

By: Representative Blackmon

To: Education

HOUSE BILL NO. 527  
(As Sent to Governor)

1 AN ACT TO PROVIDE A MECHANISM FOR THE NONRENEWAL OF LICENSED  
2 SCHOOL EMPLOYEES IN A TIMELY, COST-EFFICIENT AND FAIR MANNER; TO  
3 PROVIDE UNIFORM STANDARDS FOR EMPLOYMENT PRACTICES; TO CORRECT  
4 DEFICIENCIES IN CURRENT STATUTORY PROVISIONS RELATING TO  
5 NONREEMPLOYMENT OF LICENSED EMPLOYEES; TO AMEND SECTION 37-9-101,  
6 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ALL DECISIONS OF  
7 NONREEMPLOYMENT OF SCHOOL EMPLOYEES MUST BE BASED ON VALID  
8 EDUCATIONAL REASONS WITH RESPECT TO EMPLOYMENT OR NONCOMPLIANCE  
9 WITH SCHOOL DISTRICT PERSONNEL POLICIES; TO AMEND SECTION  
10 37-9-103, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE SCHOOL  
11 EMPLOYMENT PROCEDURES LAW SHALL APPLY TO ALL LICENSED PERSONNEL  
12 EMPLOYED BY A SCHOOL DISTRICT; TO CREATE NEW SECTION 37-9-104,  
13 MISSISSIPPI CODE OF 1972, TO REQUIRE NOTICE OF A PRELIMINARY  
14 DETERMINATION BY A SCHOOL BOARD NOT TO RENEW A SUPERINTENDENT'S  
15 CONTRACT TO BE PROVIDED BY FEBRUARY 1; TO AMEND SECTION 37-9-105,  
16 MISSISSIPPI CODE OF 1972, TO REQUIRE THE WRITTEN NOTICE OF A  
17 LICENSED EMPLOYEE'S PROPOSED NONREEMPLOYMENT TO STATE THE SPECIFIC  
18 REASONS FOR NONREEMPLOYMENT AND INCLUDE A LIST OF WITNESSES AND  
19 EVIDENCE; TO AMEND SECTION 37-9-109, MISSISSIPPI CODE OF 1972, TO  
20 PRESCRIBE THE RIGHTS AND DUTIES OF EMPLOYEES AT HEARINGS; TO AMEND  
21 SECTION 37-9-111, MISSISSIPPI CODE OF 1972, TO ESTABLISH  
22 REQUIREMENTS FOR HEARING OFFICERS AT HEARINGS ON THE  
23 NONREEMPLOYMENT OF LICENSED EMPLOYEES, TO REQUIRE HEARINGS TO BE  
24 HELD IN EXECUTIVE SESSION UNLESS AN EMPLOYEE ELECTS FOR A PUBLIC  
25 HEARING, TO PROVIDE FOR THE PRESENTATION OF EVIDENCE AT THE  
26 HEARING AND TO PRESCRIBE THE BURDEN OF PROOF AT THE HEARING FOR  
27 UPHOLDING THE DECISION OF NONREEMPLOYMENT; AND FOR RELATED  
28 PURPOSES.

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

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

32 37-9-101. Sections 37-9-101 through 37-9-113 shall be known  
33 as and cited as the "Education Employment Procedures Law of 2001."

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

39 offering an employee a renewal of his contract; to provide an  
40 opportunity for the employee to present matters in extenuation or  
41 exculpation; to provide the employee with an opportunity for a  
42 hearing to enable the board to determine whether the  
43 recommendation of nonemployment is a proper employment decision  
44 and not contrary to law and to require nonrenewal decisions to be  
45 based upon valid educational reasons or noncompliance with school  
46 district personnel policies. It is the intent of the Legislature  
47 not to establish a system of tenure \* \* \*.

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

50 37-9-103. As used in Sections 37-9-101 through 37-9-113, the  
51 word "employee" shall include:

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

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

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

66 SECTION 3. The following shall be codified as Section  
67 37-9-104, Mississippi Code of 1972:

68 37-9-104. If the board of trustees makes a preliminary  
69 determination not to offer the school district superintendent a  
70 renewal contract for a successive year, written notice of the  
71 preliminary nonreemployment determination must be given to the

72 superintendent before February 1. However, an interim conservator  
73 appointed pursuant to Section 37-17-6(14)(a) or a school board  
74 acting on the recommendation of a school district financial  
75 advisor appointed pursuant to Section 37-9-18 is not required to  
76 comply with the time limitations prescribed in this section for  
77 recommending the reemployment of superintendents.

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

80 37-9-105. In the event that a recommendation is made by the  
81 school district not to offer an employee a renewal contract for a  
82 successive year, written notice of the proposed nonreemployment  
83 stating the reasons for the proposed nonreemployment shall be  
84 given \* \* \* no later than the following:

85 \* \* \*

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

89 (b) If the employee is a teacher, administrator or  
90 other professional educator covered under Sections 37-9-101  
91 through 37-9-113, the superintendent, without further board  
92 action, shall give notice of nonreemployment on or before April  
93 15.

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

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

103 37-9-109. An employee who has received notice under Section  
104 37-9-105, upon written request from the employee received by the

105 district within ten (10) days of receipt of the notice by the  
106 employee, shall be entitled to:

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

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

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

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

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

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

136 SECTION 6. Section 37-9-111, Mississippi Code of 1972, is  
137 amended as follows:

138           37-9-111. (1) The school board, or its designee, upon  
139 request for a hearing from an employee under the terms of Sections  
140 37-9-101 through 37-9-113, shall set the time, place and date of  
141 such hearing and notify the employee in writing of same. The date  
142 shall be set not sooner than five (5) days nor later than thirty  
143 (30) days from the date of the request, unless otherwise agreed.  
144 The hearing may be held before the board or before a hearing  
145 officer appointed for such purpose by the board, either from among  
146 its own membership, from the staff of the school district or some  
147 other qualified and impartial person, but in no event shall the  
148 hearing officer be the staff member responsible for the initial  
149 recommendation of nonreemployment. No hearing officer may have an  
150 interest in the outcome of a hearing, nor may a hearing officer be  
151 related to a board member, any administrator making the  
152 recommendations of nonreemployment or the employee. Once a  
153 hearing officer is appointed, no ex parte communications may be  
154 made regarding any substantive provisions of the hearing.

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

168           (3) The district shall present evidence, either in written  
169 or oral form, at the hearing in support of its recommendation for  
170 nonreemployment.

171 \* \* \* The employee shall be afforded an opportunity to  
172 present matters at the hearing relevant to the reasons given for  
173 the proposed nonreemployment determination and to the reasons the  
174 employee alleges to be the reasons for nonreemployment and to be  
175 represented by counsel at such a hearing. Such hearing shall be  
176 conducted in such a manner as to afford the parties a fair and  
177 reasonable opportunity to present witnesses and other evidence  
178 pertinent to the issues \* \* \* and to cross-examine witnesses  
179 presented at the hearing. The board or the hearing officer may  
180 require any portion of the evidence to be submitted in the form of  
181 depositions or affidavits, and in case affidavits are received, an  
182 opportunity to present counter-affidavits shall be provided.

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

187 (5) The board shall review the matters presented before it,  
188 or, if the hearing is conducted by a hearing officer, the report  
189 of the hearing officer, if any, the record of the proceedings and,  
190 based solely thereon, conclude whether the proposed  
191 nonreemployment \* \* \* is a proper employment decision, is based  
192 upon a valid educational reason or noncompliance with school  
193 district personnel policies and is based solely upon the evidence  
194 presented at the hearing, and shall notify the employee in writing  
195 of its final decision and reasons therefor. Such notification  
196 shall be within thirty (30) days of the conclusion of the hearing  
197 if the hearing is conducted by a hearing officer and within ten  
198 (10) days of the conclusion of the hearing if the hearing is  
199 initially conducted by the board. If the matter is heard before a  
200 hearing officer, the board shall also grant the employee the  
201 opportunity to appear before the board to present a statement in  
202 his own behalf, either in person or by his attorney, prior to a  
203 final decision by the board.

204       (6) In conducting a hearing, the board or hearing officer  
205 shall not be bound by common law or by statutory rules of evidence  
206 or by technical or formal rules of procedure except as provided in  
207 Sections 37-9-101 through 37-9-113, but may conduct such hearing  
208 in such manner as best to ascertain the rights of the  
209 parties; \* \* \* however, hearsay evidence, if admitted, shall not  
210 be the sole basis for the determination of facts by the board or  
211 hearing officer.

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

216       (8) For purposes of conducting hearings under Sections  
217 37-9-101 through 37-9-113, the board or hearing officer shall have  
218 the authority to issue subpoenas for witnesses and to compel their  
219 attendance and the giving of evidence. Any expense connected  
220 therewith shall be borne by the party requesting the subpoenas,  
221 which shall include an appearance fee for each witness so  
222 subpoenaed not inconsistent with state laws governing payments to  
223 witnesses. In the event it is necessary to enforce or to quash a  
224 subpoena issued to compel the attendance of a witness, application  
225 shall be made with the chancery court of the county where the  
226 school board is located.

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