HOUSE BILL NO. 527
(As Sent to Governor)

AN ACT TO PROVIDE A MECHANISM FOR THE NONRENEWAL OF LICENSED SCHOOL EMPLOYEES IN A TIMELY, COST-EFFICIENT AND FAIR MANNER; TO PROVIDE UNIFORM STANDARDS FOR EMPLOYMENT PRACTICES; TO CORRECT DEFICIENCIES IN CURRENT STATUTORY PROVISIONS RELATING TO NONREEMPLOYMENT OF LICENSED EMPLOYEES; TO AMEND SECTION 37-9-101, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ALL DECISIONS OF NONREEMPLOYMENT OF SCHOOL EMPLOYEES MUST BE BASED ON VALID EDUCATIONAL REASONS WITH RESPECT TO EMPLOYMENT OR NONCOMPLIANCE WITH SCHOOL DISTRICT PERSONNEL POLICIES; TO AMEND SECTION 37-9-103, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE SCHOOL EMPLOYMENT PROCEDURES LAW SHALL APPLY TO ALL LICENSED PERSONNEL EMPLOYED BY A SCHOOL DISTRICT; TO CREATE NEW SECTION 37-9-104, MISSISSIPPI CODE OF 1972, TO REQUIRE NOTICE OF A PRELIMINARY DETERMINATION BY A SCHOOL BOARD NOT TO RENEW A SUPERINTENDENT'S CONTRACT TO BE PROVIDED BY FEBRUARY 1; TO AMEND SECTION 37-9-105, MISSISSIPPI CODE OF 1972, TO REQUIRE THE WRITTEN NOTICE OF A LICENSED EMPLOYEE'S PROPOSED NONREEMPLOYMENT TO STATE THE SPECIFIC REASONS FOR NONREEMPLOYMENT AND INCLUDE A LIST OF WITNESSES AND EVIDENCE; TO AMEND SECTION 37-9-109, MISSISSIPPI CODE OF 1972, TO PRESCRIBE THE RIGHTS AND DUTIES OF EMPLOYEES AT HEARINGS; TO AMEND SECTION 37-9-111, MISSISSIPPI CODE OF 1972, TO ESTABLISH REQUIREMENTS FOR HEARING OFFICERS AT HEARINGS ON THE NONREEMPLOYMENT OF LICENSED EMPLOYEES, TO REQUIRE HEARINGS TO BE HELD IN EXECUTIVE SESSION UNLESS AN EMPLOYEE ELECTS FOR A PUBLIC HEARING, TO PROVIDE FOR THE PRESENTATION OF EVIDENCE AT THE HEARING AND TO PRESCRIBE THE BURDEN OF PROOF AT THE HEARING FOR UPHOLDING THE DECISION OF NONREEMPLOYMENT; AND FOR RELATED PURPOSES.

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

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


It is the intent of the Legislature to establish procedures to provide for accountability in the teaching profession; to provide a mechanism for the nonrenewal of licensed education employees in a timely, cost-efficient and fair manner; to provide public school employees with notice of the reasons for not

H. B. No. 527 *HR03/R1165SG*
offering an employee a renewal of his contract; to provide an opportunity for the employee to present matters in extenuation or exculpation; to provide the employee with an opportunity for a hearing to enable the board to determine whether the recommendation of nonemployment is a proper employment decision and not contrary to law and to require nonrenewal decisions to be based upon valid educational reasons or noncompliance with school district personnel policies. It is the intent of the Legislature not to establish a system of tenure * * *

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

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

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

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

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

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

37-9-104. If the board of trustees makes a preliminary determination not to offer the school district superintendent a renewal contract for a successive year, written notice of the preliminary nonreemployment determination must be given to the
superintendent before February 1. However, an interim conservator appointed pursuant to Section 37-17-6(14)(a) or a school board acting on the recommendation of a school district financial advisor appointed pursuant to Section 37-9-18 is not required to comply with the time limitations prescribed in this section for recommending the reemployment of superintendents.

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

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

* * *

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

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

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

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

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

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

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

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

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

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

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

SECTION 6. Section 37-9-111, Mississippi Code of 1972, is amended as follows:
37-9-111. (1) The school board, or its designee, upon request for a hearing from an employee under the terms of Sections 37-9-101 through 37-9-113, shall set the time, place and date of such hearing and notify the employee in writing of same. The date shall be set not sooner than five (5) days nor later than thirty (30) days from the date of the request, unless otherwise agreed. The hearing may be held before the board or before a hearing officer appointed for such purpose by the board, either from among its own membership, from the staff of the school district or some other qualified and impartial person, but in no event shall the hearing officer be the staff member responsible for the initial recommendation of nonreemployment. No hearing officer may have an interest in the outcome of a hearing, nor may a hearing officer be related to a board member, any administrator making the recommendations of nonreemployment or the employee. Once a hearing officer is appointed, no ex parte communications may be made regarding any substantive provisions of the hearing.

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

(3) The district shall present evidence, either in written or oral form, at the hearing in support of its recommendation for nonreemployment.
The employee shall be afforded an opportunity to present matters at the hearing relevant to the reasons given for the proposed nonreemployment determination and to the reasons the employee alleges to be the reasons for nonreemployment and to be represented by counsel at such a hearing. Such hearing shall be conducted in such a manner as to afford the parties a fair and reasonable opportunity to present witnesses and other evidence pertinent to the issues and to cross-examine witnesses presented at the hearing. The board or the hearing officer may require any portion of the evidence to be submitted in the form of depositions or affidavits, and in case affidavits are received, an opportunity to present counter-affidavits shall be provided.

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

(5) The board shall review the matters presented before it, or, if the hearing is conducted by a hearing officer, the report of the hearing officer, if any, the record of the proceedings and, based solely thereon, conclude whether the proposed nonreemployment is a proper employment decision, is based upon a valid educational reason or noncompliance with school district personnel policies and is based solely upon the evidence presented at the hearing, and shall notify the employee in writing of its final decision and reasons therefor. Such notification shall be within thirty (30) days of the conclusion of the hearing if the hearing is conducted by a hearing officer and within ten (10) days of the conclusion of the hearing if the hearing is initially conducted by the board. If the matter is heard before a hearing officer, the board shall also grant the employee the opportunity to appear before the board to present a statement in his own behalf, either in person or by his attorney, prior to a final decision by the board.
(6) In conducting a hearing, the board or hearing officer shall not be bound by common law or by statutory rules of evidence or by technical or formal rules of procedure except as provided in Sections 37-9-101 through 37-9-113, but may conduct such hearing in such manner as best to ascertain the rights of the parties; however, hearsay evidence, if admitted, shall not be the sole basis for the determination of facts by the board or hearing officer.

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

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

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