

*****Pending***
AMENDMENT No. 1 PROPOSED TO**

House Bill NO. 742

By Senator(s) Committee

**Amend by striking all after the enacting clause and inserting
in lieu thereof the following:**

26 **SECTION 1.** Section 37-151-103, Mississippi Code of 1972, is
27 amended as follows:

28 37-151-103. (1) Funds due each school district under the
29 terms of this chapter from the Adequate Education Program Fund
30 shall be paid in the following manner: On the twenty-fifth day of
31 each month, or the next business date after that date, there shall
32 be paid to each school district by electronic funds transfer
33 one-twelfth (1/12) of the funds to which the district is entitled
34 from funds appropriated for the Adequate Education Program Fund.
35 Provided, however, that in December said payments shall be made on
36 December 15th or the next business day after that date. Provided
37 further, that the State Department of Education shall be
38 authorized to pay school districts from the common school fund and
39 the adequate education program fund on a date earlier than
40 provided for by this section if it is determined that it is in the
41 best interest of school districts to do so.

42 Provided, however, that if the cash balance in the State
43 General Fund is not adequate on the due date to pay the amounts
44 due to all school districts in the state as determined by the
45 State Superintendent of Education, the State Fiscal Officer shall

46 not transfer said funds payable to any school district or
47 districts until money is available to pay the amount due to all
48 districts.

49 (2) Notwithstanding any provision of this chapter or any
50 other law requiring the number of children in average daily
51 attendance or the average daily attendance of transported children
52 to be determined on the basis of the preceding year, the State
53 Board of Education is hereby authorized and empowered to make
54 proper adjustments in allotments in cases where major changes in
55 the number of children in average daily attendance or the average
56 daily attendance of transported children occurs from one year to
57 another as a result of changes or alterations in the boundaries of
58 school districts, the sending of children from one county or
59 district to another upon a contract basis, the termination or
60 discontinuance of a contract for the sending of children from one
61 county or district to another, a change in or relocation of
62 attendance centers, or for any other reason which would result in
63 a major decrease or increase in the number of children in average
64 daily attendance or the average daily attendance of transported
65 children during the current school year as compared with the
66 preceding year.

67 (3) In the event of an inordinately large number of
68 absentees in any school district as a result of epidemic, natural
69 disaster, or any concerted activity discouraging school
70 attendance, then in such event school attendance for the purposes
71 of determining average daily attendance under the adequate
72 education program shall be based upon the average daily attendance
73 for the preceding school year for such school district.

74 **SECTION 2.** Section 37-9-39, Mississippi Code of 1972, is
75 amended as follows:

76 37-9-39. Salaries and wages paid to any employee of any
77 school shall be paid on a basis as determined by the local school
78 board of each school district, except for December when salaries
79 or wages shall be paid by the last working day. Salaries or wages
80 shall be paid at a minimum on a monthly basis. Any school

81 employee whose employment ends during a school term, regardless of
82 the reason(s) the employment ended, shall be paid salary or wages
83 only for that portion of the school term that employee has
84 actually worked. Nothing in this statute shall be construed to
85 entitle any employee to payment of salary or wages when no work
86 has been performed. * * *

87 **SECTION 3.** Section 37-61-19, Mississippi Code of 1972, is
88 amended as follows:

89 37-61-19. It shall be the duty of the superintendents of
90 schools or administrative superintendents, and the school boards
91 of all school districts, to limit the expenditure of school funds
92 during the fiscal year to the resources available. It shall be
93 unlawful for any school district to budget expenditures from a
94 fund in excess of the resources available within that fund * * *.
95 Furthermore, it shall be unlawful for any contract to be entered
96 into or any obligation incurred or expenditure made in excess of
97 the resources available * * * for such fiscal year. Any member of
98 the school board, superintendent of schools, or other school
99 official, who shall knowingly enter into any contract, incur any
100 obligation, or make any expenditure in excess of the amount
101 available * * * for the fiscal year shall be personally liable for
102 the amount of such excess. However, no school board member,
103 superintendent or other school official shall be personally liable
104 (a) in the event of any reduction in adequate education program
105 payments by action of the Governor acting through the Department
106 of Finance and Administration, or (b) for claims, damages, awards
107 or judgments, on account of any wrongful or tortious act or
108 omission or breach of implied term or condition of any warranty or
109 contract; provided, however, that the foregoing immunity
110 provisions shall not be a defense in cases of fraud, criminal
111 action or an intentional breach of fiduciary obligations imposed
112 by statute.

113 **SECTION 4.** Section 37-61-21, Mississippi Code of 1972, is
114 amended as follows:

115 37-61-21. If it should appear to the superintendent of

116 schools or administrative superintendent or the school board of
117 any school district that the amounts to be received from state
118 appropriations, taxation or any other source will be more than the
119 amount estimated in the budget filed and approved, or if it should
120 appear that such amounts shall be less than the amount estimated,
121 the school board of the school district, with assistance from the
122 superintendent, may revise the budget at any time during the
123 fiscal year by increasing or decreasing the fund budget, in
124 proportion to the increase or decrease in the estimated amounts.
125 If it should appear to the superintendent of schools, or
126 administrative superintendent or the school board of a school
127 district that some function of the budget as filed is in excess of
128 the requirement of that function and that the entire amount
129 budgeted for such function will not be needed for expenditures
130 therefor during the fiscal year, the school board of the school
131 district, with assistance from the superintendent, may transfer
132 resources to and from functions and funds within the budget when
133 and where needed; however, no such transfer shall be made from
134 fund to fund or from function to function which will result in the
135 expenditure of any money for any purpose different from that for
136 which the money was appropriated, allotted, collected or otherwise
137 made available or for a purpose which is not authorized by law. No
138 revision of any budget under the provisions hereof shall be made
139 which will permit a fund expenditure in excess of the resources
140 available for such purpose. The revised portions of the budgets
141 shall be incorporated in the minutes of the school board by
142 spreading them on the minutes or by attaching them as an addendum.
143 Final budget revisions, pertinent to a fiscal year, shall be
144 approved on or before the date set by the State Board of Education
145 for the school district to submit its financial information for
146 that fiscal year.

147 **SECTION 5.** Section 37-43-24, Mississippi Code of 1972, is
148 amended as follows:

149 37-43-24. (1) This section shall be referred to and may be
150 cited as the "Timely Acquisition of Braille and Large Print

151 Textbooks Act of 2002."

152 (2) The State Department of Education is hereby authorized
153 and directed to place textbook procurement orders for visually
154 impaired and hearing impaired students in the schools of this
155 state prior to the beginning of the fiscal year for which the
156 expenditure for such order has been authorized by the Legislature.

157 After June 1 of any year, the State Department of Education may
158 order additional books, as needed. In addition, the State
159 Department of Education is authorized and directed to place
160 textbook, equipment and school supply procurement orders for
161 students attending the state supported schools administered by the
162 State Board of Education prior to the beginning of the fiscal year
163 for which the expenditure for such order has been authorized by
164 the Legislature, and may order additional books, equipment and
165 supplies at a later date, as needed. The department shall insure
166 that the appropriate procedures for textbook procurement are
167 followed according to state law and board policy as described in
168 the Textbook Administration Handbook.

169 **SECTION 6.** Section 37-151-5, Mississippi Code of 1972, is
170 amended as follows:

171 37-151-5. As used in Sections 37-151-3, 37-151-5 and
172 37-151-7:

173 (a) "Adequate program" or "adequate education program"
174 or "Mississippi Adequate Education Program (M.A.E.P.)" shall mean
175 the program to establish adequate current operation funding levels
176 necessary for the programs of such school district to meet at
177 Level III of the accreditation system as established by the State
178 Board of Education, acting through the Mississippi Commission on
179 School Accreditation, regardless of the school district's
180 geographic location.

181 (b) "Educational programs or elements of programs not
182 included in the adequate education program calculations, but which
183 may be included in appropriations and transfers to school
184 districts" shall mean:

185 (i) "Capital outlay" shall mean those funds used

186 for the constructing, improving, equipping, renovating or major
187 repairing of school buildings or other school facilities, or the
188 cost of acquisition of land whereon to construct or establish such
189 school facilities.

190 (ii) "Pilot programs" shall mean programs of a
191 pilot or experimental nature usually designed for special purposes
192 and for a specified period of time other than those included in
193 the adequate education program.

194 (iii) "Adult education" shall mean public
195 education dealing primarily with students above eighteen (18)
196 years of age not enrolled as full-time public school students and
197 not classified as students of technical schools, colleges or
198 universities of the state.

199 (iv) "Food service programs" shall mean those
200 programs dealing directly with the nutritional welfare of the
201 student, such as the school lunch and school breakfast programs.

202 (c) "Base student" shall mean that student
203 classification that represents the most economically educated
204 pupil in a school system meeting Level III accreditation, as
205 determined by the State Board of Education.

206 (d) "Base student cost" shall mean the funding level
207 necessary for providing an adequate education program for one (1)
208 base student, subject to any minimum amounts prescribed in Section
209 37-151-7(1).

210 (e) "Add-on program costs" shall mean those items which
211 are included in the adequate education program appropriations and
212 are outside of the program calculations:

213 (i) "Transportation" shall mean transportation to
214 and from public schools for the students of Mississippi's public
215 schools provided for under law and funded from state funds.

216 (ii) "Vocational or technical education program"
217 shall mean a secondary vocational or technical program approved by
218 the State Department of Education and provided for from state
219 funds.

220 (iii) "Special education program" shall mean a

221 program for exceptional children as defined and authorized by
222 Sections 37-23-1 through 37-23-9, and approved by the State
223 Department of Education and provided from state funds.

224 (iv) "Gifted education program" shall mean those
225 programs for the instruction of intellectually or academically
226 gifted children as defined and provided for in Section 37-23-175
227 et seq.

228 (v) "Alternative school program" shall mean those
229 programs for certain compulsory-school-age students as defined and
230 provided for in Sections 37-13-92 and 37-19-22.

231 (vi) "Extended school year programs" shall mean
232 those programs authorized by law which extend beyond the normal
233 school year.

234 (vii) "University-based programs" shall mean those
235 university-based programs for handicapped children as defined and
236 provided for in Section 37-23-131 et seq.

237 (viii) "Bus driver training" programs shall mean
238 those driver training programs as provided for in Section 37-41-1.

239 (f) "Teacher" shall include any employee of a local
240 school who is required by law to obtain a teacher's license from
241 the State Board of Education and who is assigned to an
242 instructional area of work as defined by the State Department of
243 Education.

244 (g) "Principal" shall mean the head of an attendance
245 center or division thereof.

246 (h) "Superintendent" shall mean the head of a school
247 district.

248 (i) "School district" shall mean any type of school
249 district in the State of Mississippi, and shall include
250 agricultural high schools.

251 (j) "Minimum school term" shall mean a term of at least
252 one hundred eighty (180) days of school in which both teachers and
253 pupils are in regular attendance for scheduled classroom
254 instruction for not less than sixty percent (60%) of the normal
255 school day. It is the intent of the Legislature that any tax

256 levies generated to produce additional local funds required by any
257 school district to operate school terms in excess of one hundred
258 seventy-five (175) days shall not be construed to constitute a new
259 program for the purposes of exemption from the limitation on tax
260 revenues as allowed under Sections 27-39-321 and 37-57-107 for new
261 programs mandated by the Legislature.

262 (k) The term "transportation density" shall mean the
263 number of transported children in average daily attendance per
264 square mile of area served in a school district, as determined by
265 the State Department of Education.

266 (l) The term "transported children" shall mean children
267 being transported to school who live within legal limits for
268 transportation and who are otherwise qualified for being
269 transported to school at public expense as fixed by Mississippi
270 state law.

271 (m) The term "year of teaching experience" shall mean
272 nine (9) months of actual teaching in the public or private
273 schools of this or some other state. In no case shall more than
274 one (1) year of teaching experience be given for all services in
275 one (1) calendar or school year. In determining a teacher's
276 experience, no deduction shall be made because of the temporary
277 absence of the teacher because of illness or other good cause, and
278 the teacher shall be given credit therefor. The State Board of
279 Education shall fix a number of days, not to exceed twenty-five
280 (25) consecutive school days, during which a teacher may not be
281 under contract of employment during any school year and still be
282 considered to have been in full-time employment for a regular
283 scholastic term. In determining the experience of school
284 librarians, each complete year of continuous, full-time employment
285 as a professional librarian in a public library in this or some
286 other state shall be considered a year of teaching experience. If
287 a full-time school administrator returns to actual teaching in the
288 public schools, the term "year of teaching experience" shall
289 include the period of time he or she served as a school
290 administrator. In determining the salaries of teachers who have

291 experience in any branch of the military, the term "year of
292 teaching experience" shall include each complete year of actual
293 classroom instruction while serving in the military. In
294 determining the experience of speech-language pathologists and
295 audiologists, each complete year of continuous full-time post
296 master's degree employment in an educational setting in this or
297 some other state shall be considered a year of teaching
298 experience.

299 (n) The term "average daily attendance" shall be the
300 figure which results when the total aggregate attendance during
301 the period or months counted is divided by the number of days
302 during the period or months counted upon which both teachers and
303 pupils are in regular attendance for scheduled classroom
304 instruction less the average daily attendance for self-contained
305 special education classes and, prior to full implementation of the
306 adequate education program the department shall deduct the average
307 daily attendance for the alternative school program provided for
308 in Section 37-19-22.

309 (o) The term "local supplement" shall mean the amount
310 paid to an individual teacher over and above the adequate
311 education program salary schedule for regular teaching duties.

312 (p) The term "aggregate amount of support from ad
313 valorem taxation" shall mean the amounts produced by the
314 district's total tax levies for operations.

315 (q) The term "adequate education program funds" shall
316 mean all funds, both state and local, constituting the
317 requirements for meeting the cost of the adequate program as
318 provided for in Section 37-151-7.

319 (r) "Department" shall mean the State Department of
320 Education.

321 (s) "Commission" shall mean the Mississippi Commission
322 on School Accreditation created under Section 37-17-3.

323 **SECTION 7.** Section 37-9-17, Mississippi Code of 1972, is
324 amended as follows:

325 37-9-17. (1) On or before April 1 of each year, the

326 principal of each school shall recommend to the superintendent of
327 the local school district the licensed employees or
328 noninstructional employees to be employed for the school involved
329 except those licensed employees or noninstructional employees who
330 have been previously employed and who have a contract valid for
331 the ensuing scholastic year. If such recommendations meet with
332 the approval of the superintendent, the superintendent shall
333 recommend the employment of such licensed employees or
334 noninstructional employees to the local school board, and, unless
335 good reason to the contrary exists, the board shall elect the
336 employees so recommended. If, for any reason, the local school
337 board shall decline to elect any employee so recommended,
338 additional recommendations for the places to be filled shall be
339 made by the principal to the superintendent and then by the
340 superintendent to the local school board as provided above. The
341 school board of any local school district shall be authorized to
342 designate a personnel supervisor or another principal employed by
343 the school district to recommend to the superintendent licensed
344 employees or noninstructional employees; however, this
345 authorization shall be restricted to no more than two (2)
346 positions for each employment period for each school in the local
347 school district. Any noninstructional employee employed upon the
348 recommendation of a personnel supervisor or another principal
349 employed by the local school district must have been employed by
350 the local school district at the time the superintendent was
351 elected or appointed to office; a noninstructional employee
352 employed under this authorization may not be paid compensation in
353 excess of the statewide average compensation for such
354 noninstructional position with comparable experience, as
355 established by the State Department of Education. The school
356 board of any local school district shall be authorized to
357 designate a personnel supervisor or another principal employed by
358 the school district to accept the recommendations of principals or
359 their designees for licensed employees or noninstructional
360 employees and to transmit approved recommendations to the local

361 school board; however, this authorization shall be restricted to
362 no more than two (2) positions for each employment period for each
363 school in the local school district.

364 When the licensed employees have been elected as provided in
365 the preceding paragraph, the superintendent of the district shall
366 enter into a contract with such persons in the manner provided in
367 this chapter.

368 If, at the commencement of the scholastic year, any licensed
369 employee shall present to the superintendent a license of a higher
370 grade than that specified in such individual's contract, such
371 individual may, if funds are available from minimum education
372 program funds of the district, or from district funds, be paid
373 from such funds the amount to which such higher grade license
374 would have entitled the individual, had the license been held at
375 the time the contract was executed.

376 (2) Superintendents/directors of schools under the purview
377 of the Mississippi Board of Education and the superintendent of
378 the local school district shall require that current criminal
379 records background checks and current child abuse registry checks
380 are obtained, and that such criminal record information and
381 registry checks are on file for any new hires applying for
382 employment as a licensed or nonlicensed employee at a school and
383 not previously employed in such school under the purview of the
384 Mississippi Board of Education or at such local school district
385 prior to July 1, 2000. In order to determine the applicant's
386 suitability for employment, the applicant shall be fingerprinted.

387 If no disqualifying record is identified at the state level, the
388 fingerprints shall be forwarded by the Department of Public Safety
389 to the FBI for a national criminal history record check. The fee
390 for such fingerprinting and criminal history record check shall be
391 paid by the applicant, not to exceed Fifty Dollars (\$50.00);
392 however, the Mississippi Board of Education or the school board of
393 the local school district, in its discretion, may elect to pay the
394 fee for the fingerprinting and criminal history record check on
395 behalf of any applicant. Under no circumstances shall a member of

396 the Mississippi Board of Education, superintendent/director of
397 schools under the purview of the Mississippi Board of Education,
398 local school district superintendent, local school board member or
399 any individual other than the subject of the criminal history
400 record checks disseminate information received through any such
401 checks except insofar as required to fulfill the purposes of this
402 section. Any nonpublic school which is accredited or approved by
403 the Mississippi Board of Education may avail itself of the
404 procedures provided for herein and shall be responsible for the
405 same fee charged in the case of local public schools of this
406 state.

407 (3) If such fingerprinting or criminal record checks
408 disclose a felony conviction, guilty plea or plea of nolo
409 contendere to a felony of possession or sale of drugs, murder,
410 manslaughter, armed robbery, rape, sexual battery, sex offense
411 listed in Section 45-33-23(g), child abuse, arson, grand larceny,
412 burglary, gratification of lust or aggravated assault which has
413 not been reversed on appeal or for which a pardon has not been
414 granted, the new hire shall not be eligible to be employed at such
415 school. Any employment contract for a new hire executed by the
416 superintendent of the local school district or any employment of a
417 new hire by a superintendent/director of a new school under the
418 purview of the Mississippi Board of Education shall be voidable if
419 the new hire receives a disqualifying criminal record check.
420 However, the Mississippi Board of Education or the school board
421 may, in its discretion, allow any applicant aggrieved by the
422 employment decision under this section to appear before the
423 respective board, or before a hearing officer designated for such
424 purpose, to show mitigating circumstances which may exist and
425 allow the new hire to be employed at the school. The Mississippi
426 Board of Education or local school board may grant waivers for
427 such mitigating circumstances, which shall include, but not be
428 limited to: (a) age at which the crime was committed; (b)
429 circumstances surrounding the crime; (c) length of time since the
430 conviction and criminal history since the conviction; (d) work

431 history; (e) current employment and character references; (f)
432 other evidence demonstrating the ability of the person to perform
433 the employment responsibilities competently and that the person
434 does not pose a threat to the health or safety of the children at
435 the school.

436 (4) No local school district or local school district
437 employee or members of the Mississippi Board of Education or
438 employee of a school under the purview of the Mississippi Board of
439 Education shall be held liable in any employment discrimination
440 suit in which an allegation of discrimination is made regarding an
441 employment decision authorized under this Section 37-9-17.

442 **SECTION 8.** This act shall take effect and be in force from
443 and after its passage.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTION 37-151-103, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE THE STATE DEPARTMENT OF EDUCATION TO TRANSFER STATE
3 FUNDS ON DATES OTHER THAN DECEMBER 15TH IF IT IS IN THE BEST
4 INTEREST OF THE SCHOOL DISTRICT; TO AMEND SECTION 37-9-39,
5 MISSISSIPPI CODE OF 1972, TO AUTHORIZE LOCAL SCHOOL DISTRICTS TO
6 ADOPT A POLICY ON THE TIME BASIS FOR PAYING SALARIES AND WAGES TO
7 ITS EMPLOYEES; TO AMEND SECTIONS 37-61-19 AND 37-61-21,
8 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT SCHOOL DISTRICT
9 EXPENDITURES SHALL BE LIMITED TO REVENUE RESOURCES AVAILABLE AND
10 NOT LIMITED TO BUDGET FUNDS AND TO PROVIDE A DATE FOR FINAL BUDGET
11 REVISIONS; TO AMEND SECTION 37-43-24, MISSISSIPPI CODE OF 1972, TO
12 AUTHORIZE AND DIRECT THE STATE DEPARTMENT OF EDUCATION TO PLACE
13 TEXTBOOK, EQUIPMENT AND SUPPLY ORDERS FOR STUDENTS ATTENDING
14 SCHOOLS ADMINISTERED BY THE STATE BOARD OF EDUCATION PRIOR TO THE
15 BEGINNING OF THE FISCAL YEAR FOR WHICH FUNDS ARE APPROPRIATED FOR
16 SUCH PURPOSE; TO AMEND SECTION 37-151-5, MISSISSIPPI CODE OF 1972,
17 TO INCLUDE PUBLIC SCHOOL SPEECH-LANGUAGE PATHOLOGISTS' AND
18 AUDIOLOGISTS' PROFESSIONAL EXPERIENCE IN CLINICAL SETTINGS IN THE
19 DEFINITION OF THE TERM "YEAR OF TEACHING EXPERIENCE" AS USED FOR
20 DETERMINING THEIR SALARIES IN THE PUBLIC SCHOOLS; TO AMEND SECTION
21 37-9-17, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ACCREDITED
22 PRIVATE SCHOOLS MAY UTILIZE THE CRIMINAL BACKGROUND CHECK
23 PROCEDURES FOR EMPLOYEES PROVIDED FOR PUBLIC SCHOOLS; AND FOR
24 RELATED PURPOSES.