

By: Representative Blackmon

To: Education

HOUSE BILL NO. 527

1 AN ACT TO PROVIDE A MECHANISM FOR THE NONRENEWAL OF LICENSED
 2 SCHOOL EMPLOYEES IN A TIMELY, COST-EFFICIENT AND FAIR MANNER; TO
 3 PROVIDE UNIFORM STANDARDS FOR EMPLOYMENT PRACTICES; TO CORRECT
 4 DEFICIENCIES IN CURRENT STATUTORY PROVISIONS RELATING TO
 5 NONREEMPLOYMENT OF LICENSED EMPLOYEES; TO AMEND SECTION 37-9-101,
 6 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ALL DECISIONS OF
 7 NONREEMPLOYMENT OF SCHOOL EMPLOYEES MUST BE BASED ON VALID
 8 EDUCATIONAL REASONS WITH RESPECT TO EMPLOYMENT; TO AMEND SECTION
 9 37-9-103, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE SCHOOL
 10 EMPLOYMENT PROCEDURES LAW SHALL APPLY TO ALL LICENSED PERSONNEL
 11 EMPLOYED BY A SCHOOL DISTRICT; TO CREATE NEW SECTION 37-9-104,
 12 MISSISSIPPI CODE OF 1972, TO REQUIRE NOTICE OF A PRELIMINARY
 13 DETERMINATION BY A SCHOOL BOARD NOT TO RENEW A SUPERINTENDENT'S
 14 CONTRACT TO BE PROVIDED BY FEBRUARY 1; TO AMEND SECTION 37-9-105,
 15 MISSISSIPPI CODE OF 1972, TO REQUIRE THE WRITTEN NOTICE OF A
 16 LICENSED EMPLOYEE'S PROPOSED NONREEMPLOYMENT TO STATE THE SPECIFIC
 17 REASONS FOR NONREEMPLOYMENT AND INCLUDE A LIST OF WITNESSES AND
 18 EVIDENCE; TO AMEND SECTION 37-9-109, MISSISSIPPI CODE OF 1972, TO
 19 PRESCRIBE THE RIGHTS AND DUTIES OF EMPLOYEES AT HEARINGS; TO AMEND
 20 SECTION 37-9-111, MISSISSIPPI CODE OF 1972, TO ESTABLISH
 21 REQUIREMENTS FOR HEARING OFFICERS AT HEARINGS ON THE
 22 NONREEMPLOYMENT OF LICENSED EMPLOYEES, TO REQUIRE HEARINGS TO BE
 23 HELD IN EXECUTIVE SESSION UNLESS AN EMPLOYEE ELECTS FOR A PUBLIC
 24 HEARING, TO PROVIDE FOR THE PRESENTATION OF EVIDENCE AT THE
 25 HEARING AND TO PRESCRIBE THE BURDEN OF PROOF AT THE HEARING FOR
 26 UPHOLDING THE DECISION OF NONREEMPLOYMENT; AND FOR RELATED
 27 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 2001."

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:

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 or other
51 professional personnel employed by the local school district for a
52 continuous period of two (2) years with that district and required
53 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 or 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 one (1) full year of employment with the school
59 district of current employment, and who is 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 to the
70 superintendent before February 1.

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

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; or

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:

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 must be held in executive session unless the
143 employee elects to have a public hearing. If an employee makes
144 this election, however, the board or the hearing officer, as the
145 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 must 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 be by
154 court order only.

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, 2001.