

By: Senator(s) Minor

To: Education; Judiciary

SENATE BILL NO. 2028

1 AN ACT TO AMEND THE SCHOOL EMPLOYMENT PROCEDURES LAW OF 1977;  
 2 TO AMEND SECTION 37-9-101, MISSISSIPPI CODE OF 1972, TO REQUIRE  
 3 ALL DECISIONS OF NONREEMPLOYMENT OF SCHOOL EMPLOYEES TO BE BASED  
 4 ON GOOD CAUSE WITH RESPECT TO EMPLOYMENT; TO AMEND SECTION  
 5 37-9-103, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE SCHOOL  
 6 EMPLOYMENT PROCEDURES LAW SHALL APPLY TO ALL PERSONNEL EMPLOYED BY  
 7 A SCHOOL DISTRICT; TO AMEND SECTION 37-9-105, MISSISSIPPI CODE OF  
 8 1972, TO REQUIRE THE WRITTEN NOTICE OF A PROPOSED NONRENEWAL TO  
 9 STATE THE SPECIFIC REASONS FOR NONRENEWAL AND TO INCLUDE A LIST OF  
 10 WITNESSES AND EVIDENCE; TO AMEND SECTION 37-9-109, MISSISSIPPI  
 11 CODE OF 1972, TO PRESCRIBE THE RIGHTS OF EMPLOYEES AT HEARINGS; TO  
 12 AMEND SECTION 37-9-111, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR  
 13 THE APPOINTMENT OF A HEARING OFFICER AT ANY SUCH HEARING ON THE  
 14 NONREEMPLOYMENT OF A SCHOOL EMPLOYEE, TO PROVIDE FOR THE  
 15 PRESENTATION OF EVIDENCE AT THE HEARING, AND TO PRESCRIBE THE  
 16 BURDEN OF PROOF AT THE HEARING FOR UPHOLDING THE PROPOSED  
 17 NONREEMPLOYMENT; TO AMEND SECTION 37-9-113, MISSISSIPPI CODE OF  
 18 1972, TO ESTABLISH THE STANDARD OF JUDICIAL REVIEW OF THE SCHOOL  
 19 BOARD ACTION ON APPEAL IN SUCH CASES; AND FOR RELATED PURPOSES.

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

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

23 37-9-101. Sections 37-9-101 through 37-9-113 shall be known  
 24 as and cited as the "School Employment Procedures Law of 1977."

25 It is the intent of the Legislature to: provide procedural  
 26 and substantive due process of law for nonreemployment and to  
 27 require that all decisions of nonreemployment be based upon just  
 28 cause with respect to employment in the school district; establish  
 29 procedures for providing public school employees with notice of  
 30 the reasons for not offering an employee a renewal of his  
 31 contract; \* \* \* to provide an opportunity for the employee to  
 32 present matters in extenuation or exculpation; and provide the  
 33 employee with an opportunity for a hearing in order to enable the  
 34 board to determine whether the recommendation of nonemployment is



35 a proper employment decision and not contrary to law, and not to  
36 establish a system of tenure \* \* \*.

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

39 37-9-103. As used in Sections 37-9-101 through 37-9-113 the  
40 word "employee" shall include any teacher, principal,  
41 superintendent elected by a board of trustees or other \* \* \*  
42 personnel employed by any public school district of this  
43 state \* \* \*.

44 SECTION 3. Section 37-9-105, Mississippi Code of 1972, is  
45 amended as follows:

46 37-9-105. In the event that a recommendation is made by the  
47 superintendent of a school district not to offer an employee a  
48 renewal contract for a successive year, written notice of the  
49 proposed nonrenewal stating the specific reasons for the proposed  
50 nonrenewal and including a list of witnesses and/or documentary  
51 evidence substantiating such reasons shall be given within seven  
52 (7) days of the date when the recommendation to reemploy would  
53 have been made under \* \* \* Sections 37-9-15 and 37-9-17, \* \* \* but  
54 in any event, no later than the following:

55 (a) If the employee is a superintendent, the school  
56 district shall give notice of nonreemployment on or before  
57 February 1;

58 (b) If the employee is a principal, the school district  
59 shall give notice of nonreemployment on or before March 1;

60 (c) If the employee is a teacher or other professional  
61 educator, the school district shall give notice of nonreemployment  
62 on or before April 8.

63 \* \* \*

64 SECTION 4. Section 37-9-109, Mississippi Code of 1972, is  
65 amended as follows:

66 37-9-109. An employee who has received notice under Section  
67 37-9-105, upon written request, shall be entitled to:



68 (a) Written notice of the specific reasons for  
69 nonreemployment, together with a summary of the factual basis  
70 therefor, a list of witnesses and a copy of any and all  
71 documentary evidence substantiating such reasons, which notice  
72 shall be given at least ten (10) days prior to any hearing;

73 (b) An opportunity for a hearing at which to present  
74 matters relevant to the reasons given for the proposed  
75 nonreemployment and at which the decision will be based solely  
76 upon the evidence presented specifically addressing the reasons  
77 presented in the notice made under Section 37-9-105, and any  
78 reasons alleged by the employee to be the reason for  
79 nonreemployment;

80 (c) Receive a fair and impartial hearing before the  
81 board or hearing officer;

82 (d) Be represented by legal counsel or a representative  
83 of the employee's choice, at his own expense.

84 If the employee does not request a hearing, the decision  
85 of the board with regard to the reemployment of the employee shall  
86 be final.

87 SECTION 5. Section 37-9-111, Mississippi Code of 1972, is  
88 amended as follows:

89 37-9-111. (1) The school board, upon request for a hearing  
90 from an employee under the terms of Sections 37-9-101 through  
91 37-9-113, shall set the time, place and date of such hearing and  
92 notify the employee in writing of same. The date shall be set not  
93 sooner than five (5) days nor later than thirty (30) days from the  
94 date of the request, unless otherwise agreed. The hearing may be  
95 held before the board or before a hearing officer appointed for  
96 such purpose by the board, either from among its own  
97 membership \* \* \* or some other qualified and impartial person who  
98 is not an employee, school board member or school board attorney  
99 of a public school district.



100 (2) The employee shall be afforded an opportunity to present  
101 matters at the hearing relevant to the reasons given for the  
102 proposed nonreemployment \* \* \* and to the reasons the employee  
103 alleges to be the reasons for nonreemployment. The employee also  
104 shall be afforded an opportunity to be represented by counsel or a  
105 representative of the employee's choice at such a hearing. Such  
106 hearing shall be conducted in such a manner as to afford the  
107 employee a fair and reasonable opportunity to present witnesses  
108 and other evidence pertinent to the issues in his behalf and to  
109 cross-examine witnesses against the employee. \* \* \*

110 (3) The board shall cause to be made stenographic notes of  
111 the proceedings. In the event of a judicial appeal of the board's  
112 decision, the entire expense of the transcript and notes shall be  
113 assessed as court costs.

114 (4) The board shall review the matters presented before it,  
115 or, if the hearing is conducted by a hearing officer, the record  
116 of the proceedings and, based solely thereon, conclude whether the  
117 proposed nonreemployment \* \* \* is a proper employment decision,  
118 for just cause and based solely upon the evidence presented  
119 specifically addressing the reasons presented in the notice made  
120 under Section 37-9-105. The board shall notify the employee in  
121 writing of its final decision and reasons therefor. Such  
122 notification shall be within thirty (30) days of the conclusion of  
123 the hearing if the hearing is conducted by a hearing officer and  
124 within ten (10) days of the conclusion of the hearing if the  
125 hearing is initially conducted by the board. If the matter is  
126 heard before a hearing officer, the board shall also grant the  
127 employee the opportunity to appear before the board to present a  
128 statement in his own behalf, either in person or by his attorney,  
129 prior to a final decision by the board.

130 (5) In conducting a hearing, the board or hearing officer  
131 shall not be bound by common law or by statutory rules of evidence  
132 or by technical or formal rules of procedure except as provided in



133 Sections 37-9-101 through 37-9-113, but may conduct such hearing  
134 in such manner as best to ascertain the rights of the  
135 parties; \* \* \* however, hearsay evidence, if admitted, shall not  
136 be the sole basis for the determination of facts by the board or  
137 hearing officer. The burden of proof shall be on the employer to  
138 provide evidence to substantiate the specific reasons for  
139 nonreemployment presented in the notice made under Section  
140 37-9-105.

141 (6) In the event the decision of the school board is in  
142 favor of the employee, the board shall have the authority to order  
143 the execution of a contract with the employee for an additional  
144 period of one (1) year.

145 (7) For purposes of conducting hearings under Sections  
146 37-9-101 through 37-9-113, the board or hearing officer shall have  
147 the authority to issue subpoenas for witnesses and to compel their  
148 attendance and the giving of evidence. Any expense connected  
149 therewith shall be borne by the party requesting the subpoenas,  
150 which shall include an appearance fee for each witness so  
151 subpoenaed not inconsistent with state laws governing payments to  
152 witnesses. In the event it is necessary to enforce or to quash a  
153 subpoena issued to compel the attendance of a witness, application  
154 shall be made with the chancery court of the county where the  
155 school board is located.

156 SECTION 6. Section 37-9-113, Mississippi Code of 1972, is  
157 amended as follows:

158 37-9-113. (1) Any employee aggrieved by a final decision of  
159 the school board is entitled to judicial review of the decision,  
160 as \* \* \* provided for in this section.

161 (2) An appeal may be taken by such employee to the chancery  
162 court of the judicial district in which the school district is  
163 located, by filing a petition with the clerk of that court and  
164 executing and filing bond payable to the school board with  
165 sufficient sureties, in the penalty of not less than Two Hundred



166 Dollars (\$200.00), conditioned upon the payment of all of the  
167 costs of appeal, within twenty (20) days of the receipt of the  
168 final decision of the board.

169 (3) The scope of review of the chancery court in such cases  
170 shall be limited to a review of the record made before the school  
171 board or hearing officer to determine if the action of the school  
172 board is unlawful for the reason that it was:

173 (a) Not supported by a preponderance of the evidence;

174 (b) Arbitrary or capricious; or

175 (c) In violation of some statutory or constitutional  
176 right of the employee.

177 \* \* \*

178 (4) Any party aggrieved by action of the chancery court may  
179 appeal to the Supreme Court in the manner provided by law.

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

