

By: Minor

To: Education; Judiciary

SENATE BILL NO. 2920

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 SECTION 1. Section 37-9-101, Mississippi Code of 1972, is
22 amended as follows:[MS1]

23 37-9-101. Sections 37-9-101 through 37-9-113 shall be known
24 as and cited as the "School Employment Procedures Law of 1977."

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

35 employment decision and not contrary to law, and not to establish
36 a system of tenure * * *.

37 SECTION 2. Section 37-9-103, Mississippi Code of 1972, is
38 amended as follows:[MS2]

39 37-9-103. As used in Sections 37-9-101 through 37-9-113 the
40 word "employee" shall include any teacher, principal,
41 superintendent elected by a board of trustees or other * * *
42 personnel employed by any public school district of this
43 state * * *.

44 SECTION 3. Section 37-9-105, Mississippi Code of 1972, is
45 amended as follows:[MS3]

46 37-9-105. In the event that a recommendation is made by the
47 superintendent of a school district not to offer an employee a
48 renewal contract for a successive year, written notice of the
49 proposed nonrenewal stating the specific reasons for the proposed
50 nonrenewal and including a list of witnesses and/or documentary
51 evidence substantiating such reasons shall be given within seven
52 (7) days of the date when the recommendation to reemploy would
53 have been made under * * * Sections 37-9-15 and 37-9-17, * * * but
54 in any event, no later than the following:

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

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

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

63 * * *

64 SECTION 4. Section 37-9-109, Mississippi Code of 1972, is
65 amended as follows:[MS4]

66 37-9-109. An employee who has received notice under Section
67 37-9-105, upon written request, shall be entitled to:

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

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

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

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

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

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

87 SECTION 5. Section 37-9-111, Mississippi Code of 1972, is
88 amended as follows:[MS5]

89 37-9-111. (1) The school board, upon request for a hearing
90 from an employee under the terms of Sections 37-9-101 through
91 37-9-113, shall set the time, place and date of such hearing and
92 notify the employee in writing of same. The date shall be set not
93 sooner than five (5) days nor later than thirty (30) days from the
94 date of the request, unless otherwise agreed. The hearing may be
95 held before the board or before a hearing officer appointed for
96 such purpose by the board, either from among its own
97 membership * * * or some other qualified and impartial person who
98 is not an employee, school board member or school board attorney
99 of a public school district.

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

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

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

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

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

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

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

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

156 SECTION 6. Section 37-9-113, Mississippi Code of 1972, is
157 amended as follows:[MS6]

158 37-9-113. (1) Any employee aggrieved by a final decision of
159 the school board is entitled to judicial review of the decision,
160 as * * * provided for in this section.

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

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

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

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

174 (b) Arbitrary or capricious; or

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

177 * * *

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

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