

By: Representative Blackmon

To: Education

HOUSE BILL NO. 527
(As Passed the House)

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. However, an interim conservator

71 appointed pursuant to Section 37-17-6(14)(a) or a school board
72 acting on the recommendation of a school district financial
73 advisor appointed pursuant to Section 37-9-18 is not required to
74 comply with the time limitations prescribed in this section for
75 recommending the reemployment of superintendents.

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

78 37-9-105. In the event that a recommendation is made by the
79 school district not to offer an employee a renewal contract for a
80 successive year, written notice of the proposed nonreemployment
81 stating the reasons for the proposed nonreemployment shall be
82 given * * * no later than the following:

83 * * *

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

87 (b) If the employee is a teacher, administrator or
88 other professional educator covered under Sections 37-9-101
89 through 37-9-113, the superintendent, without further board
90 action, shall give notice of nonreemployment on or before April
91 15.

92 An interim conservator appointed pursuant to the provisions
93 of Section 37-17-6(14)(a) or a school board acting on the
94 recommendation of a school district financial advisor appointed
95 pursuant to the provisions of Section 37-9-18 shall not be
96 required to comply with the time limitations prescribed in this
97 section for recommending the reemployment of * * * principals,
98 teachers, administrators or other professional educators.

99 SECTION 5. Section 37-9-109, Mississippi Code of 1972, is
100 amended as follows:

101 37-9-109. An employee who has received notice under Section
102 37-9-105, upon written request from the employee received by the

103 district within ten (10) days of receipt of the notice by the
104 employee, shall be entitled to:

105 (a) Written notice of the specific reasons for
106 nonreemployment, together with a summary of the factual basis
107 therefor, a list of witnesses and a copy of documentary evidence
108 substantiating the reasons intended to be presented at the
109 hearing, which notice shall be given at least fourteen (14) days
110 prior to any hearing; if the district fails to provide this
111 information to the employee, then the recommendation for
112 nonemployment shall be null and void, and the board shall order
113 the execution of a contract with the employee for an additional
114 period of one (1) year;

115 (b) An opportunity for a hearing at which to present
116 matters relevant to the reasons given for the proposed
117 nonreemployment * * *, including any reasons alleged by the
118 employee to be the reason for nonreemployment;

119 (c) Receive a fair and impartial hearing before the
120 board or hearing officer;

121 (d) Be represented by legal counsel, at his own
122 expense.

123 Any employee requesting a hearing shall provide the district,
124 not less than five (5) days before the scheduled date for the
125 hearing, a response to the specific reasons for nonreemployment, a
126 list of witnesses and a copy of documentary evidence in support of
127 the response intended to be presented at the hearing. If the
128 employee fails to provide this information, then the
129 recommendation of nonreemployment shall be final without the
130 necessity of a hearing.

131 If the employee does not request a hearing, the
132 recommendation regarding the nonreemployment of the employee shall
133 be final.

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

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

153 (2) The hearing must be held in executive session unless the
154 employee elects to have a public hearing. If an employee makes
155 this election, however, the board or the hearing officer, as the
156 case may be, may order any part of the hearing to be held in
157 executive session, if, in the opinion of the board or the hearing
158 officer, the testimony to be elicited deals with matters involving
159 the reputation or character of another person. Notwithstanding
160 the election by an employee for a public hearing, any testimony by
161 minor witnesses must be held in executive session and considered
162 confidential personnel records and confidential student records,
163 subject to an expectation of reasonable privacy and
164 confidentiality. Public disclosure of these records may be by
165 court order only.

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

169 * * * The employee shall be afforded an opportunity to
170 present matters at the hearing relevant to the reasons given for
171 the proposed nonreemployment determination and to the reasons the
172 employee alleges to be the reasons for nonreemployment and to be
173 represented by counsel at such a hearing. Such hearing shall be
174 conducted in such a manner as to afford the parties a fair and
175 reasonable opportunity to present witnesses and other evidence
176 pertinent to the issues * * * and to cross-examine witnesses
177 presented at the hearing. The board or the hearing officer may
178 require any portion of the evidence to be submitted in the form of
179 depositions or affidavits, and in case affidavits are received, an
180 opportunity to present counter-affidavits shall be provided.

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

185 (5) The board shall review the matters presented before it,
186 or, if the hearing is conducted by a hearing officer, the report
187 of the hearing officer, if any, the record of the proceedings and,
188 based solely thereon, conclude whether the proposed
189 nonreemployment * * * is a proper employment decision, is based
190 upon a valid educational reason and is based solely upon the
191 evidence presented at the hearing, and shall notify the employee
192 in writing of its final decision and reasons therefor. Such
193 notification shall be within thirty (30) days of the conclusion of
194 the hearing if the hearing is conducted by a hearing officer and
195 within ten (10) days of the conclusion of the hearing if the
196 hearing is initially conducted by the board. If the matter is
197 heard before a hearing officer, the board shall also grant the
198 employee the opportunity to appear before the board to present a
199 statement in his own behalf, either in person or by his attorney,
200 prior to a final decision by the board.

201 (6) In conducting a hearing, the board or hearing officer
202 shall not be bound by common law or by statutory rules of evidence
203 or by technical or formal rules of procedure except as provided in
204 Sections 37-9-101 through 37-9-113, but may conduct such hearing
205 in such manner as best to ascertain the rights of the
206 parties; * * * however, hearsay evidence, if admitted, shall not
207 be the sole basis for the determination of facts by the board or
208 hearing officer.

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

213 (8) For purposes of conducting hearings under Sections
214 37-9-101 through 37-9-113, the board or hearing officer shall have
215 the authority to issue subpoenas for witnesses and to compel their
216 attendance and the giving of evidence. Any expense connected
217 therewith shall be borne by the party requesting the subpoenas,
218 which shall include an appearance fee for each witness so
219 subpoenaed not inconsistent with state laws governing payments to
220 witnesses. In the event it is necessary to enforce or to quash a
221 subpoena issued to compel the attendance of a witness, application
222 shall be made with the chancery court of the county where the
223 school board is located.

224 SECTION 7. This act shall take effect and be in force from
225 and after July 1, 2001.