

By: Smith (35th)

To: Ways and Means

HOUSE BILL NO. 1605

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: (a) provide greater financial resources
11 from Mississippi taxpayers for Mississippi public schools, (b)
12 provide assistance for families of low or limited financial
13 resources who want expanded educational opportunities for their
14 children, (c) affirm that all children are unique and learn
15 differently and may benefit from these expanded educational
16 opportunities, and (d) enable Mississippi to achieve a greater
17 level of educational excellence.

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

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; and

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 2000 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, 2000.