

By: Representative Warren

To: Education;
Appropriations

HOUSE BILL NO. 742
(As Sent to Governor)

1 AN ACT TO AMEND CERTAIN STATUTES RELATING TO THE
2 ADMINISTRATION OF SCHOOL DISTRICTS; TO AMEND SECTION 37-7-307,
3 MISSISSIPPI CODE OF 1972, TO AUTHORIZE LOCAL SCHOOL DISTRICTS TO
4 PRESCRIBE MEETINGS QUALIFYING FOR PROFESSIONAL LEAVE, TO PROVIDE
5 THAT SCHOOL DISTRICT SUBSTITUTE EMPLOYEES MAY BE PAID FROM ANY
6 SCHOOL DISTRICT FUNDS, TO CLARIFY CERTAIN PROVISIONS IN THE SCHOOL
7 DISTRICT EMPLOYEE CATASTROPHIC INJURY OR ILLNESS LEAVE LAW, TO
8 CLARIFY THE DEDUCTION FROM A SCHOOL DISTRICT EMPLOYEE'S
9 COMPENSATION DUE TO THE EMPLOYMENT OF A SUBSTITUTE AND TO
10 AUTHORIZE SCHOOL DISTRICTS TO EMPLOY SUBSTITUTE EMPLOYEES FOR
11 PERSONNEL IN ADDITION TO TEACHERS; TO AMEND SECTION 37-151-103,
12 MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE STATE DEPARTMENT OF
13 EDUCATION TO TRANSFER STATE FUNDS ON DATES OTHER THAN DECEMBER 15
14 IF IT IS IN THE BEST INTEREST OF THE SCHOOL DISTRICT; TO AMEND
15 SECTION 37-9-39, MISSISSIPPI CODE OF 1972, TO AUTHORIZE LOCAL
16 SCHOOL DISTRICTS TO ADOPT A POLICY ON THE TIME BASIS FOR PAYING
17 SALARIES AND WAGES TO ITS EMPLOYEES; TO AMEND SECTIONS 37-61-19
18 AND 37-61-21, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT SCHOOL
19 DISTRICT EXPENDITURES SHALL BE LIMITED TO REVENUE RESOURCES
20 AVAILABLE AND NOT LIMITED TO BUDGET FUNDS AND TO PROVIDE A DATE
21 FOR FINAL BUDGET REVISIONS; TO AMEND SECTION 37-151-5, MISSISSIPPI
22 CODE OF 1972, TO CLARIFY THE TERM "YEAR OF TEACHING EXPERIENCE"
23 UNDER THE ADEQUATE EDUCATION PROGRAM FOR SALARY EXPERIENCE
24 INCREMENT PURPOSES AND TO INCLUDE PUBLIC SCHOOL SPEECH-LANGUAGE
25 PATHOLOGISTS' AND AUDIOLOGISTS' PROFESSIONAL EXPERIENCE IN
26 CLINICAL SETTINGS IN THE DEFINITION OF THE TERM "YEAR OF TEACHING
27 EXPERIENCE" AS USED FOR DETERMINING THEIR SALARIES IN THE PUBLIC
28 SCHOOLS; TO AMEND SECTION 37-9-17, MISSISSIPPI CODE OF 1972, TO
29 PROVIDE THAT ACCREDITED PRIVATE SCHOOLS MAY UTILIZE THE CRIMINAL
30 BACKGROUND CHECK PROCEDURES FOR EMPLOYEES PROVIDED FOR PUBLIC
31 SCHOOLS; TO AMEND SECTION 37-43-24, MISSISSIPPI CODE OF 1972, TO
32 AUTHORIZE AND DIRECT THE STATE DEPARTMENT OF EDUCATION TO PLACE
33 TEXTBOOK, EQUIPMENT AND SUPPLY ORDERS FOR STUDENTS ATTENDING
34 SCHOOLS ADMINISTERED BY THE STATE BOARD OF EDUCATION PRIOR TO THE
35 BEGINNING OF THE FISCAL YEAR FOR WHICH FUNDS ARE APPROPRIATED FOR
36 SUCH PURPOSE; AND FOR RELATED PURPOSES.

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

38 **SECTION 1.** Section 37-7-307, Mississippi Code of 1972, as
39 amended by Senate Bill No. 2313, 2003 Regular Session, is amended
40 as follows:

41 **[Through June 30, 2003, Section 37-7-307 shall read as**
42 **follows:]**

43 37-7-307. (1) For purposes of this section, the term
44 "licensed employee" means any employee of a public school district



45 required to hold a valid license by the Commission on Teacher and
46 Administrator Education, Certification and Licensure and
47 Development.

48 (2) The school board of a school district shall establish by
49 rules and regulations a policy of sick leave with pay for licensed
50 employees employed in the school district, and such policy shall
51 include the following minimum provisions for sick and emergency
52 leave with pay:

53 (a) Each licensed employee, at the beginning of each
54 school year, shall be credited with a minimum sick leave
55 allowance, with pay, of seven (7) days for absences caused by
56 illness or physical disability of the employee during that school
57 year.

58 (b) Any unused portion of the total sick leave
59 allowance shall be carried over to the next school year and
60 credited to such licensed employee if the licensed employee
61 remains employed in the same school district. In the event any
62 public school licensed employee transfers from one public school
63 district in Mississippi to another, any unused portion of the
64 total sick leave allowance credited to such licensed employee
65 shall be credited to such licensed employee in the computation of
66 unused leave for retirement purposes under Section 25-11-109.
67 Accumulation of sick leave allowed under this section shall be
68 unlimited.

69 (c) No deduction from the pay of such licensed employee
70 may be made because of absence of such licensed employee caused by
71 illness or physical disability of the licensed employee until
72 after all sick leave allowance credited to such licensed employee
73 has been used.

74 (d) For the first ten (10) days of absence of a
75 licensed employee because of illness or physical disability, in
76 any school year, in excess of the sick leave allowance credited to
77 such licensed employee, there may be deducted from the pay of such



78 licensed employee the established substitute amount of licensed
79 employee compensation paid in that local school district,
80 necessitated because of the absence of the licensed employee as a
81 result of illness or physical disability. Thereafter, the regular
82 pay of such absent licensed employee may be suspended and withheld
83 in its entirety for any period of absence because of illness or
84 physical disability during that school year.

85 (3) Beginning with the school year 1983-1984, each licensed
86 employee at the beginning of each school year shall be credited
87 with a minimum personal leave allowance, with pay, of two (2) days
88 for absences caused by personal reasons during that school year.
89 Such personal leave shall not be taken on the first day of the
90 school term, the last day of the school term, on a day previous to
91 a holiday or a day after a holiday. Personal leave may be used
92 for professional purposes, including absences caused by attendance
93 of such licensed employee at a seminar, class, training program,
94 professional association or other functions designed for
95 educators. No deduction from the pay of such licensed employee
96 may be made because of absence of such licensed employee caused by
97 personal reasons until after all personal leave allowance credited
98 to such licensed employee has been used. However, the
99 superintendent of a school district, in his discretion, may allow
100 a licensed employee personal leave in addition to any minimum
101 personal leave allowance, under the condition that there shall be
102 deducted from the salary of such licensed employee the actual
103 amount of any compensation paid to any person as a substitute,
104 necessitated because of the absence of the licensed employee.

105 (4) Beginning with the school year 1992-1993, each licensed
106 employee shall be credited with a professional leave allowance,
107 with pay, for each day of absence caused by reason of such
108 employee's statutorily required membership and attendance at a
109 regular or special meeting held within the State of Mississippi of
110 the State Board of Education, the Commission on Teacher and



111 Administrator Education, Certification and Licensure and
112 Development, the Commission on School Accreditation, the
113 Mississippi Authority for Educational Television, the meetings of
114 the state textbook rating committees or other meetings authorized
115 by local school board policy.

116 (5) Upon retirement from employment, each licensed and
117 nonlicensed employee shall be paid for not more than thirty (30)
118 days of unused accumulated leave earned while employed by the
119 school district in which the employee is last employed. Such
120 payment for licensed employees shall be made by the school
121 district at a rate equal to the amount paid to substitute teachers
122 and for nonlicensed employees, the payment shall be made by the
123 school district at a rate equal to the federal minimum wage. The
124 payment shall be treated in the same manner for retirement
125 purposes as a lump sum payment for personal leave as provided in
126 Section 25-11-103(e). Any remaining lawfully credited unused
127 leave, for which payment has not been made, shall be certified to
128 the Public Employees' Retirement System in the same manner and
129 subject to the same limitations as otherwise provided by law for
130 unused leave.

131 (6) The school board may adopt rules and regulations which
132 will reasonably aid to implement the policy of sick and personal
133 leave, including, but not limited to, rules and regulations having
134 the following general effect:

135 (a) Requiring the absent * * * employee to furnish the
136 certificate of a physician or dentist or other medical
137 practitioner as to the illness of the absent licensed employee,
138 where the absence is for four (4) or more consecutive school days,
139 or for two (2) consecutive school days immediately preceding or
140 following a nonschool day;

141 (b) Providing penalties, by way of full deduction from
142 salary, or entry on the work record of the * * * employee, or



143 other appropriate penalties, for any materially false statement by
144 the * * * employee as to the cause of absence;

145 (c) Forfeiture of accumulated or future sick leave, if
146 the absence of the * * * employee is caused by optional dental or
147 medical treatment or surgery which could, without medical risk,
148 have been provided, furnished or performed at a time when school
149 was not in session;

150 (d) Enlarging, increasing or providing greater sick or
151 personal leave allowances than the minimum standards established
152 by this section in the discretion of the school board of each
153 school district.

154 (7) School boards may include in their budgets provisions
155 for the payment of substitute employees, necessitated because of
156 the absence of regular licensed employees. All such substitute
157 employees shall be paid wholly from district funds * * *, except
158 as otherwise provided for long-term substitute teachers in Section
159 37-19-20. Such school boards, in their discretion, also may pay,
160 from district funds other than adequate education program funds,
161 the whole or any part of the salaries of all employees granted
162 leaves for the purpose of special studies or training.

163 (8) The school board may further adopt rules and regulations
164 which will reasonably implement such leave policies for all other
165 nonlicensed and hourly paid school employees as the board deems
166 appropriate.

167 (9) (a) For the purposes of this subsection, the following
168 words and phrases shall have the meaning ascribed in this
169 paragraph unless the context requires otherwise:

170 (i) "Catastrophic injury or illness" means a
171 severe condition or combination of conditions affecting the mental
172 or physical health of an employee or a member of an employee's
173 immediate family, including pregnancy, that requires the services
174 of a licensed physician for an extended period of time and that



175 forces the employee to exhaust all leave time available to that
176 employee * * *.

177 (ii) "Immediate family" means spouse, parent,
178 stepparent, sibling, child or stepchild.

179 (b) Any school district employee may donate a portion
180 of his or her unused accumulated personal leave or sick leave to
181 another employee of the same or another school district who is
182 suffering from a catastrophic injury or illness or who has a
183 member of his or her immediate family suffering from a
184 catastrophic injury or illness, in accordance with the following:

185 (i) The employee donating the leave (the "donor
186 employee") shall designate the employee who is to receive the
187 leave (the "recipient employee") and the amount of unused
188 accumulated personal leave and sick leave that is to be donated,
189 and shall notify the school district superintendent or his
190 designee of his or her designation.

191 (ii) The maximum amount of unused accumulated
192 personal leave that an employee may donate to any other employee
193 may not exceed a number of days that would leave the donor
194 employee with fewer than seven (7) days of personal leave
195 remaining, and the maximum amount of unused accumulated sick leave
196 that an employee may donate to any other employee may not exceed
197 fifty percent (50%) of the unused accumulated sick leave of the
198 donor employee.

199 (iii) An employee must have exhausted all of his
200 or her available leave before he or she will be eligible to
201 receive any leave donated by another employee. Eligibility for
202 donated leave shall be based upon review and approval by the donor
203 employee's supervisor.

204 (iv) Before an employee may receive donated leave,
205 he or she must provide the school district superintendent or his
206 designee with a physician's statement that states the beginning
207 date of the catastrophic injury or illness, a description of the



208 injury or illness, and a prognosis for recovery and the
209 anticipated date that the recipient employee will be able to
210 return to work.

211 (v) If the total amount of leave that is donated
212 to any employee is not used by the recipient employee, the whole
213 days of donated leave shall be returned to the donor employees on
214 a pro rata basis, based on the ratio of the number of days of
215 leave donated by each donor employee to the total number of days
216 of leave donated by all donor employees.

217 (vi) Donated leave shall not be used in lieu of
218 disability retirement.

219 **[From and after July 1, 2003, Section 37-7-307 shall read as**
220 **follows:]**

221 37-7-307. (1) For purposes of this section, the term
222 "licensed employee" means any employee of a public school district
223 required to hold a valid license by the Commission on Teacher and
224 Administrator Education, Certification and Licensure and
225 Development.

226 (2) The school board of a school district shall establish by
227 rules and regulations a policy of sick leave with pay for licensed
228 employees and teacher assistants employed in the school district,
229 and such policy shall include the following minimum provisions for
230 sick and emergency leave with pay:

231 (a) Each licensed employee, at the beginning of each
232 school year, shall be credited with a minimum sick leave
233 allowance, with pay, of seven (7) days for absences caused by
234 illness or physical disability of the employee during that school
235 year.

236 (b) Any unused portion of the total sick leave
237 allowance shall be carried over to the next school year and
238 credited to such licensed employee and teacher assistants if the
239 licensed employee or teachers assistant remains employed in the
240 same school district. In the event any public school licensed



241 employee or teacher assistant transfers from one public school
242 district in Mississippi to another, any unused portion of the
243 total sick leave allowance credited to such licensed employee or
244 teacher assistant shall be credited to such licensed employee or
245 teacher assistant in the computation of unused leave for
246 retirement purposes under Section 25-11-109. Accumulation of sick
247 leave allowed under this section shall be unlimited.

248 (c) No deduction from the pay of such licensed employee
249 may be made because of absence of such licensed employee or
250 teacher assistant caused by illness or physical disability of the
251 licensed employee or teacher assistant until after all sick leave
252 allowance credited to such licensed employee or teacher assistant
253 has been used.

254 (d) For the first ten (10) days of absence of a
255 licensed employee because of illness or physical disability, in
256 any school year, in excess of the sick leave allowance credited to
257 such licensed employee, there may be deducted from the pay of such
258 licensed employee the established substitute amount of licensed
259 employee compensation paid in that local school district,
260 necessitated because of the absence of the licensed employee as a
261 result of illness or physical disability. Thereafter, the regular
262 pay of such absent licensed employee may be suspended and withheld
263 in its entirety for any period of absence because of illness or
264 physical disability during that school year.

265 (3) Beginning with the school year 1983-1984, each licensed
266 employee at the beginning of each school year shall be credited
267 with a minimum personal leave allowance, with pay, of two (2) days
268 for absences caused by personal reasons during that school year.
269 Such personal leave shall not be taken on the first day of the
270 school term, the last day of the school term, on a day previous to
271 a holiday or a day after a holiday. Personal leave may be used
272 for professional purposes, including absences caused by attendance
273 of such licensed employee at a seminar, class, training program,



274 professional association or other functions designed for
275 educators. No deduction from the pay of such licensed employee
276 may be made because of absence of such licensed employee caused by
277 personal reasons until after all personal leave allowance credited
278 to such licensed employee has been used. However, the
279 superintendent of a school district, in his discretion, may allow
280 a licensed employee personal leave in addition to any minimum
281 personal leave allowance, under the condition that there shall be
282 deducted from the salary of such licensed employee the actual
283 amount of any compensation paid to any person as a substitute,
284 necessitated because of the absence of the licensed employee. Any
285 unused portion of the total personal leave allowance up to five
286 (5) days shall be carried over to the next school year and
287 credited to such licensed employee if the licensed employee
288 remains employed in the same school district.

289 (4) Beginning with the school year 1992-1993, each licensed
290 employee shall be credited with a professional leave allowance,
291 with pay, for each day of absence caused by reason of such
292 employee's statutorily required membership and attendance at a
293 regular or special meeting held within the State of Mississippi of
294 the State Board of Education, the Commission on Teacher and
295 Administrator Education, Certification and Licensure and
296 Development, the Commission on School Accreditation, the
297 Mississippi Authority for Educational Television, the meetings of
298 the state textbook rating committees or other meetings authorized
299 by local school board policy.

300 (5) Upon retirement from employment, each licensed and
301 nonlicensed employee shall be paid for not more than thirty (30)
302 days of unused accumulated leave earned while employed by the
303 school district in which the employee is last employed. Such
304 payment for licensed employees shall be made by the school
305 district at a rate equal to the amount paid to substitute teachers
306 and for nonlicensed employees, the payment shall be made by the



307 school district at a rate equal to the federal minimum wage. The
308 payment shall be treated in the same manner for retirement
309 purposes as a lump sum payment for personal leave as provided in
310 Section 25-11-103(e). Any remaining lawfully credited unused
311 leave, for which payment has not been made, shall be certified to
312 the Public Employees' Retirement System in the same manner and
313 subject to the same limitations as otherwise provided by law for
314 unused leave.

315 (6) The school board may adopt rules and regulations which
316 will reasonably aid to implement the policy of sick and personal
317 leave, including, but not limited to, rules and regulations having
318 the following general effect:

319 (a) Requiring the absent * * * employee to furnish the
320 certificate of a physician or dentist or other medical
321 practitioner as to the illness of the absent licensed employee,
322 where the absence is for four (4) or more consecutive school days,
323 or for two (2) consecutive school days immediately preceding or
324 following a nonschool day;

325 (b) Providing penalties, by way of full deduction from
326 salary, or entry on the work record of the * * * employee, or
327 other appropriate penalties, for any materially false statement by
328 the * * * employee as to the cause of absence;

329 (c) Forfeiture of accumulated or future sick leave, if
330 the absence of the * * * employee is caused by optional dental or
331 medical treatment or surgery which could, without medical risk,
332 have been provided, furnished or performed at a time when school
333 was not in session;

334 (d) Enlarging, increasing or providing greater sick or
335 personal leave allowances than the minimum standards established
336 by this section in the discretion of the school board of each
337 school district.

338 (7) School boards may include in their budgets provisions
339 for the payment of substitute employees, necessitated because of



340 the absence of regular licensed employees. All such substitute
341 employees shall be paid wholly from district funds * * *, except
342 as otherwise provided for long-term substitute teachers in Section
343 37-19-20. Such school boards, in their discretion, also may pay,
344 from district funds other than adequate education program funds,
345 the whole or any part of the salaries of all employees granted
346 leaves for the purpose of special studies or training.

347 (8) The school board may further adopt rules and regulations
348 which will reasonably implement such leave policies for all other
349 nonlicensed and hourly paid school employees as the board deems
350 appropriate.

351 (9) (a) For the purposes of this subsection, the following
352 words and phrases shall have the meaning ascribed in this
353 paragraph unless the context requires otherwise:

354 (i) "Catastrophic injury or illness" means a
355 severe condition or combination of conditions affecting the mental
356 or physical health of an employee or a member of an employee's
357 immediate family, including pregnancy, that requires the services
358 of a licensed physician for an extended period of time and that
359 forces the employee to exhaust all leave time available to that
360 employee * * *.

361 (ii) "Immediate family" means spouse, parent,
362 stepparent, sibling, child or stepchild.

363 (b) Any school district employee may donate a portion
364 of his or her unused accumulated personal leave or sick leave to
365 another employee of the same or another school district who is
366 suffering from a catastrophic injury or illness or who has a
367 member of his or her immediate family suffering from a
368 catastrophic injury or illness, in accordance with the following:

369 (i) The employee donating the leave (the "donor
370 employee") shall designate the employee who is to receive the
371 leave (the "recipient employee") and the amount of unused
372 accumulated personal leave and sick leave that is to be donated,



373 and shall notify the school district superintendent or his
374 designee of his or her designation.

375 (ii) The maximum amount of unused accumulated
376 personal leave that an employee may donate to any other employee
377 may not exceed a number of days that would leave the donor
378 employee with fewer than seven (7) days of personal leave
379 remaining, and the maximum amount of unused accumulated sick leave
380 that an employee may donate to any other employee may not exceed
381 fifty percent (50%) of the unused accumulated sick leave of the
382 donor employee.

383 (iii) An employee must have exhausted all of his
384 or her available leave before he or she will be eligible to
385 receive any leave donated by another employee. Eligibility for
386 donated leave shall be based upon review and approval by the donor
387 employee's supervisor.

388 (iv) Before an employee may receive donated leave,
389 he or she must provide the school district superintendent or his
390 designee with a physician's statement that states the beginning
391 date of the catastrophic injury or illness, a description of the
392 injury or illness, and a prognosis for recovery and the
393 anticipated date that the recipient employee will be able to
394 return to work.

395 (v) If the total amount of leave that is donated
396 to any employee is not used by the recipient employee, the whole
397 days of donated leave shall be returned to the donor employees on
398 a pro rata basis, based on the ratio of the number of days of
399 leave donated by each donor employee to the total number of days
400 of leave donated by all donor employees.

401 (vi) Donated leave shall not be used in lieu of
402 disability retirement.

403 **SECTION 2.** Section 37-151-103, Mississippi Code of 1972, is
404 amended as follows:



405 37-151-103. (1) Funds due each school district under the
406 terms of this chapter from the Adequate Education Program Fund
407 shall be paid in the following manner: On the twenty-fifth day of
408 each month, or the next business date after that date, there shall
409 be paid to each school district by electronic funds transfer
410 one-twelfth (1/12) of the funds to which the district is entitled
411 from funds appropriated for the Adequate Education Program Fund.

412 * * * However, * * * in December those payments shall be made on
413 December 15th or the next business day after that date. In
414 addition, the State Department of Education may pay school
415 districts from the common school fund and the Adequate Education
416 Program Fund on a date earlier than provided for by this section
417 if it is determined that it is in the best interest of school
418 districts to do so.

419 Provided, however, that if the cash balance in the State
420 General Fund is not adequate on the due date to pay the amounts
421 due to all school districts in the state as determined by the
422 State Superintendent of Education, the State Fiscal Officer shall
423 not transfer said funds payable to any school district or
424 districts until money is available to pay the amount due to all
425 districts.

426 (2) Notwithstanding any provision of this chapter or any
427 other law requiring the number of children in average daily
428 attendance or the average daily attendance of transported children
429 to be determined on the basis of the preceding year, the State
430 Board of Education is hereby authorized and empowered to make
431 proper adjustments in allotments in cases where major changes in
432 the number of children in average daily attendance or the average
433 daily attendance of transported children occurs from one (1) year
434 to another as a result of changes or alterations in the boundaries
435 of school districts, the sending of children from one (1) county
436 or district to another upon a contract basis, the termination or
437 discontinuance of a contract for the sending of children from one



438 (1) county or district to another, a change in or relocation of
439 attendance centers, or for any other reason which would result in
440 a major decrease or increase in the number of children in average
441 daily attendance or the average daily attendance of transported
442 children during the current school year as compared with the
443 preceding year.

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

451 **SECTION 3.** Section 37-9-39, Mississippi Code of 1972, is
452 amended as follows:

453 37-9-39. Salary or wages paid to any employee of any school
454 shall be paid on a basis as determined by the local school board
455 of each school district, except for December, when salaries or
456 wages shall be paid by the last working day. Salaries or wages
457 shall be paid at a minimum on a monthly basis. Any school
458 employee whose employment ends during a school term, regardless of
459 the reason(s) the employment ended, shall be paid salary or wages
460 only for that portion of the school term that employee actually
461 worked. Nothing in this section shall be construed to entitle any
462 employee to payment of salary or wages when no work has been
463 performed.

464 **SECTION 4.** Section 37-61-19, Mississippi Code of 1972, is
465 amended as follows:

466 37-61-19. It shall be the duty of the superintendents of
467 schools or administrative superintendents, and the school boards
468 of all school districts, to limit the expenditure of school funds
469 during the fiscal year to the resources available. It shall be
470 unlawful for any school district to budget expenditures from a



471 fund in excess of the resources available within that fund
472 * * *. Furthermore, it shall be unlawful for any contract to be
473 entered into or any obligation incurred or expenditure made in
474 excess of the resources available * * * for such fiscal year. Any
475 member of the school board, superintendent of schools, or other
476 school official, who shall knowingly enter into any contract,
477 incur any obligation, or make any expenditure in excess of the
478 amount available * * * for the fiscal year shall be personally
479 liable for the amount of such excess. However, no school board
480 member, superintendent or other school official shall be
481 personally liable (a) in the event of any reduction in adequate
482 education program payments by action of the Governor acting
483 through the Department of Finance and Administration, or (b) for
484 claims, damages, awards or judgments, on account of any wrongful
485 or tortious act or omission or breach of implied term or condition
486 of any warranty or contract; provided, however, that the foregoing
487 immunity provisions shall not be a defense in cases of fraud,
488 criminal action or an intentional breach of fiduciary obligations
489 imposed by statute.

490 **SECTION 5.** Section 37-61-21, Mississippi Code of 1972, is
491 amended as follows:

492 37-61-21. If it should appear to the superintendent of
493 schools or administrative superintendent or the school board of
494 any school district that the amounts to be received from state
495 appropriations, taxation or any other source will be more than the
496 amount estimated in the budget filed and approved, or if it should
497 appear that such amounts shall be less than the amount estimated,
498 the school board of the school district, with assistance from the
499 superintendent, may revise the budget at any time during the
500 fiscal year by increasing or decreasing the fund budget, in
501 proportion to the increase or decrease in the estimated amounts.
502 If it should appear to the superintendent of schools, or
503 administrative superintendent or the school board of a school



504 district that some function of the budget as filed is in excess of
505 the requirement of that function and that the entire amount
506 budgeted for such function will not be needed for expenditures
507 therefor during the fiscal year, the school board of the school
508 district, with assistance from the superintendent, may transfer
509 resources to and from functions and funds within the budget when
510 and where needed; however, no such transfer shall be made from
511 fund to fund or from function to function which will result in the
512 expenditure of any money for any purpose different from that for
513 which the money was appropriated, allotted, collected or otherwise
514 made available or for a purpose which is not authorized by law.
515 No revision of any budget under the provisions hereof shall be
516 made which will permit a fund expenditure in excess of the
517 resources available for such purpose. The revised portions of the
518 budgets shall be incorporated in the minutes of the school board
519 by spreading them on the minutes or by attaching them as an
520 addendum. Final budget revisions, pertinent to a fiscal year,
521 shall be approved on or before the date set by the State Board of
522 Education for the school district to submit its financial
523 information for that fiscal year.

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

526 37-151-5. As used in Sections 37-151-3, 37-151-5 and
527 37-151-7:

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



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

540 (i) "Capital outlay" shall mean those funds used
541 for the constructing, improving, equipping, renovating or major
542 repairing of school buildings or other school facilities, or the
543 cost of acquisition of land whereon to construct or establish such
544 school facilities.

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

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

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

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

561 (d) "Base student cost" shall mean the funding level
562 necessary for providing an adequate education program for one (1)
563 base student, subject to any minimum amounts prescribed in Section
564 37-151-7(1).

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



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

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

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

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

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

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

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

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

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

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



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

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

606 (j) "Minimum school term" shall mean a term of at least
607 one hundred eighty (180) days of school in which both teachers and
608 pupils are in regular attendance for scheduled classroom
609 instruction for not less than sixty percent (60%) of the normal
610 school day. It is the intent of the Legislature that any tax
611 levies generated to produce additional local funds required by any
612 school district to operate school terms in excess of one hundred
613 seventy-five (175) days shall not be construed to constitute a new
614 program for the purposes of exemption from the limitation on tax
615 revenues as allowed under Sections 27-39-321 and 37-57-107 for new
616 programs mandated by the Legislature.

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

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

626 (m) The term "year of teaching experience" shall mean
627 nine (9) months of actual teaching in the public or private
628 schools * * *. In no case shall more than one (1) year of
629 teaching experience be given for all services in one (1) calendar
630 or school year. In determining a teacher's experience, no
631 deduction shall be made because of the temporary absence of the
632 teacher because of illness or other good cause, and the teacher
633 shall be given credit therefor. The State Board of Education



634 shall fix a number of days, not to exceed twenty-five (25)
635 consecutive school days, during which a teacher may not be under
636 contract of employment during any school year and still be
637 considered to have been in full-time employment for a regular
638 scholastic term. If a teacher exceeds the number of days
639 established by the State Board of Education that a teacher may not
640 be under contract but may still be employed, that teacher shall
641 not be credited with a year of teaching experience. In
642 determining the experience of school librarians, each complete
643 year of continuous, full-time employment as a professional
644 librarian in a public library in this or some other state shall be
645 considered a year of teaching experience. If a full-time school
646 administrator returns to actual teaching in the public schools,
647 the term "year of teaching experience" shall include the period of
648 time he or she served as a school administrator. In determining
649 the salaries of teachers who have experience in any branch of the
650 military, the term "year of teaching experience" shall include
651 each complete year of actual classroom instruction while serving
652 in the military. In determining the experience of speech-language
653 pathologists and audiologists, each complete year of continuous
654 full-time post master's degree employment in an educational
655 setting in this or some other state shall be considered a year of
656 teaching experience.

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



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

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

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

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

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

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

683 37-9-17. (1) On or before April 1 of each year, the
684 principal of each school shall recommend to the superintendent of
685 the local school district the licensed employees or
686 noninstructional employees to be employed for the school involved
687 except those licensed employees or noninstructional employees who
688 have been previously employed and who have a contract valid for
689 the ensuing scholastic year. If such recommendations meet with
690 the approval of the superintendent, the superintendent shall
691 recommend the employment of such licensed employees or
692 noninstructional employees to the local school board, and, unless
693 good reason to the contrary exists, the board shall elect the
694 employees so recommended. If, for any reason, the local school
695 board shall decline to elect any employee so recommended,
696 additional recommendations for the places to be filled shall be
697 made by the principal to the superintendent and then by the
698 superintendent to the local school board as provided above. The
699 school board of any local school district shall be authorized to



700 designate a personnel supervisor or another principal employed by
701 the school district to recommend to the superintendent licensed
702 employees or noninstructional employees; however, this
703 authorization shall be restricted to no more than two (2)
704 positions for each employment period for each school in the local
705 school district. Any noninstructional employee employed upon the
706 recommendation of a personnel supervisor or another principal
707 employed by the local school district must have been employed by
708 the local school district at the time the superintendent was
709 elected or appointed to office; a noninstructional employee
710 employed under this authorization may not be paid compensation in
711 excess of the statewide average compensation for such
712 noninstructional position with comparable experience, as
713 established by the State Department of Education. The school
714 board of any local school district shall be authorized to
715 designate a personnel supervisor or another principal employed by
716 the school district to accept the recommendations of principals or
717 their designees for licensed employees or noninstructional
718 employees and to transmit approved recommendations to the local
719 school board; however, this authorization shall be restricted to
720 no more than two (2) positions for each employment period for each
721 school in the local school district.

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

726 If, at the commencement of the scholastic year, any licensed
727 employee shall present to the superintendent a license of a higher
728 grade than that specified in such individual's contract, such
729 individual may, if funds are available from minimum education
730 program funds of the district, or from district funds, be paid
731 from such funds the amount to which such higher grade license



732 would have entitled the individual, had the license been held at
733 the time the contract was executed.

734 (2) Superintendents/directors of schools under the purview
735 of the Mississippi Board of Education and the superintendent of
736 the local school district shall require that current criminal
737 records background checks and current child abuse registry checks
738 are obtained, and that such criminal record information and
739 registry checks are on file for any new hires applying for
740 employment as a licensed or nonlicensed employee at a school and
741 not previously employed in such school under the purview of the
742 Mississippi Board of Education or at such local school district
743 prior to July 1, 2000. In order to determine the applicant's
744 suitability for employment, the applicant shall be fingerprinted.
745 If no disqualifying record is identified at the state level, the
746 fingerprints shall be forwarded by the Department of Public Safety
747 to the FBI for a national criminal history record check. The fee
748 for such fingerprinting and criminal history record check shall be
749 paid by the applicant, not to exceed Fifty Dollars (\$50.00);
750 however, the Mississippi Board of Education or the school board of
751 the local school district, in its discretion, may elect to pay the
752 fee for the fingerprinting and criminal history record check on
753 behalf of any applicant. Under no circumstances shall a member of
754 the Mississippi Board of Education, superintendent/director of
755 schools under the purview of the Mississippi Board of Education,
756 local school district superintendent, local school board member or
757 any individual other than the subject of the criminal history
758 record checks disseminate information received through any such
759 checks except insofar as required to fulfill the purposes of this
760 section. Any nonpublic school which is accredited or approved by
761 the Mississippi Board of Education may avail itself of the
762 procedures provided for herein and shall be responsible for the
763 same fee charged in the case of local public schools of this
764 state.



765 (3) If such fingerprinting or criminal record checks
766 disclose a felony conviction, guilty plea or plea of nolo
767 contendere to a felony of possession or sale of drugs, murder,
768 manslaughter, armed robbery, rape, sexual battery, sex offense
769 listed in Section 45-33-23(g), child abuse, arson, grand larceny,
770 burglary, gratification of lust or aggravated assault which has
771 not been reversed on appeal or for which a pardon has not been
772 granted, the new hire shall not be eligible to be employed at such
773 school. Any employment contract for a new hire executed by the
774 superintendent of the local school district or any employment of a
775 new hire by a superintendent/director of a new school under the
776 purview of the Mississippi Board of Education shall be voidable if
777 the new hire receives a disqualifying criminal record check.
778 However, the Mississippi Board of Education or the school board
779 may, in its discretion, allow any applicant aggrieved by the
780 employment decision under this section to appear before the
781 respective board, or before a hearing officer designated for such
782 purpose, to show mitigating circumstances which may exist and
783 allow the new hire to be employed at the school. The Mississippi
784 Board of Education or local school board may grant waivers for
785 such mitigating circumstances, which shall include, but not be
786 limited to: (a) age at which the crime was committed; (b)
787 circumstances surrounding the crime; (c) length of time since the
788 conviction and criminal history since the conviction; (d) work
789 history; (e) current employment and character references; (f)
790 other evidence demonstrating the ability of the person to perform
791 the employment responsibilities competently and that the person
792 does not pose a threat to the health or safety of the children at
793 the school.

794 (4) No local school district or local school district
795 employee or members of the Mississippi Board of Education or
796 employee of a school under the purview of the Mississippi Board of
797 Education shall be held liable in any employment discrimination



798 suit in which an allegation of discrimination is made regarding an
799 employment decision authorized under this Section 37-9-17.

800 **SECTION 8.** Section 37-43-24, Mississippi Code of 1972, is
801 amended as follows:

802 37-43-24. (1) This section shall be referred to and may be
803 cited as the "Timely Acquisition of Braille and Large Print
804 Textbooks Act of 2002."

805 (2) The State Department of Education is hereby authorized
806 and directed to place textbook procurement orders for visually
807 impaired and hearing impaired students in the schools of this
808 state prior to the beginning of the fiscal year for which the
809 expenditure for such order has been authorized by the Legislature.
810 After June 1 of any year, the State Department of Education may
811 order additional books, as needed. In addition, the State
812 Department of Education is authorized and directed to place
813 textbook, equipment and school supply procurement orders for
814 students attending the state supported schools administered by the
815 State Board of Education prior to the beginning of the fiscal year
816 for which the expenditure for such order has been authorized by
817 the Legislature, and may order additional books, equipment and
818 supplies at a later date, as needed. The department shall insure
819 that the appropriate procedures for textbook procurement are
820 followed according to state law and board policy as described in
821 the Textbook Administration Handbook.

822 **SECTION 9.** This act shall take effect and be in force from
823 and after its passage.

