



The 2016 Mississippi Legislative Session

**A brief overview of some of the Good (not so much),
the Bad (big time!), and the Ugly (a real doozy!)**

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May 2016

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A brief overview of some of **The Good** (*not so much*),
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The Good (*tepid applause*)

SB 2438: All school superintendents to be appointed rather than elected

This bill, signed by the Governor, requires that after January 1, 2019 all school district superintendents shall be appointed rather than elected; appointed consistent with existing MS law for appointed superintendents.

This will be a major shift for about one-third of MS school districts and remove MS as one of the last bastions in the nation for the election of school district superintendents.

This change from *elected* to *appointed* superintendents will enable:

- school districts to vastly broaden the geographic range of the pool of candidates from which to choose a superintendent, and open the process to those who have either little interest in or the stomach for the non-educational role of running electoral campaigns
- school boards to hold superintendents accountable to fulfilling their duties and responsibilities, which they are virtually unable to do now when the superintendents are elected
- school boards to undertake a serious vetting process, with professional assistance when appropriate; and an opportunity to incorporate a community vetting process to forge an alliance between the school board and community to select the best candidate for superintendent to address the particular education needs of students in the district

The core challenge generated by this change in governance is that local school boards heretofore not responsible for the selection of their superintendents, will have to develop the requisite skills, tools and procedures that ought to ensure that wise choices will be made to attract, employ and retain the best superintendents.

At the same time, while school boards have the right to select superintendents, the community has a corresponding duty to elect or fight for the appointment of school board members who are up to the task of choosing effective, accountable school superintendents to administer their districts ... and to replace those school board members who are not.

In short, school boards and community members will need to step up ... preferably together ... or lose out!

SB 2157: Student individual reading plans; new promotion standard to advance to 4th grade

This bill amends the 2013 Literacy-Based Promotion Act to mandate that *every student* who it is determined has a *reading deficiency* must be provided an *individual reading plan* tailored to the specific needs of that student and the bill details what must be included in the plan, 37-177-1(2) at lines 25-52 in the bill:

Each public school student who exhibits a substantial deficiency in reading at any time ... must be given intensive reading instruction and intervention immediately following the identification of the reading deficiency. The intensive reading instruction and intervention must be documented for each student in an individual reading plan, which includes, at a minimum, the following:

- (a) The student's specific, diagnosed reading skill deficiencies as determined (or identified) by diagnostic assessment data;
- (b) The goals and benchmarks for growth;
- (c) How progress will be monitored and evaluated;
- (d) The type of additional instructional services and interventions the student will receive;
- (e) The research-based reading instructional programming the teacher will use to provide reading instruction, addressing the areas of phonemic awareness, phonics, fluency, vocabulary and comprehension;
- (f) The strategies the student's parent is encouraged to use in assisting the student to achieve reading competency; and
- (g) Any additional services the teacher deems available and appropriate to accelerate the student's reading skill development.

This bill also amends the reading competence standard that a student will be required to meet, beginning with the 2018-2019 school year, on the 3rd grade summative assessment in the late spring or summer in order to advance to the 4th grade, 37-177-9, at lines 144-150 in the bill:

Beginning in the 2018-2019 school year, if a student's reading deficiency is not remedied by the end of the student's Third-Grade year, as demonstrated by the *student scoring above the lowest two (2) achievement levels* in reading on the state annual accountability assessment or on an approved alternative standardized assessment for Third Grade, the student shall not be promoted to Fourth Grade. [emphasis added]

These changes add three distinct benefits:

1. The individual reading plan requirements enables teachers and administrators to know, beginning grade K or 1, exactly what they have the duty to provide to students with a reading deficiency and to their parents.
2. These requirements also generate a corresponding right with which parents, beginning in grade K or 1, can seek to hold teachers and administrators accountable to provide the reading literacy services to which their children are entitled.
3. The new assessment standard is intended to ensure that students are proficient at the 3rd grade reading level, ready to move from learning to read to reading to learn, and are equipped to handle the 4th grade literacy demands. The prior existing standard was not aligned at all with 3rd grade literacy proficiency and raised the specter that students could pass the assessment, but not be ready for the 4th grade.

Unfortunately, the Literacy-Based Promotion Act controversial mandate continues to require that 3rd grade students who do not pass the 3rd grade assessment, with certain exceptions, must be retained in 3rd grade.

Also on the upside:

- Several major bills *failed* that were intended to shift administration of key parts of public education policy from the MS State Board of Education, the MS Dept. of Education and the State Supt. of Education to the Governor's office, the State Auditor's office and PEER, the legislative oversight body
- Several major bills *failed* that were intended to create publicly-funded vouchers, scholarships and tax breaks to subsidize the expenses that parents endure when they enroll their children in private schools
- Several major bills *failed* that were intended to significantly expand charter schools to all students in all districts in the state
- A bill *failed* that was designed to create a Capitol Improvement District that would use state funds to repair and create new infrastructure in support of new business investment within a huge expanse of the downtown areas of the City of Jackson, and shift control of decision-making and judicial oversight from the City of Jackson to the Governor's office.

The Bad (so much at stake, so little careful analysis)

HB 989: Creation of the MS Achievement School District

This bill to create a MS Achievement School District (ASD) represents the latest initiative in Mississippi to fashion a district-level education improvement strategy that, unfortunately, based on national experience has little prospect of significant success, renders a dramatic shift in governance away from local control, and throws open the door to significant privatization of traditional public school districts.

The core of the bill is that the State Board of Education is required to create a new MS Achievement School District (ASD) with its own board and superintendent, subject to guidelines to be created and supervised by the State Board of Education (SBE).

“Failing”, “persistently failing”, and “chronically underperforming” districts are targeted for take over, elimination and absorption into the ASD, limited only by the capacity of the ASD to do the job. The bill delegates the authority to define “persistently failing” to the SBE, but for no apparent reason fails to authorize the SBE to define “chronically underperforming”.

Some portions of the bill are patently inconsistent and some lack such clarity that it is unclear which districts are intended by the Legislature to be subject to takeover and absorption into the ASD.

- NOTE this extraordinary inconsistency:
In Section 1(1), lines 42 – 46, the bill defines the districts targeted by the bill: districts with a grade rank of ‘F’ for 2 consecutive years will be subject to take over, elimination and

absorption by the ASD.

But in Section 1(5)(a), lines 62-68, a significantly different standard for absorption of a district is set out:

“Each public school or district in the state which, during each of two (2) consecutive school years *or during two (2) of three (3) consecutive years*, receives an ‘F’ designation by the State Board of Education under the accountability rating system or has been *persistently failing as defined by the State Board of Education* may be absorbed into and become a part of the Mississippi Achievement School District.” [emphasis added]

The clause, “... or during two (2) of three (3) consecutive years ...” was added in the Conference on the bill. Under this expanded definition a district with a string of consecutive grade ranks, such as “C”, “F”, “C”, “F”, will qualify for absorption by the ASD.

- Note this lack of clarity:

Section 1(1), at lines 39 –47, states:

The Mississippi Achievement School District shall be a statewide school district, separate and distinct from all other school districts but not confined to any specified geographic boundaries, and may be comprised of any public schools or school districts in the state which, during two (2) consecutive school years, are designated an “F” school or district by the State Board of Education under the accountability rating system *or which have been persistently failing and chronically underperforming*. [emphasis added]

There is no definition of either “persistently failing” or “chronically underperforming”. In Section 1(5)(a), lines 62-68, the SBE gets to define “persistently failing”, but not “chronically underperforming”. No boundaries are set in the bill.

The way the bill is written the district would have to be *both* “persistently failing” AND “chronically underperforming”. Is this a mere redundancy or is it intended that there be two separate standards? If two standards, what is the difference between them? Suppose a district had a string of “D” grade ranks (that is, chronically underperforming), but no “F” grades (that is, *not* persistently failing): would that district qualify for absorption by the ASD?

In short, the SBE is authorized to create an *elastic* standard in which an “F” grade rank will not be required to justify a district being taken over; then eliminated and absorbed into the ASD.

- Note Section 5(f), lines 139-147:

“Upon attaining and maintaining a school or district accountability rating of “C” or better under the State Department of Education’s accountability rating system for five (5) consecutive years, the State Board of Education may decide to revert the absorbed school or district back to local governance, provided the school or school(s) in question are not conversion charter schools. “Local governance” may include a traditional school board

model of governance or other new form of governance such as mayoral control, or other type of governance.”

And then lines 151 – 154:

The manner and timeline for reverting a school or district back to local control shall be at the discretion of the State School Board, *but in no case shall it exceed five (5) years.*

If the absorbed school district must wait to be restored to independence until it has ranked “C” or better for 5 consecutive years, and the State School Board in the exercise of its discretion has five years to reconstitute it, then it would appear that a district can be kept in the ASD for up to five additional years ... a total of 10 years from the first year the district is ranked a “C”.

This time limitation is strange since the State Board has the discretion not to restore the district at all.

The mayoral control idea is a governance device to minimize community impact on policy, politicize education policy, and expedite the path to privatization. See NYC, Detroit and Chicago, for examples.

SB 2161: Charter law removes prohibition: opens charters to students from across district lines

This bill, which the Governor has signed into law, amends the 2013 MS charter school law to permit students from school districts ranked “C”, “D”, or “F” to enroll in a charter school that is not located in the school districts in which they reside. This out-of-district transfer had been expressly prohibited in the original bill. The prohibition had been an instrumental part of the compromises that enabled the passage of the bill in 2013. The new provision, 37-28-23(1)(b), at lines 135-143 in the bill, states:

A charter school must be open to:

...

(b) Any student who resides in the geographical boundaries of a school district that was rated “C,” “D” or “F” at the time the charter school was approved by the authorizer board, or who resides in the geographical boundaries of a school district rated “C,” or “D” or “F” at the time the student enrolls.

Note that there are two standards: a student can transfer across district lines if the student resides in a “C”, “D” or “F” rated district at the time of transfer; OR, if the student resides in a district that was rated at “C”, “D”, or “F” at the time the charter school was approved by the charter authorizer board.

This means that a student who resides in an “A” or “B” rated district can transfer across district lines to a charter school if in an earlier year the student’s school district of residence had been rated at “C” or below whenever the charter school received its original authorization.

The loss of students from traditional schools to charters will further degrade the funding of traditional public schools, which are already egregiously underfunded.

SCHOOL CONSOLIDATIONS:

[HB 926](#): Consolidation of Holmes County and Town of Durant school districts

[HB 987](#): Consolidation of Leflore County and City of Greenwood school districts

[HB 991](#): Study Commission concerning consolidation of school districts in Chickasaw County (Chickasaw County, Town of Houston and Town of Okolona); report back to 2017 Legislature

[SB 2495](#): Consolidation of Montgomery County and Town of Winona school districts

[SB 2498](#): Consolidation of Perry County and Town of Richton school districts [Bill died**]**

[SB 2500](#): Dissolution of Town of Lumberton district into Lamar County and Town of Poplarville school districts

Note this very peculiar set of outcomes in the efforts by the Republican super-majority to propel school consolidations through this series of bills immediately above:

- The three (3) proposed consolidations that the Legislature adopted in each case involved the consolidation of two majority-black districts
- At the same time, the bill that proposed consolidation of the two majority-white districts in Perry County, where the districts are each approximately 75% majority-white, died in committee
- The bill to consolidate districts in Chickasaw County involved two substantially majority-black districts and one district, Chickasaw County, which is more than 60% white. The effort to consolidate was derailed and referred to a Study Commission. That's especially interesting because House member Rep. Willie Perkins, who represents Leflore County and the City of Greenwood school districts which are both more than 92% black, asked to refer the proposed Leflore/Greenwood consolidation to a study commission. Rep. Toby Barker, the Republican floor manager for all the consolidation bills on the House side, denounced the request for a study commission as a farce because study commissions usually recommend against consolidation, and therefore, are a waste of time that delays the intended outcome. Perkins' request failed and the Leflore/Greenwood consolidation passed.
- Lumberton school district, 42% black, is being eliminated and its students absorbed into the adjoining districts of Lamar and Poplarville, which are 25% black and 11% percent black, respectively.

Also on the downside:

- The Republican super-majority engaged in cynical, disingenuous deception of the public when it blessed corporate profits with a massive tax cut while calling it a pay raise for taxpayers; and called the MAEP K-12 education appropriation "level funding" while underfunding the MAEP formula by more than \$170 million.

Ultimately, the \$415 million dollar tax cut [i.e. reduction in state revenues] will only benefit some Mississippi families as much as \$3 per week or \$150 per year. The big winners will be huge corporate enterprises.

The legislative leadership calls the MAEP appropriation “level funding”, but the more accurate characterization is “level under-funding”, which now amount to more than \$1.8 billion in under-funding from fiscal years 2009 to 2007.

The big losers will be the people because education will be underfunded, infrastructure will go without repair and rebuilding, health care benefits and services will be insufficient, and government services, including police and emergency services at the state and local levels will not be able to meet community needs. Such a deal!

- The Legislature *passed* the Jackson airport bill that transfers control of the airport from majority-black City of Jackson to a new regional board comprised of majority-white Rankin, Madison and Hinds counties, and provides the state executive branch and the counties with a clear control of appointment of a majority of seats on the regional board.
- The Legislature *failed*:
 - to expand Medicaid coverage
 - to appropriate funds to repair such infrastructure as roads, bridges, streets, water and sewer at the state, county or municipal levels
 - to fund the public education Capital Building Fund
 - to enact comprehensive election reform, including later registration deadlines and early voting

The Ugly (in so many ways)

HB 1523: Freedom of Conscience from Government Discrimination Act

Peer into the moral center of this bill and you will see the still-glowing embers of *Dred Scott v. Sandford* (1857) and the skeletal frame of discrimination identified, scorned and held unconstitutional in *Brown v. Board of Education* (1954).

This now internationally infamous, unconstitutional establishment of a particular religious viewpoint, signed into law by the Governor, attacks:

- same-sex marriage
- transgender self-identification, and
- sexual relations between consenting adults outside of marriage, regardless of the respective genders of the participants.

The core values in this bill are to create for targeted individuals a:

- A. *scarlet letter* of immorality that is fashioned with the imprimatur of a state-approved religious test
- B. *stigma* of second-class citizenship, and
- C. *stamp of authority* that will enable, encourage and justify private individuals and government officials to deploy their alleged deeply held beliefs to *refuse to provide*

- governmental services, both ministerial and discretionary, including but not limited to marriage licenses, building permits, driver licenses, access to public records, administrative and judicial proceedings
- employment in private business or public agencies, or to justify termination of employment in either private or public entities, and to regulate dress and conduct based on stereotypical gender norms
- professional services, including legal, medical, accounting, and psychological
- contracts to buy, lease or rent real properties
- contracts to buy, lease or rent personal properties
- services related to the adoption of children

Further, the law expressly protects individuals and government officials from criminal or civil liability in judicial proceedings for exercising their beliefs, notwithstanding any deleterious impact on those discriminated against.

This law is unconstitutional because the State of Mississippi clearly, unequivocally and unabashedly establishes as the foundation of this state law a particular religious viewpoint in violation of the **1st Amendment** prohibition against establishment of religion.

In addition, this law enables the denial of property rights to targeted individuals in violation of the **Due Process clauses** of both the US and MS constitutions because *employment has been held to be a protected property right* under the **Due Process Clause** by both the US Supreme Court and the MS Supreme Court.

This law is also a **Bill of Attainder** in violation of the prohibition against Bills of Attainder set forth in Article 1, Section 9, Clause 3 of the United States Constitution:

“No State shall ... pass any Bill of Attainder ...”

Bills of Attainder can be traced all the way back to the 1300s in England. Bills of Attainder were invidious legislation designed to strip individuals or group of persons of all of their rights, and then punish them without the benefit of trial. It was a tyrannical strategy used by the King of England and also by colonial legislatures prior to and during the American Revolution. Two provisions of the US Constitution prohibit Bills of Attainder to prevent their use by both the US Congress and state legislatures.

The US Supreme Court in *Cummings v. Missouri (1867)* devised a 3-prong test to determine whether legislation constitutes an unconstitutional Bill of Attainder. A bill constitutes a Bill of Attainder if it:

- a. Specifies the individuals or groups that are affected;
- b. Includes punishment; and
- c. Lacks provision for a judicial trial.

US Supreme Court Chief Justice John Marshall held in *Fletcher v. Peck (1810)*:

“... a Bill of Attainder may affect the life of an individual, or may confiscate his property, or may do both.”

The US Supreme Court held in *United States v. Brown (1965)* that *exclusion from employment is a*

form of punishment. Therefore, if an employer were to deny or terminate employment on grounds provided in HB 1523, then it would appear to be a form of *punishment* that would violate the Supreme Court 3-prong test for Bill of Attainder.

Does HB 1523 meet the US Supreme Court 3-prong test for Bills of Attainder?

- a. Specifies the individuals or groups that are affected? Check!*
- b. Includes punishment? Check!*
- c. Lacks provision for a judicial trial? Check!*

As the “old saw” from many reported legal decisions explains: If it looks like a duck, walks like a duck, and quacks like a duck, then the evidence shows that it is a duck!

HB 1523 is an immoral and unconstitutional abomination!

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