

By: Representative Smith (35th)

To: Education; Ways and  
Means

## HOUSE BILL NO. 1649

1 AN ACT TO CREATE THE MISSISSIPPI PUBLIC SCHOOL RELIEF ACT; TO  
2 PROVIDE AN INCOME TAX CREDIT FOR TAXPAYERS WHO MAKE CASH  
3 CONTRIBUTIONS TO SCHOOL TUITION ORGANIZATIONS OR PUBLIC SCHOOLS;  
4 TO AMEND SECTIONS 37-7-301 AND 37-19-27, MISSISSIPPI CODE OF 1972,  
5 IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

7 SECTION 1. Sections 1 through 3 of this act shall be known  
8 and may be cited as the Mississippi Public School Relief Act.

9 SECTION 2. It is the intent and purpose of Sections 1  
10 through 3 of this act to: (1) provide greater financial resources  
11 from Mississippi taxpayers for Mississippi public schools, (2)  
12 provide assistance for families of low or limited financial  
13 resources who want expanded educational opportunities for their  
14 children, (3) affirm that all children are unique and learn  
15 differently and may benefit from these expanded educational  
16 opportunities, and (4) enable Mississippi to achieve a greater  
17 level of educational excellence.

18 SECTION 3. (1) Except as otherwise provided in subsection  
19 (3), for any taxpayer who makes a voluntary cash contribution to a  
20 school tuition organization or a qualified school that is a public  
21 school, a credit against the income taxes imposed by Section  
22 27-7-1 et seq., Mississippi Code of 1972, shall be allowed in the  
23 amount provided in subsection (2) of this section. For purposes  
24 of this section:

25 (a) "School tuition organization" means a charitable  
26 organization in this state which is exempt from federal taxation  
27 under Section 501(c)(3) of the Internal Revenue Code and which  
28 allocates at least ninety percent (90%) of its annual revenue for

29 educational scholarships or tuition grants to children in order to  
30 allow them to attend any qualified school of their parent's or  
31 guardian's choice, or for reimbursement to public qualified  
32 schools for expenses incurred in enrolling students lawfully  
33 transferred to such a school from outside the school's school  
34 district, or both.

35 (b) "Qualified school" means a public or nonpublic  
36 primary or secondary school in this state. In the case of a  
37 nonpublic school, the school must not discriminate on the basis of  
38 race, color, sex, handicap or national origin, and the school must  
39 maintain educational standards equivalent to the standards  
40 established by the State Department of Education for the state  
41 schools as outlined in the Approval Requirements of the State  
42 Board of Education for Nonpublic Schools.

43 (2) (a) The income tax credit provided in subsection (1) of  
44 this section for a voluntary cash contribution to a school tuition  
45 organization shall be equal to the amount of the contribution to  
46 such organization during the taxable year, not to exceed the  
47 lesser of Five Hundred Dollars (\$500.00) or the amount of income  
48 tax imposed upon the taxpayer for the taxable year reduced by the  
49 sum of all other credits allowable to such taxpayer under the  
50 state income tax laws, except credit for tax payments made by or  
51 on behalf of the taxpayer. In the case of married individuals  
52 filing separate returns, each person may claim an amount not to  
53 exceed one-half (1/2) of the tax credit which would have been  
54 allowed for a joint return. Any unused portion of the credit may  
55 be carried forward for the next five (5) succeeding tax years.

56 (b) The income tax credit provided in subsection (1) of  
57 this section for a voluntary cash contribution to a qualified  
58 school that is a public school shall be equal to the amount of the  
59 contribution to such school during the taxable year, not to exceed  
60 the lesser of Two Hundred Dollars (\$200.00) or the amount of  
61 income tax imposed upon the taxpayer for the taxable year reduced  
62 by the sum of all other credits allowable to such taxpayer under  
63 the state income tax laws, except credit for tax payments made by  
64 or on behalf of the taxpayer. In the case of married individuals  
65 filing separate returns, each person may claim an amount not to  
66 exceed one-half (1/2) of the tax credit which would have been

67 allowed for a joint return. Any unused portion of the credit may  
68 be carried forward for the next five (5) succeeding tax years.

69 (3) Any amount of a cash contribution made by a taxpayer  
70 that is applied toward the credit provided in this section may not  
71 be used as a deduction by the taxpayer for state income tax  
72 purposes.

73 (4) The tax credit provided for in this section shall not be  
74 allowed if the taxpayer designates the taxpayer's cash  
75 contribution to the school tuition organization for the direct  
76 benefit of any dependent of the taxpayer.

77 SECTION 4. Section 37-7-301, Mississippi Code of 1972, is  
78 amended as follows:

79 37-7-301. The school boards of all school districts shall  
80 have the following powers, authority and duties in addition to all  
81 others imposed or granted by law, to wit:

82 (a) To organize and operate the schools of the district  
83 and to make such division between the high school grades and  
84 elementary grades as, in their judgment, will serve the best  
85 interests of the school;

86 (b) To introduce public school music, art, manual  
87 training and other special subjects into either the elementary or  
88 high school grades, as the board shall deem proper;

89 (c) To be the custodians of real and personal school  
90 property and to manage, control and care for same, both during the  
91 school term and during vacation;

92 (d) To have responsibility for the erection, repairing  
93 and equipping of school facilities and the making of necessary  
94 school improvements;

95 (e) To suspend or to expel a pupil for misconduct in  
96 the school, upon school buses, on the road to and from school,  
97 during recess or upon the school playgrounds, and to delegate such  
98 authority to the appropriate officials of the school district;

99 (f) To visit schools in the district, in their  
100 discretion, in a body for the purpose of determining what can be

101 done for the improvement of the school in a general way;

102 (g) To support, within reasonable limits, the  
103 superintendent, administrative superintendent, principal and  
104 teachers where necessary for the proper discipline of the school;

105 (h) To exclude from the schools students with what  
106 appears to be infectious or contagious diseases; provided,  
107 however, such student may be allowed to return to school upon  
108 presenting a certificate from a public health officer, duly  
109 licensed physician or nurse practitioner that the student is free  
110 from such disease;

111 (i) To require those vaccinations specified by the  
112 State Health Officer as provided in Section 41-23-37, Mississippi  
113 Code of 1972;

114 (j) To see that all necessary utilities and services  
115 are provided in the schools at all times when same are needed;

116 (k) To authorize the use of the school buildings and  
117 grounds for the holding of public meetings and gatherings of the  
118 people under such regulations as may be prescribed by said board;

119 (l) To prescribe and enforce rules and regulations not  
120 inconsistent with law or with the regulations of the State Board  
121 of Education for their own government and for the government of  
122 the schools, and to transact their business at regular and special  
123 meetings called and held in the manner provided by law;

124 (m) To maintain and operate all of the schools under  
125 their control for such length of time during the year as may be  
126 required;

127 (n) To enforce in the schools the courses of study and  
128 the use of the textbooks prescribed by the proper authorities;

129 (o) To make orders directed to the superintendent of  
130 schools or administrative superintendent for the issuance of pay  
131 certificates for lawful purposes on any available funds of the  
132 district and to have full control of the receipt, distribution,  
133 allotment and disbursement of all funds provided for the support  
134 and operation of the schools of such school district whether such

135 funds be derived from state appropriations, local ad valorem tax  
136 collections, or otherwise;

137           (p) To select all school district personnel in the  
138 manner provided by law, and to provide for such employee fringe  
139 benefit programs, including accident reimbursement plans, as may  
140 be deemed necessary and appropriate by the board;

141           (q) To provide athletic programs and other school  
142 activities and to regulate the establishment and operation of such  
143 programs and activities;

144           (r) To join, in their discretion, any association of  
145 school boards and other public school-related organizations, and  
146 to pay from local funds other than minimum foundation funds, any  
147 membership dues;

148           (s) To expend local school activity funds, or other  
149 available school district funds, other than minimum education  
150 program funds, for the purposes prescribed under this paragraph.  
151 "Activity funds" shall mean all funds received by school officials  
152 in all school districts paid or collected to participate in any  
153 school activity, such activity being part of the school program  
154 and partially financed with public funds or supplemented by public  
155 funds. The term "activity funds" shall not include any funds  
156 raised and/or expended by any organization unless commingled in a  
157 bank account with existing activity funds, regardless of whether  
158 the funds were raised by school employees or received by school  
159 employees during school hours or using school facilities, and  
160 regardless of whether a school employee exercises influence over  
161 the expenditure or disposition of such funds. Organizations shall  
162 not be required to make any payment to any school for the use of  
163 any school facility if, in the discretion of the local school  
164 governing board, the organization's function shall be deemed to be  
165 beneficial to the official or extracurricular programs of the  
166 school. For the purposes of this provision, the term  
167 "organization" shall not include any organization subject to the  
168 control of the local school governing board. Activity funds may

169 only be expended for any necessary expenses or travel costs,  
170 including advances, incurred by students and their chaperons in  
171 attending any in-state or out-of-state school-related programs,  
172 conventions or seminars and/or any commodities, equipment, travel  
173 expenses, purchased services or school supplies which the local  
174 school governing board, in its discretion, shall deem beneficial  
175 to the official or extracurricular programs of the district,  
176 including items which may subsequently become the personal  
177 property of individuals, including yearbooks, athletic apparel,  
178 book covers and trophies. Activity funds may be used to pay  
179 travel expenses of school district personnel. The local school  
180 governing board shall be authorized and empowered to promulgate  
181 rules and regulations specifically designating for what purposes  
182 school activity funds may be expended. The local school governing  
183 board shall provide (a) that such school activity funds shall be  
184 maintained and expended by the principal of the school generating  
185 the funds in individual bank accounts, or (b) that such school  
186 activity funds shall be maintained and expended by the  
187 superintendent of schools in a central depository approved by the  
188 board. The local school governing board shall provide that such  
189 school activity funds be audited as part of the annual audit  
190 required in Section 37-9-18. The State Auditor shall prescribe a  
191 uniform system of accounting and financial reporting for all  
192 school activity fund transactions;

193 (t) To contract, on a shared savings, lease or  
194 lease-purchase basis, for energy efficiency services and/or  
195 equipment as provided for in Section 31-7-14, not to exceed ten  
196 (10) years;

197 (u) To maintain accounts and issue pay certificates on  
198 school food service bank accounts;

199 (v) (i) To lease a school building from an individual,  
200 partnership, nonprofit corporation or a private for-profit  
201 corporation for the use of such school district, and to expend  
202 funds therefor as may be available from any non-minimum program

203 sources. The school board of the school district desiring to  
204 lease a school building shall declare by resolution that a need  
205 exists for a school building and that the school district cannot  
206 provide the necessary funds to pay the cost or its proportionate  
207 share of the cost of a school building required to meet the  
208 present needs. The resolution so adopted by the school board  
209 shall be published once each week for three (3) consecutive weeks  
210 in a newspaper having a general circulation in the school district  
211 involved, with the first publication thereof to be made not less  
212 than thirty (30) days prior to the date upon which the school  
213 board is to act on the question of leasing a school building. If  
214 no petition requesting an election is filed prior to such meeting  
215 as hereinafter provided, then the school board may, by resolution  
216 spread upon its minutes, proceed to lease a school building. If  
217 at any time prior to said meeting a petition signed by not less  
218 than twenty percent (20%) or fifteen hundred (1500), whichever is  
219 less, of the qualified electors of the school district involved  
220 shall be filed with the school board requesting that an election  
221 be called on the question, then the school board shall, not later  
222 than the next regular meeting, adopt a resolution calling an  
223 election to be held within such school district upon the question  
224 of authorizing the school board to lease a school building. Such  
225 election shall be called and held, and notice thereof shall be  
226 given, in the same manner for elections upon the questions of the  
227 issuance of the bonds of school districts, and the results thereof  
228 shall be certified to the school board. If at least three-fifths  
229 (3/5) of the qualified electors of the school district who voted  
230 in such election shall vote in favor of the leasing of a school  
231 building, then the school board shall proceed to lease a school  
232 building. The term of the lease contract shall not exceed twenty  
233 (20) years, and the total cost of such lease shall be either the  
234 amount of the lowest and best bid accepted by the school board  
235 after advertisement for bids or an amount not to exceed the  
236 current fair market value of the lease as determined by the

237 averaging of at least two (2) appraisals by members of the  
238 American Institute of Real Estate Appraisers or the Society of  
239 Real Estate Appraisers. The term "school building" as used in  
240 this item (v) shall be construed to mean any building or buildings  
241 used for classroom purposes in connection with the operation of  
242 schools and shall include the site therefor, necessary support  
243 facilities, and the equipment thereof and appurtenances thereto  
244 such as heating facilities, water supply, sewage disposal,  
245 landscaping, walks, drives and playgrounds. The term "lease" as  
246 used in this item (v)(i) may include a lease/purchase contract;

247 (ii) If two (2) or more school districts propose  
248 to enter into a lease contract jointly, then joint meetings of the  
249 school boards having control may be held but no action taken shall  
250 be binding on any such school district unless the question of  
251 leasing a school building is approved in each participating school  
252 district under the procedure hereinabove set forth in item (v)(i).  
253 All of the provisions of item (v)(i) regarding the term and amount  
254 of the lease contract shall apply to the school boards of school  
255 districts acting jointly. Any lease contract executed by two (2)  
256 or more school districts as joint lessees shall set out the amount  
257 of the aggregate lease rental to be paid by each, which may be  
258 agreed upon, but there shall be no right of occupancy by any  
259 lessee unless the aggregate rental is paid as stipulated in the  
260 lease contract. All rights of joint lessees under the lease  
261 contract shall be in proportion to the amount of lease rental paid  
262 by each;

263 (w) To employ all noninstructional and noncertificated  
264 employees and fix the duties and compensation of such personnel  
265 deemed necessary pursuant to the recommendation of the  
266 superintendent of schools or the administrative superintendent;

267 (x) To employ and fix the duties and compensation of  
268 such legal counsel as deemed necessary;

269 (y) Subject to rules and regulations of the State Board  
270 of Education, to purchase, own and operate trucks, vans and other



271 motor vehicles, which shall bear the proper identification  
272 required by law;

273 (z) To expend funds for the payment of substitute  
274 teachers and to adopt reasonable regulations for the employment  
275 and compensation of such substitute teachers;

276 (aa) To acquire in its own name by purchase all real  
277 property which shall be necessary and desirable in connection with  
278 the construction, renovation or improvement of any public school  
279 building or structure. If the board shall be unable to agree with  
280 the owner of any such real property in connection with any such  
281 project, the board shall have the power and authority to acquire  
282 any such real property by condemnation proceedings pursuant to  
283 Section 11-27-1 et seq., Mississippi Code of 1972, and for such  
284 purpose, the right of eminent domain is hereby conferred upon and  
285 vested in said board. Provided further, that the local school  
286 board is authorized to grant an easement for ingress and egress  
287 over sixteenth section land or lieu land in exchange for a similar  
288 easement upon adjoining land where the exchange of easements  
289 affords substantial benefit to the sixteenth section land;  
290 provided, however, the exchange must be based upon values as  
291 determined by a competent appraiser, with any differential in  
292 value to be adjusted by cash payment. Any easement rights granted  
293 over sixteenth section land under such authority shall terminate  
294 when the easement ceases to be used for its stated purpose. No  
295 sixteenth section or lieu land which is subject to an existing  
296 lease shall be burdened by any such easement except by consent of  
297 the lessee or unless the school district shall acquire the  
298 unexpired leasehold interest affected by the easement;

299 (bb) To charge reasonable fees related to the  
300 educational programs of the district, in the manner prescribed in  
301 Section 37-7-335;

302 (cc) Subject to rules and regulations of the State  
303 Board of Education, to purchase relocatable classrooms for the use  
304 of such school district, in the manner prescribed in Section

305 37-1-13;

306 (dd) Enter into contracts or agreements with other  
307 school districts, political subdivisions or governmental entities  
308 to carry out one or more of the powers or duties of the school  
309 board, or to allow more efficient utilization of limited resources  
310 for providing services to the public;

311 (ee) To provide for in-service training for employees  
312 of the district. Until June 30, 1994, the school boards may  
313 designate two (2) days of the minimum school term, as defined in  
314 Section 37-19-1, for employee in-service training for  
315 implementation of the new statewide testing system as developed by  
316 the State Board of Education. Such designation shall be subject  
317 to approval by the State Board of Education pursuant to uniform  
318 rules and regulations;

319 (ff) The school boards of all school districts, as part  
320 of their duties to prescribe the use of textbooks, may provide  
321 that parents and legal guardians shall be responsible for the  
322 textbooks and for the compensation to the school district for any  
323 books which are not returned to the proper schools upon the  
324 withdrawal of their dependent child. If a textbook is lost or not  
325 returned by any student who drops out of the public school  
326 district, the parent or legal guardian shall also compensate the  
327 school district for the fair market value of the textbooks;

328 (gg) To conduct fund-raising activities on behalf of  
329 the school district that the local school board, in its  
330 discretion, deems appropriate or beneficial to the official or  
331 extracurricular programs of the district; provided that:

332 (i) Any proceeds of the fund-raising activities  
333 shall be treated as "activity funds" and shall be accounted for as  
334 are other activity funds under this section; and

335 (ii) Fund-raising activities conducted or  
336 authorized by the board for the sale of school pictures, the  
337 rental of caps and gowns or the sale of graduation invitations for  
338 which the school board receives a commission, rebate or fee shall

339 contain a disclosure statement advising that a portion of the  
340 proceeds of the sales or rentals shall be contributed to the  
341 student activity fund;

342 (hh) To allow individual lessons for music, art and  
343 other curriculum-related activities for academic credit or  
344 nonacademic credit during school hours and using school equipment  
345 and facilities, subject to uniform rules and regulations adopted  
346 by the school board;

347 (ii) To charge reasonable fees for participating in an  
348 extracurricular activity for academic or nonacademic credit for  
349 necessary and required equipment such as safety equipment, band  
350 instruments and uniforms;

351 (jj) To conduct or participate in any fund-raising  
352 activities on behalf of or in connection with a tax-exempt  
353 charitable organization;

354 (kk) To exercise such powers as may be reasonably  
355 necessary to carry out the provisions of this section; and

356 (ll) To expend funds for the services of nonprofit arts  
357 organizations or other such nonprofit organizations who provide  
358 performances or other services for the students of the school  
359 district.

360 (mm) To accept any contribution or other term of  
361 financial assistance.

362 SECTION 5. Section 37-19-27, Mississippi Code of 1972, is  
363 amended as follows:

364 37-19-27. (1) Legally transferred students going from one  
365 school district to another shall be counted for teacher allotment  
366 and allotments for supportive services by the school district  
367 wherein the pupils attend school, including cost allotments  
368 prescribed in Sections 37-19-19 and 37-19-31 for school district  
369 administrative and clerical salaries and other expenses, but shall  
370 be counted for transportation allotment purposes in the school  
371 district which furnishes or provides the transportation. The  
372 school boards of the school districts which approve the transfer

373 of a student under the provisions of Section 37-15-31 shall enter  
374 into an agreement and contract for the payment or nonpayment of  
375 any portion of their local maintenance funds which they deem fair  
376 and equitable in support of any transferred student. Except as  
377 provided in subsection (2) of this section, local maintenance  
378 funds shall be transferred only to the extent specified in the  
379 agreement and contract entered into by the affected school  
380 districts. The terms of any local maintenance fund payment  
381 transfer contract shall be spread upon the minutes of both of the  
382 affected school district school boards. The school district  
383 accepting any transfer students under the provisions of Section  
384 37-15-31(1) shall be authorized to accept tuition from such  
385 students \* \* \* and such agreement may remain in effect for any  
386 length of time designated in the contract. The terms of such  
387 student transfer contracts and the amounts of any tuition charged  
388 any transfer student shall be spread upon the minutes of both of  
389 the affected school boards. Any voluntary cash contribution made  
390 to a school and any assistance provided by a school tuition  
391 organization as described in Section 3 of House Bill No. \_\_\_\_\_,  
392 1999 Regular Session, may be designated for such tuition payments.

393 No school district accepting any transfer students under the  
394 provisions of Section 37-15-31(2), which provides for the transfer  
395 of certain school district employee dependents, shall be  
396 authorized to charge such transfer students any tuition fees.

397 (2) Local maintenance funds shall be paid by the home school  
398 district to the transferee school district for students granted  
399 transfers under the provisions of Sections 37-15-29(3) and  
400 37-15-31(3), Mississippi Code of 1972, not to exceed the  
401 "individual student entitlement" as defined in Section  
402 37-22-1(2)(d), Mississippi Code of 1972, multiplied by the number  
403 of such legally transferred students.

404 SECTION 6. Nothing in this act shall affect or defeat any  
405 claim, assessment, appeal, suit, right or cause of action for  
406 taxes due or accrued under the income tax laws before the date on

407 which this act becomes effective, whether such claims,  
408 assessments, appeals, suits or actions have been begun before the  
409 date on which this act becomes effective or are begun thereafter;  
410 and the provisions of the income tax laws are expressly continued  
411 in full force, effect and operation for the purpose of the  
412 assessment, collection and enrollment of liens for any taxes due  
413 or accrued and the execution of any warrant under such laws before  
414 the date on which this act becomes effective, and for the  
415 imposition of any penalties, forfeitures or claims for failure to  
416 comply with such laws.

417         SECTION 7. The Legislature declares that the provisions of  
418 this act are not severable and that this act would not have been  
419 enacted without the inclusion of all provisions. If any provision  
420 of this act is for any reason held invalid, the entire act is  
421 invalid.

422         SECTION 8. This act shall take effect and be in force from  
423 and after January 1, 1999.