

By: Senator(s) Harden

To: Education;
Appropriations

SENATE BILL NO. 2313

1 AN ACT RELATING TO NONCERTIFIED PUBLIC SCHOOL DISTRICT
2 PERSONNEL; TO REQUIRE THE STATE DEPARTMENT OF EDUCATION TO DEVELOP
3 HIRING STANDARDS, CONTRACTS AND SALARY SCHEDULES FOR NONCERTIFIED
4 SCHOOL DISTRICT EMPLOYEES, AND TO PRESCRIBE A MINIMUM ANNUAL
5 SALARY THEREFOR; TO REQUIRE THE STATE DEPARTMENT OF EDUCATION TO
6 DEVELOP AND IMPLEMENT A TRAINING PROGRAM FOR TEACHERS AND TEACHING
7 ASSISTANTS; TO AMEND SECTION 37-7-307, MISSISSIPPI CODE OF 1972,
8 TO PROVIDE A MINIMUM SICK LEAVE AND PERSONAL LEAVE ALLOWANCE FOR
9 SUCH NONCERTIFIED EMPLOYEES, AND TO PROVIDE THAT ACCRUED SICK
10 LEAVE FOR SUCH EMPLOYEES SHALL HAVE UNLIMITED ACCUMULATION; TO
11 AMEND SECTION 37-9-103, MISSISSIPPI CODE OF 1972, TO INCLUDE
12 NONCERTIFIED SCHOOL PERSONNEL WITHIN THE PROVISIONS OF THE SCHOOL
13 EMPLOYMENT PROCEDURES ACT; TO AMEND SECTION 71-3-5, MISSISSIPPI
14 CODE OF 1972, TO REQUIRE SCHOOL DISTRICTS TO COME WITHIN THE
15 PROVISIONS OF THE WORKERS' COMPENSATION LAW WITH RESPECT TO ALL
16 SCHOOL DISTRICT EMPLOYEES; AND FOR RELATED PURPOSES.

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

18 **SECTION 1.** For purposes of this act, "noncertified
19 personnel" shall mean all public school district employees who are
20 not administrators, teachers or other persons required to have
21 certification by the State Department of Education as a condition
22 of employment. These include, but are not limited to, teaching
23 assistants, teaching aides, assistant reading instructors,
24 secretaries, clerical or office help, cafeteria personnel and
25 maintenance personnel.

26 **SECTION 2.** Hiring standards, contracts, job descriptions and
27 salary schedules for noncertified personnel will be developed by
28 the State Department of Education for implementation in each
29 school district. Full-time noncertified personnel shall be paid a
30 minimum annual salary of Twelve Thousand Dollars (\$12,000.00).

31 **SECTION 3.** The statewide training program for teachers and
32 their teaching assistants prescribed in Section 37-21-7(5),
33 Mississippi Code of 1972, to assure maximum efficiency in the
34 teaching assistant program shall be developed by the State



35 Department of Education and implemented in each school district in
36 the 2003-2004 school year.

37 **SECTION 4.** Section 37-7-307, Mississippi Code of 1972, is
38 amended as follows:

39 37-7-307. (1) For purposes of this section, the term
40 "licensed employee" means any employee of a public school district
41 required to hold a valid license by the Commission on Teacher and
42 Administrator Education, Certification and Licensure and
43 Development.

44 (2) The school board of a school district shall establish by
45 rules and regulations a policy of sick leave with pay for licensed
46 employees employed in the school district, and such policy shall
47 include the following minimum provisions for sick and emergency
48 leave with pay:

49 (a) Each licensed employee, at the beginning of each
50 school year, shall be credited with a minimum sick leave
51 allowance, with pay, of seven (7) days for absences caused by
52 illness or physical disability of the employee during that school
53 year.

54 (b) Any unused portion of the total sick leave
55 allowance shall be carried over to the next school year and
56 credited to such licensed employee if the licensed employee
57 remains employed in the same school district. In the event any
58 public school licensed employee transfers from one public school
59 district in Mississippi to another, any unused portion of the
60 total sick leave allowance credited to such licensed employee
61 shall be credited to such licensed employee in the computation of
62 unused leave for retirement purposes under Section 25-11-109.
63 Accumulation of sick leave allowed under this section shall be
64 unlimited.

65 (c) No deduction from the pay of such licensed employee
66 may be made because of absence of such licensed employee caused by
67 illness or physical disability of the licensed employee until



68 after all sick leave allowance credited to such licensed employee
69 has been used.

70 (d) For the first ten (10) days of absence of a
71 licensed employee because of illness or physical disability, in
72 any school year, in excess of the sick leave allowance credited to
73 such licensed employee, there may be deducted from the pay of such
74 licensed employee the established substitute amount of licensed
75 employee compensation paid in that local school district,
76 necessitated because of the absence of the licensed employee as a
77 result of illness or physical disability. Thereafter, the regular
78 pay of such absent licensed employee may be suspended and withheld
79 in its entirety for any period of absence because of illness or
80 physical disability during that school year.

81 (3) Beginning with the school year 1983-1984, each licensed
82 employee at the beginning of each school year shall be credited
83 with a minimum personal leave allowance, with pay, of two (2) days
84 for absences caused by personal reasons during that school year.
85 Such personal leave shall not be taken on the first day of the
86 school term, the last day of the school term, on a day previous to
87 a holiday or a day after a holiday. Personal leave may be used
88 for professional purposes, including absences caused by attendance
89 of such licensed employee at a seminar, class, training program,
90 professional association or other functions designed for
91 educators. No deduction from the pay of such licensed employee
92 may be made because of absence of such licensed employee caused by
93 personal reasons until after all personal leave allowance credited
94 to such licensed employee has been used. However, the
95 superintendent of a school district, in his discretion, may allow
96 a licensed employee personal leave in addition to any minimum
97 personal leave allowance, under the condition that there shall be
98 deducted from the salary of such licensed employee the actual
99 amount of any compensation paid to any person as a substitute,
100 necessitated because of the absence of the licensed employee.



101 (4) Beginning with the school year 1992-1993, each licensed
102 employee shall be credited with a professional leave allowance,
103 with pay, for each day of absence caused by reason of such
104 employee's statutorily required membership and attendance at a
105 regular or special meeting held within the State of Mississippi of
106 the State Board of Education, the Commission on Teacher and
107 Administrator Education, Certification and Licensure and
108 Development, the Commission on School Accreditation, the
109 Mississippi Authority for Educational Television and the meetings
110 of the state textbook rating committees.

111 (5) Upon retirement from employment, each licensed and
112 nonlicensed employee shall be paid for not more than thirty (30)
113 days of unused accumulated leave earned while employed by the
114 school district in which the employee is last employed. Such
115 payment for licensed employees shall be made by the school
116 district at a rate equal to the amount paid to substitute teachers
117 and for nonlicensed employees, the payment shall be made by the
118 school district at a rate equal to the federal minimum wage. The
119 payment shall be treated in the same manner for retirement
120 purposes as a lump-sum payment for personal leave as provided in
121 Section 25-11-103(e). Any remaining lawfully credited unused
122 leave, for which payment has not been made, shall be certified to
123 the Public Employees' Retirement System in the same manner and
124 subject to the same limitations as otherwise provided by law for
125 unused leave.

126 (6) The school board may adopt rules and regulations which
127 will reasonably aid to implement the policy of sick and personal
128 leave, including, but not limited to, rules and regulations having
129 the following general effect:

130 (a) Requiring the absent licensed employee to furnish
131 the certificate of a physician or dentist or other medical
132 practitioner as to the illness of the absent licensed employee,
133 where the absence is for four (4) or more consecutive school days,



134 or for two (2) consecutive school days immediately preceding or
135 following a nonschool day;

136 (b) Providing penalties, by way of full deduction from
137 salary, or entry on the work record of the licensed employee, or
138 other appropriate penalties, for any materially false statement by
139 the licensed employee as to the cause of absence;

140 (c) Forfeiture of accumulated or future sick leave, if
141 the absence of the licensed employee is caused by optional dental
142 or medical treatment or surgery which could, without medical risk,
143 have been provided, furnished or performed at a time when school
144 was not in session;

145 (d) Enlarging, increasing or providing greater sick or
146 personal leave allowances than the minimum standards established
147 by this section in the discretion of the school board of each
148 school district.

149 (7) School boards may include in their budgets provisions
150 for the payment of substitute teachers, necessitated because of
151 the absence of regular licensed employees. All such substitute
152 teachers shall be paid wholly from district funds other than
153 minimum education program funds, except as otherwise provided for
154 long-term substitute teachers in Section 37-19-20. Such school
155 boards, in their discretion, also may pay, from district funds
156 other than minimum education program funds, the whole or any part
157 of the salaries of licensed employees granted leaves for the
158 purpose of special studies or training.

159 (8) The school board may further adopt rules and regulations
160 which will reasonably implement such leave policies for all other
161 nonlicensed school employees as the board deems appropriate. Any
162 unused portion of the total sick leave allowance for a nonlicensed
163 school employee shall be carried over to the next school year and
164 credited to such nonlicensed employee if the nonlicensed employee
165 remains employed in the same school district.



166 (9) (a) For the purposes of this subsection, the following
167 words and phrases shall have the meaning ascribed in this
168 paragraph unless the context requires otherwise:

169 (i) "Catastrophic injury or illness" means a
170 severe condition or combination of conditions affecting the mental
171 or physical health of an employee or a member of an employee's
172 immediate family, including pregnancy, that requires the services
173 of a licensed physician for an extended period of time and that
174 forces the employee to exhaust all leave time accumulated by that
175 employee, thereby resulting in the loss of compensation from the
176 school district for the employee.

177 (ii) "Immediate family" means spouse, parent,
178 stepparent, sibling, child or stepchild.

179 (b) Any school district employee may donate a portion
180 of his or her unused accumulated personal leave or sick leave to
181 another employee of the same or another school district who is
182 suffering from a catastrophic injury or illness or who has a
183 member of his or her immediate family suffering from a
184 catastrophic injury or illness, in accordance with the following:

185 (i) The employee donating the leave (the "donor
186 employee") shall designate the employee who is to receive the
187 leave (the "recipient employee") and the amount of unused
188 accumulated personal leave and sick leave that is to be donated,
189 and shall notify the school district superintendent or his
190 designee of his or her designation.

191 (ii) The maximum amount of unused accumulated
192 personal leave that an employee may donate to any other employee
193 may not exceed a number of days that would leave the donor
194 employee with fewer than seven (7) days of personal leave
195 remaining, and the maximum amount of unused accumulated sick leave
196 that an employee may donate to any other employee may not exceed
197 fifty percent (50%) of the unused accumulated sick leave of the
198 donor employee.



199 (iii) An employee must have exhausted all of his
200 or her accumulated personal leave and sick leave before he or she
201 will be eligible to receive any leave donated by another employee.
202 Eligibility for donated leave shall be based upon review and
203 approval by the donor employee's supervisor.

204 (iv) Before an employee may receive donated leave,
205 he or she must provide the school district superintendent or his
206 designee with a physician's statement that states the beginning
207 date of the catastrophic injury or illness, a description of the
208 injury or illness, and a prognosis for recovery and the
209 anticipated date that the recipient employee will be able to
210 return to work.

211 (v) If the total amount of leave that is donated
212 to any employee is not used by the recipient employee, the whole
213 days of donated leave shall be returned to the donor employees on
214 a pro rata basis, based on the ratio of the number of days of
215 leave donated by each donor employee to the total number of days
216 of leave donated by all donor employees.

217 (vi) Donated leave shall not be used in lieu of
218 disability retirement.

219 **SECTION 5.** Section 37-9-103, Mississippi Code of 1972, is
220 amended as follows:

221 37-9-103. As used in Sections 37-9-101 through 37-9-113, the
222 word "employee" shall include:

223 (a) Any teacher, principal, superintendent or other
224 professional personnel employed by the local school district for a
225 continuous period of two (2) years with that district and required
226 to have a valid license issued by the State Department of
227 Education as a prerequisite of employment, and shall include any
228 noncertified school district personnel as such term is defined in
229 Section 1 of Senate Bill No. 2313, 2003 Regular Session; or

230 (b) Any teacher, principal, superintendent or other
231 professional personnel who has completed a continuous period of



232 two (2) years of employment in a Mississippi public school
233 district and one (1) full year of employment with the school
234 district of current employment, and who is required to have a
235 valid license issued by the State Department of Education as a
236 prerequisite of employment.

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

239 **SECTION 6.** Section 71-3-5, Mississippi Code of 1972, is
240 amended as follows:

241 71-3-5. The following shall constitute employers subject to
242 the provisions of this chapter:

243 Every person, firm and private corporation, including any
244 public service corporation but excluding, however, all nonprofit
245 charitable, fraternal, cultural, or religious corporations or
246 associations, that have in service five (5) or more workmen or
247 operatives regularly in the same business or in or about the same
248 establishment under any contract of hire, express or implied.

249 Any state agency, state institution, state department, or
250 subdivision thereof, including counties and municipalities * * *,
251 or the singular thereof, not heretofore included under the
252 Workers' Compensation Law, may elect, by proper action of its
253 officers or department head, to come within its provisions and, in
254 such case, shall notify the commission of such action by filing
255 notice of compensation insurance with the commission. Payment for
256 compensation insurance policies so taken may be made from any
257 appropriation or funds available to such agency, department or
258 subdivision thereof, or from the general fund of any county or
259 municipality.

260 From and after July 1, 1990, all offices, departments,
261 agencies, bureaus, commissions, boards, institutions, hospitals,
262 colleges, universities, airport authorities or other
263 instrumentalities of the "state" as such term is defined in
264 Section 11-46-1, Mississippi Code of 1972, shall come under the



265 provisions of the Workers' Compensation Law. Payment for
266 compensation insurance policies so taken may be made from any
267 appropriation or funds available to such office, department,
268 agency, bureau, commission, board, institution, hospital, college,
269 university, airport authority or other instrumentality of the
270 state.

271 From and after October 1, 1990, counties and municipalities
272 shall come under the provisions of the Workers' Compensation Law.
273 Payment for compensation insurance policies so taken may be made
274 from any funds available to such counties and municipalities.

275 From and after October 1, 1993, all "political subdivisions,"
276 as such term is defined in Section 11-46-1, Mississippi Code of
277 1972, except counties and municipalities shall come under the
278 provisions of the Workers' Compensation Law. All public school
279 districts shall come within the provisions of the Workers'
280 Compensation Law with respect to all school district employees.
281 Payment for compensation insurance policies so taken may be made
282 from any funds available to such political subdivisions. However,
283 school districts shall not expend adequate education program funds
284 to pay for such policies.

285 From and after July 1, 1988, the "state" as such term is
286 defined in Section 11-46-1, Mississippi Code of 1972, may elect to
287 become a self-insurer under the provisions elsewhere set out by
288 law, by notifying the commission of its intent to become a
289 self-insurer. The cost of being such a self-insurer, as provided
290 otherwise by law, may be paid from funds available to the offices,
291 departments, agencies, bureaus, commissions, boards, institutions,
292 hospitals, colleges, universities, airport authorities or other
293 instrumentalities of the state.

294 The Mississippi Transportation Commission, the Department of
295 Public Safety and the Mississippi Industries for the Blind may
296 elect to become self-insurers under the provisions elsewhere set
297 out by law by notifying the commission of their intention of



298 becoming such a self-insurer. The cost of being such a
299 self-insurer, as provided elsewhere by law, may be paid from funds
300 available to the Mississippi Transportation Commission, the
301 Department of Public Safety or the Mississippi Industries for the
302 Blind.

303 The Mississippi State Senate and the Mississippi House of
304 Representatives may elect to become self-insurers under provisions
305 elsewhere set out by law by notifying the commission of their
306 intention of becoming such self-insurers. The cost of being such
307 self-insurers, as provided elsewhere by law, may be paid from
308 funds available to the Mississippi State Senate and the
309 Mississippi House of Representatives. The Mississippi State
310 Senate and the Mississippi House of Representatives are authorized
311 and empowered to provide workers' compensation benefits for
312 employees after January 1, 1970.

313 Any municipality of the State of Mississippi having forty
314 thousand (40,000) population or more desiring to do so may elect
315 to become a self-insurer under provisions elsewhere set out by law
316 by notifying the commission of its intention of becoming such an
317 insurer. The cost of being such a self-insurer, as provided
318 elsewhere by law, may be provided from any funds available to such
319 municipality.

320 The commission may, under such rules and regulations as it
321 prescribes, permit two (2) or more "political subdivisions," as
322 such term is defined in Section 11-46-1, Mississippi Code of 1972,
323 to pool their liabilities to participate in a group workers'
324 compensation self-insurance program. The governing authorities of
325 any political subdivision may authorize the organization and
326 operation of, or the participation in such a group self-insurance
327 program with other political subdivisions, provided such program
328 is approved by the commission. The cost of participating in a
329 group self-insurance program may be provided from any funds
330 available to a political subdivision.



331 Domestic servants, farmers and farm labor are not included
332 under the provisions of this chapter, but this exemption does not
333 apply to the processing of agricultural products when carried on
334 commercially. Any purchaser of timber products shall not be
335 liable for workers' compensation for any person who harvests and
336 delivers timber to such purchaser if such purchaser is not liable
337 for unemployment tax on the person harvesting and delivering the
338 timber as provided by United States Code Annotated, Title 26,
339 Section 3306, as amended. Provided, however, nothing in this
340 section shall be construed to exempt an employer who would
341 otherwise be covered under Section 71-3-5 from providing workers'
342 compensation coverage on those employees for whom he is liable for
343 unemployment tax.

344 Employers exempted by this section may assume, with respect
345 to any employee or classification of employees, the liability for
346 compensation imposed upon employers by this chapter with respect
347 to employees within the coverage of this chapter. The purchase
348 and acceptance by such employer of valid workers' compensation
349 insurance applicable to such employee or classification of
350 employees shall constitute, as to such employer, an assumption by
351 him of such liability under this chapter without any further act
352 on his part notwithstanding any other provisions of this chapter,
353 but only with respect to such employee or such classification of
354 employees as are within the coverage of the state fund. Such
355 assumption of liability shall take effect and continue from the
356 effective date of such workers' compensation insurance and as long
357 only as such coverage shall remain in force, in which case the
358 employer shall be subject with respect to such employee or
359 classification of employees to no other liability than the
360 compensation as provided for in this chapter.

361 This chapter shall not apply to transportation and maritime
362 employments for which a rule of liability is provided by the laws
363 of the United States.



364 This chapter shall not be applicable to a mere direct
365 buyer-seller or vendor-vendee relationship where there is no
366 employer-employee relationship as defined by Section 71-3-3, and
367 any insurance carrier is hereby prohibited from charging a premium
368 for any person who is a seller or vendor rather than an employee.

369 Any employer may elect, by proper and written action of its
370 own governing authority, to be exempt from the provisions of the
371 Workers' Compensation Law as to its sole proprietor, its partner
372 in a partnership or to its employee who is the owner of fifteen
373 percent (15%) or more of its stock in a corporation, if such sole
374 proprietor, partner or employee also voluntarily agrees thereto in
375 writing. Any sole proprietor, partner or employee owning fifteen
376 percent (15%) or more of the stock of his/her corporate employer
377 who becomes exempt from coverage under the Workers' Compensation
378 Law shall be excluded from the total number of workers or
379 operatives toward reaching the mandatory coverage threshold level
380 of five (5).

381 **SECTION 7.** This act shall take effect and be in force from
382 and after July 1, 2003.

