECTION 37-9-101,  
7 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ALL DECISIONS OF  
8 NONREEMPLOYMENT OF SCHOOL EMPLOYEES SHALL BE BASED ON VALID  
9 EDUCATIONAL REASONS WITH RESPECT TO EMPLOYMENT; TO AMEND SECTION  
10 37-9-103, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE SCHOOL  
11 EMPLOYMENT PROCEDURES LAW SHALL APPLY TO ALL LICENSED PERSONNEL  
12 EMPLOYED BY A SCHOOL DISTRICT; TO CREATE NEW SECTION 37-9-104,  
13 MISSISSIPPI CODE OF 1972, TO REQUIRE NOTICE OF A PRELIMINARY  
14 DETERMINATION BY A SCHOOL BOARD NOT TO RENEW A SUPERINTENDENT'S  
15 CONTRACT TO BE PROVIDED BY FEBRUARY 1; TO AMEND SECTION 37-9-105,  
16 MISSISSIPPI CODE OF 1972, TO REQUIRE THAT THE WRITTEN NOTICE OF  
17 PROPOSED NONREEMPLOYMENT STATE THE SPECIFIC REASONS FOR  
18 NONREEMPLOYMENT, INCLUDING A LIST OF WITNESSES AND EVIDENCE; TO  
19 AMEND SECTION 37-9-109, MISSISSIPPI CODE OF 1972, TO PRESCRIBE THE  
20 RIGHTS AND DUTIES OF EMPLOYEES AT HEARINGS; TO AMEND SECTION  
21 37-9-111, MISSISSIPPI CODE OF 1972, TO ESTABLISH REQUIREMENTS FOR  
22 HEARING OFFICERS AT ANY SUCH HEARING ON THE NONREEMPLOYMENT OF  
23 SUCH EMPLOYEE, TO REQUIRE HEARINGS TO BE HELD IN EXECUTIVE SESSION  
24 UNLESS THE EMPLOYEE ELECTS FOR A PUBLIC HEARING, TO PROVIDE FOR  
25 THE PRESENTATION OF EVIDENCE AT THE HEARING AND TO PRESCRIBE THE  
26 BURDEN OF PROOF AT THE HEARING FOR UPHOLDING THE DECISION OF  
27 NONREEMPLOYMENT; AND FOR RELATED PURPOSES.

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

29 SECTION 1. Section 37-9-101, Mississippi Code of 1972, is  
30 amended as follows:

31 37-9-101. Sections 37-9-101 through 37-9-113 shall be known  
32 as and cited as the "Education Employment Procedures Law of 2000."

33 It is the intent of the Legislature to establish procedures  
34 to provide for accountability in the teaching profession; to  
35 provide a mechanism for the nonrenewal of licensed education  
36 employees in a timely, cost-efficient and fair manner; to provide  
37 public school employees with notice of the reasons for not  
38 offering an employee a renewal of his contract; to provide an

39 opportunity for the employee to present matters in extenuation or  
40 exculpation; to provide the employee with an opportunity for a  
41 hearing to enable the board to determine whether the  
42 recommendation of nonemployment is a proper employment decision  
43 and not contrary to law; and to require nonrenewal decisions to be  
44 based upon valid educational reasons. It is the intent of the  
45 Legislature not to establish a system of tenure \* \* \*.

46 SECTION 2. Section 37-9-103, Mississippi Code of 1972, is  
47 amended as follows:[HS1]

48 37-9-103. As used in Sections 37-9-101 through 37-9-113, the  
49 word "employee" shall include:

50 (a) Any teacher, principal, superintendent \* \* \* and  
51 other professional personnel employed by the local school district  
52 for a continuous period of two (2) years with that district and  
53 required to have a valid license issued by the State Department of  
54 Education as a prerequisite of employment; or

55 (b) Any teacher, principal, superintendent and other  
56 professional personnel who has completed a continuous period of  
57 two (2) years of employment in a Mississippi public school  
58 district and has completed one (1) full year of employment with  
59 the school district of current employment and required to have a  
60 valid license issued by the State Department of Education as a  
61 prerequisite of employment.

62 For purposes of Sections 37-9-101 through 37-9-113, the term  
63 "days" means calendar days.

64 SECTION 3. The following shall be codified as Section  
65 37-9-104, Mississippi Code of 1972:

66 37-9-104. If the board of trustees makes a preliminary  
67 determination not to offer the school district superintendent a  
68 renewal contract for a successive year, written notice of the  
69 preliminary nonreemployment determination must be given before  
70 February 1.

71 SECTION 4. Section 37-9-105, Mississippi Code of 1972, is  
72 amended as follows:[HS2]

73 37-9-105. In the event that a recommendation is made by the  
74 school district not to offer an employee a renewal contract for a  
75 successive year, written notice of the proposed nonreemployment

76 stating the reasons for the proposed nonreemployment shall be  
77 given \* \* \* no later than the following:

78 \* \* \*

79 (a) If the employee is a principal, the superintendent,  
80 without further board action, shall give notice of nonreemployment  
81 on or before March 1;

82 (b) If the employee is a teacher, administrator or  
83 other professional educator covered under Sections 37-9-101  
84 through 37-9-113, the superintendent, without further board  
85 action, shall give notice of nonreemployment on or before April  
86 15.

87 \* \* \*

88 SECTION 5. Section 37-9-109, Mississippi Code of 1972, is  
89 amended as follows:[HS3]

90 37-9-109. An employee who has received notice under Section  
91 37-9-105, upon written request from the employee received by the  
92 district within ten (10) days of receipt of the notice by the  
93 employee, shall be entitled to:

94 (a) Written notice of the specific reasons for  
95 nonreemployment, together with a summary of the factual basis  
96 therefor, a list of witnesses and a copy of documentary evidence  
97 substantiating the reasons intended to be presented at the  
98 hearing, which notice shall be given at least fourteen (14) days  
99 prior to any hearing; if the district fails to provide this  
100 information to the employee, then the recommendation for  
101 nonemployment shall be null and void, and the board shall order  
102 the execution of a contract with the employee for an additional  
103 period of one (1) year;

104 (b) An opportunity for a hearing at which to present  
105 matters relevant to the reasons given for the proposed  
106 nonreemployment \* \* \*, including any reasons alleged by the  
107 employee to be the reason for nonreemployment;

108 (c) Receive a fair and impartial hearing before the

109 board or hearing officer;

110 (d) Be represented by legal counsel, at his own  
111 expense.

112 Any employee requesting a hearing shall provide the district,  
113 not less than five (5) days before the scheduled date for the  
114 hearing, a response to the specific reasons for nonreemployment, a  
115 list of witnesses and a copy of documentary evidence in support of  
116 the response intended to be presented at the hearing. If the  
117 employee fails to provide this information, then the  
118 recommendation of nonreemployment shall be final without the  
119 necessity of a hearing.

120 If the employee does not request a hearing, the  
121 recommendation regarding the nonreemployment of the employee shall  
122 be final.

123 SECTION 6. Section 37-9-111, Mississippi Code of 1972, is  
124 amended as follows:

125 37-9-111. (1) The school board, or its designee, upon  
126 request for a hearing from an employee under the terms of Sections  
127 37-9-101 through 37-9-113, shall set the time, place and date of  
128 such hearing and notify the employee in writing of same. The date  
129 shall be set not sooner than five (5) days nor later than thirty  
130 (30) days from the date of the request, unless otherwise agreed.  
131 The hearing may be held before the board or before a hearing  
132 officer appointed for such purpose by the board, either from among  
133 its own membership, from the staff of the school district or some  
134 other qualified and impartial person, but in no event shall the  
135 hearing officer be the staff member responsible for the initial  
136 recommendation of nonreemployment. No hearing officer may have an  
137 interest in the outcome of a hearing, nor may a hearing officer be  
138 related to a board member, any administrator making the  
139 recommendations of nonreemployment or the employee. Once a  
140 hearing officer is appointed, no ex parte communications may be  
141 made regarding any substantive provisions of the hearing.

142       (2) The hearing shall be held in executive session unless  
143 the employee elects to have a public hearing. If an employee  
144 makes this election, however, the board or the hearing officer, as  
145 the case may be, may order any part of the hearing to be held in  
146 executive session, if, in the opinion of the board or the hearing  
147 officer, the testimony to be elicited deals with matters involving  
148 the reputation or character of another person. Notwithstanding  
149 the election by an employee for a public hearing, any testimony by  
150 minor witnesses shall be held in executive session and considered  
151 confidential personnel records and confidential student records,  
152 subject to an expectation of reasonable privacy and  
153 confidentiality. Public disclosure of these records may only be  
154 by court order.

155       (3) The district shall present evidence, either in written  
156 or oral form, at the hearing in support of its recommendation for  
157 nonreemployment.

158       \* \* \* The employee shall be afforded an opportunity to  
159 present matters at the hearing relevant to the reasons given for  
160 the proposed nonreemployment determination and to the reasons the  
161 employee alleges to be the reasons for nonreemployment and to be  
162 represented by counsel at such a hearing. Such hearing shall be  
163 conducted in such a manner as to afford the parties a fair and  
164 reasonable opportunity to present witnesses and other evidence  
165 pertinent to the issues \* \* \* and to cross-examine witnesses  
166 presented at the hearing. The board or the hearing officer may  
167 require any portion of the evidence to be submitted in the form of  
168 depositions or affidavits, and in case affidavits are received, an  
169 opportunity to present counter-affidavits shall be provided.

170       (4) The board shall cause to be made stenographic notes of  
171 the proceedings. In the event of a judicial appeal of the board's  
172 decision, the entire expense of the transcript and notes shall be  
173 assessed as court costs.

174       (5) The board shall review the matters presented before it,

175 or, if the hearing is conducted by a hearing officer, the report  
176 of the hearing officer, if any, the record of the proceedings and,  
177 based solely thereon, conclude whether the proposed  
178 nonreemployment \* \* \* is a proper employment decision, is based  
179 upon a valid educational reason and is based solely upon the  
180 evidence presented at the hearing, and shall notify the employee  
181 in writing of its final decision and reasons therefor. Such  
182 notification shall be within thirty (30) days of the conclusion of  
183 the hearing if the hearing is conducted by a hearing officer and  
184 within ten (10) days of the conclusion of the hearing if the  
185 hearing is initially conducted by the board. If the matter is  
186 heard before a hearing officer, the board shall also grant the  
187 employee the opportunity to appear before the board to present a  
188 statement in his own behalf, either in person or by his attorney,  
189 prior to a final decision by the board.

190 (6) In conducting a hearing, the board or hearing officer  
191 shall not be bound by common law or by statutory rules of evidence  
192 or by technical or formal rules of procedure except as provided in  
193 Sections 37-9-101 through 37-9-113, but may conduct such hearing  
194 in such manner as best to ascertain the rights of the  
195 parties; \* \* \* however, hearsay evidence, if admitted, shall not  
196 be the sole basis for the determination of facts by the board or  
197 hearing officer.

198 (7) In the event the decision of the school board is in  
199 favor of the employee, the board shall have the authority to order  
200 the execution of a contract with the employee for an additional  
201 period of one (1) year.

202 (8) For purposes of conducting hearings under Sections  
203 37-9-101 through 37-9-113, the board or hearing officer shall have  
204 the authority to issue subpoenas for witnesses and to compel their  
205 attendance and the giving of evidence. Any expense connected  
206 therewith shall be borne by the party requesting the subpoenas,  
207 which shall include an appearance fee for each witness so

208 subpoenaed not inconsistent with state laws governing payments to  
209 witnesses. In the event it is necessary to enforce or to quash a  
210 subpoena issued to compel the attendance of a witness, application  
211 shall be made with the chancery court of the county where the  
212 school board is located.

213 SECTION 7. This act shall take effect and be in force from  
214 and after July 1, 2000.