

By: Representative Gunn

To: Appropriations

HOUSE BILL NO. 1530
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 37-13-91, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT A COMPULSORY-SCHOOL-AGE CHILD WHO IS ABSENT MORE
3 THAN 37% OF THE INSTRUCTIONAL DAY MUST BE CONSIDERED ABSENT THE
4 ENTIRE DAY; TO AMEND SECTION 37-151-5, MISSISSIPPI CODE OF 1972,
5 TO REVISE THE DEFINITION OF THE TERMS "MINIMUM SCHOOL TERM" AND
6 "AVERAGE DAILY ATTENDANCE" AS SUCH TERMS ARE USED FOR DETERMINING
7 ALLOCATIONS TO SCHOOL DISTRICTS UNDER THE ADEQUATE EDUCATION
8 PROGRAM; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 37-13-91, Mississippi Code of 1972, is
11 amended as follows:

12 37-13-91. (1) This section shall be referred to as the
13 "Mississippi Compulsory School Attendance Law."

14 (2) The following terms as used in this section are defined
15 as follows:

16 (a) "Parent" means the father or mother to whom a child
17 has been born, or the father or mother by whom a child has been
18 legally adopted.

19 (b) "Guardian" means a guardian of the person of a
20 child, other than a parent, who is legally appointed by a court of
21 competent jurisdiction.



22 (c) "Custodian" means any person having the present
23 care or custody of a child, other than a parent or guardian of the
24 child.

25 (d) "School day" means not less than five (5) and not
26 more than eight (8) hours of actual teaching in which both
27 teachers and pupils are in regular attendance for scheduled
28 schoolwork.

29 (e) "School" means any public school in this state or
30 any nonpublic school in this state which is in session each school
31 year for at least one hundred eighty (180) school days, except
32 that the "nonpublic" school term shall be the number of days that
33 each school shall require for promotion from grade to grade.

34 (f) "Compulsory-school-age child" means a child who has
35 attained or will attain the age of six (6) years on or before
36 September 1 of the calendar year and who has not attained the age
37 of seventeen (17) years on or before September 1 of the calendar
38 year; and shall include any child who has attained or will attain
39 the age of five (5) years on or before September 1 and has
40 enrolled in a full-day public school kindergarten program.
41 Provided, however, that the parent or guardian of any child
42 enrolled in a full-day public school kindergarten program shall be
43 allowed to disenroll the child from the program on a one-time
44 basis, and such child shall not be deemed a compulsory-school-age
45 child until the child attains the age of six (6) years.



46 (g) "School attendance officer" means a person employed
47 by the State Department of Education pursuant to Section 37-13-89.

48 (h) "Appropriate school official" means the
49 superintendent of the school district, or his designee, or, in the
50 case of a nonpublic school, the principal or the headmaster.

51 (i) "Nonpublic school" means an institution for the
52 teaching of children, consisting of a physical plant, whether
53 owned or leased, including a home, instructional staff members and
54 students, and which is in session each school year. This
55 definition shall include, but not be limited to, private, church,
56 parochial and home instruction programs.

57 (3) A parent, guardian or custodian of a
58 compulsory-school-age child in this state shall cause the child to
59 enroll in and attend a public school or legitimate nonpublic
60 school for the period of time that the child is of compulsory
61 school age, except under the following circumstances:

62 (a) When a compulsory-school-age child is physically,
63 mentally or emotionally incapable of attending school as
64 determined by the appropriate school official based upon
65 sufficient medical documentation.

66 (b) When a compulsory-school-age child is enrolled in
67 and pursuing a course of special education, remedial education or
68 education for handicapped or physically or mentally disadvantaged
69 children.



70 (c) When a compulsory-school-age child is being
71 educated in a legitimate home instruction program.

72 The parent, guardian or custodian of a compulsory-school-age
73 child described in this subsection, or the parent, guardian or
74 custodian of a compulsory-school-age child attending any nonpublic
75 school, or the appropriate school official for any or all children
76 attending a nonpublic school shall complete a "certificate of
77 enrollment" in order to facilitate the administration of this
78 section.

79 The form of the certificate of enrollment shall be prepared
80 by the Office of Compulsory School Attendance Enforcement of the
81 State Department of Education and shall be designed to obtain the
82 following information only:

83 (i) The name, address, telephone number and date
84 of birth of the compulsory-school-age child;

85 (ii) The name, address and telephone number of the
86 parent, guardian or custodian of the compulsory-school-age child;

87 (iii) A simple description of the type of
88 education the compulsory-school-age child is receiving and, if the
89 child is enrolled in a nonpublic school, the name and address of
90 the school; and

91 (iv) The signature of the parent, guardian or
92 custodian of the compulsory-school-age child or, for any or all
93 compulsory-school-age child or children attending a nonpublic



94 school, the signature of the appropriate school official and the
95 date signed.

96 The certificate of enrollment shall be returned to the school
97 attendance officer where the child resides on or before September
98 15 of each year. Any parent, guardian or custodian found by the
99 school attendance officer to be in noncompliance with this section
100 shall comply, after written notice of the noncompliance by the
101 school attendance officer, with this subsection within ten (10)
102 days after the notice or be in violation of this section.

103 However, in the event the child has been enrolled in a public
104 school within fifteen (15) calendar days after the first day of
105 the school year as required in subsection (6), the parent or
106 custodian may, at a later date, enroll the child in a legitimate
107 nonpublic school or legitimate home instruction program and send
108 the certificate of enrollment to the school attendance officer and
109 be in compliance with this subsection.

110 For the purposes of this subsection, a legitimate nonpublic
111 school or legitimate home instruction program shall be those not
112 operated or instituted for the purpose of avoiding or
113 circumventing the compulsory attendance law.

114 (4) An "unlawful absence" is an absence for an entire school
115 day or during part of a school day by a compulsory-school-age
116 child, which absence is not due to a valid excuse for temporary
117 nonattendance. For purposes of reporting absenteeism under
118 subsection (6) of this section, if a compulsory-school-age child



119 has an absence that is more than thirty-seven percent (37%) of the
120 instructional day, as fixed by the school board for the school at
121 which the compulsory-school-age child is enrolled, the child must
122 be considered absent the entire school day. Days missed from
123 school due to disciplinary suspension shall not be considered an
124 "excused" absence under this section. This subsection shall not
125 apply to children enrolled in a nonpublic school.

126 Each of the following shall constitute a valid excuse for
127 temporary nonattendance of a compulsory-school-age child enrolled
128 in a public school, provided satisfactory evidence of the excuse
129 is provided to the superintendent of the school district, or his
130 designee:

131 (a) An absence is excused when the absence results from
132 the compulsory-school-age child's attendance at an authorized
133 school activity with the prior approval of the superintendent of
134 the school district, or his designee. These activities may
135 include field trips, athletic contests, student conventions,
136 musical festivals and any similar activity.

137 (b) An absence is excused when the absence results from
138 illness or injury which prevents the compulsory-school-age child
139 from being physically able to attend school.

140 (c) An absence is excused when isolation of a
141 compulsory-school-age child is ordered by the county health
142 officer, by the State Board of Health or appropriate school
143 official.



144 (d) An absence is excused when it results from the
145 death or serious illness of a member of the immediate family of a
146 compulsory-school-age child. The immediate family members of a
147 compulsory-school-age child shall include children, spouse,
148 grandparents, parents, brothers and sisters, including
149 stepbrothers and stepsisters.

150 (e) An absence is excused when it results from a
151 medical or dental appointment of a compulsory-school-age child.

152 (f) An absence is excused when it results from the
153 attendance of a compulsory-school-age child at the proceedings of
154 a court or an administrative tribunal if the child is a party to
155 the action or under subpoena as a witness.

156 (g) An absence may be excused if the religion to which
157 the compulsory-school-age child or the child's parents adheres,
158 requires or suggests the observance of a religious event. The
159 approval of the absence is within the discretion of the
160 superintendent of the school district, or his designee, but
161 approval should be granted unless the religion's observance is of
162 such duration as to interfere with the education of the child.

163 (h) An absence may be excused when it is demonstrated
164 to the satisfaction of the superintendent of the school district,
165 or his designee, that the purpose of the absence is to take
166 advantage of a valid educational opportunity such as travel,
167 including vacations or other family travel. Approval of the
168 absence must be gained from the superintendent of the school



169 district, or his designee, before the absence, but the approval
170 shall not be unreasonably withheld.

171 (i) An absence may be excused when it is demonstrated
172 to the satisfaction of the superintendent of the school district,
173 or his designee, that conditions are sufficient to warrant the
174 compulsory-school-age child's nonattendance. However, no absences
175 shall be excused by the school district superintendent, or his
176 designee, when any student suspensions or expulsions circumvent
177 the intent and spirit of the compulsory attendance law.

178 (5) Any parent, guardian or custodian of a
179 compulsory-school-age child subject to this section who refuses or
180 willfully fails to perform any of the duties imposed upon him or
181 her under this section or who intentionally falsifies any
182 information required to be contained in a certificate of
183 enrollment, shall be guilty of contributing to the neglect of a
184 child and, upon conviction, shall be punished in accordance with
185 Section 97-5-39.

186 Upon prosecution of a parent, guardian or custodian of a
187 compulsory-school-age child for violation of this section, the
188 presentation of evidence by the prosecutor that shows that the
189 child has not been enrolled in school within eighteen (18)
190 calendar days after the first day of the school year of the public
191 school which the child is eligible to attend, or that the child
192 has accumulated twelve (12) unlawful absences during the school
193 year at the public school in which the child has been enrolled,



194 shall establish a prima facie case that the child's parent,
195 guardian or custodian is responsible for the absences and has
196 refused or willfully failed to perform the duties imposed upon him
197 or her under this section. However, no proceedings under this
198 section shall be brought against a parent, guardian or custodian
199 of a compulsory-school-age child unless the school attendance
200 officer has contacted promptly the home of the child and has
201 provided written notice to the parent, guardian or custodian of
202 the requirement for the child's enrollment or attendance.

203 (6) If a compulsory-school-age child has not been enrolled
204 in a school within fifteen (15) calendar days after the first day
205 of the school year of the school which the child is eligible to
206 attend or the child has accumulated five (5) unlawful absences
207 during the school year of the public school in which the child is
208 enrolled, the school district superintendent or his designee shall
209 report, within two (2) school days or within five (5) calendar
210 days, whichever is less, the absences to the school attendance
211 officer. The State Department of Education shall prescribe a
212 uniform method for schools to utilize in reporting the unlawful
213 absences to the school attendance officer. The superintendent or
214 his designee, also shall report any student suspensions or student
215 expulsions to the school attendance officer when they occur.

216 (7) When a school attendance officer has made all attempts
217 to secure enrollment and/or attendance of a compulsory-school-age
218 child and is unable to effect the enrollment and/or attendance,



219 the attendance officer shall file a petition with the youth court
220 under Section 43-21-451 or shall file a petition in a court of
221 competent jurisdiction as it pertains to parent or child.
222 Sheriffs, deputy sheriffs and municipal law enforcement officers
223 shall be fully authorized to investigate all cases of
224 nonattendance and unlawful absences by compulsory-school-age
225 children, and shall be authorized to file a petition with the
226 youth court under Section 43-21-451 or file a petition or
227 information in the court of competent jurisdiction as it pertains
228 to parent or child for violation of this section. The youth court
229 shall expedite a hearing to make an appropriate adjudication and a
230 disposition to ensure compliance with the Compulsory School
231 Attendance Law, and may order the child to enroll or re-enroll in
232 school. The superintendent of the school district to which the
233 child is ordered may assign, in his discretion, the child to the
234 alternative school program of the school established pursuant to
235 Section 37-13-92.

236 (8) The State Board of Education shall adopt rules and
237 regulations for the purpose of reprimanding any school
238 superintendents who fail to timely report unexcused absences under
239 the provisions of this section.

240 (9) Notwithstanding any provision or implication herein to
241 the contrary, it is not the intention of this section to impair
242 the primary right and the obligation of the parent or parents, or
243 person or persons in loco parentis to a child, to choose the



244 proper education and training for such child, and nothing in this
245 section shall ever be construed to grant, by implication or
246 otherwise, to the State of Mississippi, any of its officers,
247 agencies or subdivisions any right or authority to control,
248 manage, supervise or make any suggestion as to the control,
249 management or supervision of any private or parochial school or
250 institution for the education or training of children, of any kind
251 whatsoever that is not a public school according to the laws of
252 this state; and this section shall never be construed so as to
253 grant, by implication or otherwise, any right or authority to any
254 state agency or other entity to control, manage, supervise,
255 provide for or affect the operation, management, program,
256 curriculum, admissions policy or discipline of any such school or
257 home instruction program.

258 **SECTION 2.** Section 37-151-5, Mississippi Code of 1972, is
259 amended as follows:

260 37-151-5. As used in Sections 37-151-5 and 37-151-7:

261 (a) "Adequate program" or "adequate education program"
262 or "Mississippi Adequate Education Program (MAEP)" shall mean the
263 program to establish adequate current operation funding levels
264 necessary for the programs of such school district to meet at
265 least a successful Level III rating of the accreditation system as
266 established by the State Board of Education using current
267 statistically relevant state assessment data.



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

272 (i) "Capital outlay" shall mean those funds used
273 for the constructing, improving, equipping, renovating or major
274 repairing of school buildings or other school facilities, or the
275 cost of acquisition of land whereon to construct or establish such
276 school facilities.

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

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

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

289 (c) "Base student" shall mean that student
290 classification that represents the most economically educated
291 pupil in a school system meeting the definition of successful, as
292 determined by the State Board of Education.



293 (d) "Base student cost" shall mean the funding level
294 necessary for providing an adequate education program for one (1)
295 base student, subject to any minimum amounts prescribed in Section
296 37-151-7(1).

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

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

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

307 (iii) "Special education program" shall mean a
308 program for exceptional children as defined and authorized by
309 Sections 37-23-1 through 37-23-9, and approved by the State
310 Department of Education and provided from state funds.

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

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



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

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

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

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

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

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

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

338 (j) "Minimum school term" shall mean a term of at least
339 one hundred eighty (180) days of school in which both teachers and
340 pupils are in regular attendance for scheduled classroom
341 instruction for not less than * * * sixty-three percent (63%) of
342 the * * * instructional day, as fixed by the local school board



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

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

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

360 (m) The term "year of teaching experience" shall mean
361 nine (9) months of actual teaching in the public or private
362 schools. In no case shall more than one (1) year of teaching
363 experience be given for all services in one (1) calendar or school
364 year. In determining a teacher's experience, no deduction shall
365 be made because of the temporary absence of the teacher because of
366 illness or other good cause, and the teacher shall be given credit
367 therefor. Beginning with the 2003-2004 school year, the State



368 Board of Education shall fix a number of days, not to exceed
369 forty-five (45) consecutive school days, during which a teacher
370 may not be under contract of employment during any school year and
371 still be considered to have been in full-time employment for a
372 regular scholastic term. If a teacher exceeds the number of days
373 established by the State Board of Education that a teacher may not
374 be under contract but may still be employed, that teacher shall
375 not be credited with a year of teaching experience. In
376 determining the experience of school librarians, each complete
377 year of continuous, full-time employment as a professional
378 librarian in a public library in this or some other state shall be
379 considered a year of teaching experience. If a full-time school
380 administrator returns to actual teaching in the public schools,
381 the term "year of teaching experience" shall include the period of
382 time he or she served as a school administrator. In determining
383 the salaries of teachers who have experience in any branch of the
384 military, the term "year of teaching experience" shall include
385 each complete year of actual classroom instruction while serving
386 in the military. In determining the experience of speech-language
387 pathologists and audiologists, each complete year of continuous
388 full-time post master's degree employment in an educational
389 setting in this or some other state shall be considered a year of
390 teaching experience. Provided, however, that school districts are
391 authorized, in their discretion, to negotiate the salary levels
392 applicable to certificated employees employed after July 1, 2009,



393 who are receiving retirement benefits from the retirement system
394 of another state, and the annual experience increment provided in
395 Section 37-19-7 shall not be applicable to any such retired
396 certificated employee.

397 (n) (i) The term "average daily attendance" shall be
398 the figure which results when the total aggregate full-day
399 attendance during the period or months counted is divided by the
400 number of days during the period or months counted upon which both
401 teachers and pupils are in regular attendance for scheduled
402 classroom instruction, unless a pupil's absence is excused due to
403 participation in an activity authorized by the State Board of
404 Education under subparagraph (ii) of this paragraph, less the
405 average daily attendance for self-contained special education
406 classes * * *. For purposes of determining and reporting
407 attendance, a pupil must be present for at least sixty-three
408 percent (63%) of the instructional day, as fixed by the local
409 school board for each school in the school district, in order to
410 be considered in full-day attendance. Prior to full
411 implementation of the adequate education program the department
412 shall deduct the average daily attendance for the alternative
413 school program provided for in Section 37-19-22.

414 (ii) The State Board of Education shall define
415 those activities necessitating a pupil's absence that, for
416 purposes of determining and reporting attendance for average daily
417 attendance purposes, must be considered an excused absence. Such



418 activities include, but are not limited to: official organized
419 events sponsored by the 4-H or Future Farmers of America (FFA);
420 official organized junior livestock shows and rodeo events;
421 official employment as a page at the State Capitol for the
422 Mississippi House of Representatives or Senate; subject-matter
423 field trips; athletic contests; student conventions; music
424 festivals or contests; and any similar school-related activity
425 designated by the State Board of Education. The State Board of
426 Education shall prescribe the means by which a pupil's absence due
427 to participation in an activity authorized by the board pursuant
428 to this subparagraph must be verified. This subparagraph (ii)
429 shall stand repealed on July 1, 2016.

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

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

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

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



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

444 (t) The term "successful school district" shall mean a
445 Level III school district as designated by the State Board of
446 Education using current statistically relevant state assessment
447 data.

448 (u) "Dual enrollment-dual credit programs" shall mean
449 programs for potential or recent high school student dropouts to
450 dually enroll in their home high school and a local community
451 college in a dual credit program consisting of high school
452 completion coursework and a credential, certificate or degree
453 program at the community college, as provided in Section
454 37-15-38(19).

455 **SECTION 3.** This act shall take effect and be in force from
456 and after July 1, 2013.

