

**\*\*\*Adopted\*\*\***

**SUBSTITUTE 1 FOR AMENDMENT No. 1 PROPOSED TO**

**House Bill NO. 742**

**By Senator(s) Gordon**

**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

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

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

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

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

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

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

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

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

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

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

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

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

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

Textbooks Act of 2002."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) "Special education program" shall mean a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



experience in any branch of the military, the term "year of teaching experience" shall include each complete year of actual classroom instruction while serving in the military. In determining the experience of speech-language pathologists and audiologists, each complete year of continuous full-time post master's degree employment in an educational setting in this or some other state shall be considered a year of teaching experience; provided, however, that the cost of any such experience increments for speech-language pathologist and audiologist shall not be included in the calculation of base student cost under the adequate education program.

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

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

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

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

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

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

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

328           37-9-17. (1) On or before April 1 of each year, the  
329 principal of each school shall recommend to the superintendent of  
330 the local school district the licensed employees or  
331 noninstructional employees to be employed for the school involved  
332 except those licensed employees or noninstructional employees who  
333 have been previously employed and who have a contract valid for  
334 the ensuing scholastic year. If such recommendations meet with  
335 the approval of the superintendent, the superintendent shall  
336 recommend the employment of such licensed employees or  
337 noninstructional employees to the local school board, and, unless  
338 good reason to the contrary exists, the board shall elect the  
339 employees so recommended. If, for any reason, the local school  
340 board shall decline to elect any employee so recommended,  
341 additional recommendations for the places to be filled shall be  
342 made by the principal to the superintendent and then by the  
343 superintendent to the local school board as provided above. The  
344 school board of any local school district shall be authorized to  
345 designate a personnel supervisor or another principal employed by  
346 the school district to recommend to the superintendent licensed  
347 employees or noninstructional employees; however, this  
348 authorization shall be restricted to no more than two (2)  
349 positions for each employment period for each school in the local  
350 school district. Any noninstructional employee employed upon the  
351 recommendation of a personnel supervisor or another principal  
352 employed by the local school district must have been employed by  
353 the local school district at the time the superintendent was  
354 elected or appointed to office; a noninstructional employee  
355 employed under this authorization may not be paid compensation in  
356 excess of the statewide average compensation for such  
357 noninstructional position with comparable experience, as  
358 established by the State Department of Education. The school  
359 board of any local school district shall be authorized to  
360 designate a personnel supervisor or another principal employed by

the school district to accept the recommendations of principals or their designees for licensed employees or noninstructional employees and to transmit approved recommendations to the local school board; however, this authorization shall be restricted to no more than two (2) positions for each employment period for each school in the local school district.

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

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

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

If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the FBI for a national criminal history record check. The fee for such fingerprinting and criminal history record check shall be paid by the applicant, not to exceed Fifty Dollars (\$50.00);

however, the Mississippi Board of Education or the school board of

the local school district, in its discretion, may elect to pay the fee for the fingerprinting and criminal history record check on behalf of any applicant. Under no circumstances shall a member of the Mississippi Board of Education, superintendent/director of schools under the purview of the Mississippi Board of Education, local school district superintendent, local school board member or any individual other than the subject of the criminal history record checks disseminate information received through any such checks except insofar as required to fulfill the purposes of this section. Any nonpublic school which is accredited or approved by the Mississippi Board of Education may avail itself of the procedures provided for herein and shall be responsible for the same fee charged in the case of local public schools of this state.

(3) If such fingerprinting or criminal record checks disclose a felony conviction, guilty plea or plea of nolo contendere to a felony of possession or sale of drugs, murder, manslaughter, armed robbery, rape, sexual battery, sex offense listed in Section 45-33-23(g), child abuse, arson, grand larceny, burglary, gratification of lust or aggravated assault which has not been reversed on appeal or for which a pardon has not been granted, the new hire shall not be eligible to be employed at such school. Any employment contract for a new hire executed by the superintendent of the local school district or any employment of a new hire by a superintendent/director of a new school under the purview of the Mississippi Board of Education shall be voidable if the new hire receives a disqualifying criminal record check. However, the Mississippi Board of Education or the school board may, in its discretion, allow any applicant aggrieved by the employment decision under this section to appear before the respective board, or before a hearing officer designated for such purpose, to show mitigating circumstances which may exist and allow the new hire to be employed at the school. The Mississippi Board of Education or local school board may grant waivers for such mitigating circumstances, which shall include, but not be

limited to: (a) age at which the crime was committed; (b) circumstances surrounding the crime; (c) length of time since the conviction and criminal history since the conviction; (d) work history; (e) current employment and character references; (f) other evidence demonstrating the ability of the person to perform the employment responsibilities competently and that the person does not pose a threat to the health or safety of the children at the school.

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

**SECTION 8.** This act shall take effect and be in force from and after its passage and shall stand repealed July 1, 2004.

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

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