HOUSE BILL NO. 838

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2002

By: Representative Denny

To: Education; Ways and Means

AN ACT TO AMEND SECTIONS 37-57-105 AND 37-57-107, MISSISSIPPI CODE OF 1972, TO DELETE THE AUTHORITY OF SCHOOL BOARDS TO INCREASE AD VALOREM TAXES LEVIED FOR SCHOOL DISTRICT PURPOSES, REGARDLESS OF THE MILLAGE RATE, ABSENT APPROVAL IN A REFERENDUM ON THE PROPOSED TAX INCREASE; TO AMEND SECTION 27-39-207, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO REPEAL SECTION 37-57-104, MISSISSIPPI CODE OF 1972, WHICH REQUIRES AN ELECTION FOR CERTAIN AD VALOREM TAX INCREASES IN SCHOOL DISTRICTS LEVYING MORE THAN 55 MILLS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 37-57-105, Mississippi Code of 1972, is amended as follows:

[Until July 1, 2002, this section shall read as follows:]

37-57-105. (1) In addition to the taxes levied under Section 37-57-1, the levying authority for the school district, as defined in Section 37-57-1, upon receipt of a certified copy of an order adopted by the school board of the school district requesting an ad valorem tax effort in dollars for the support of the school district, shall, at the same time and in the same manner as other ad valorem taxes are levied, levy an annual ad valorem tax in the amount fixed in such order, subject to the increase limitation prescribed in Section 37-57-107, upon all of the taxable property of such school district, which shall not be less than a millage rate necessary to generate funds equal to the "district entitlement" as defined in Section 37-22-1(2)(e) or the millage rate certified by the State Board of Education as the uniform minimum school district ad valorem tax levy, whichever is less, including the amount of millage levied for the support of the minimum education program in such school district under Section 37-57-1. Provided, however, that any school district...
levying less than the uniform minimum school district ad valorem
tax levy on July 1, 1989, or a millage rate necessary to generate
funds equal to the "district entitlement" shall only be required
to increase its local district maintenance levy in four (4) mill
annual increments in order to attain such millage requirements.
In making such levy, the levying authority shall levy an
additional amount sufficient to cover anticipated delinquencies
and costs of collection so that the net amount of money to be
produced by such levy shall be equal to the amount which is
requested by said school board. The proceeds of such tax levy,
excluding levies for the payment of the principal of and interest
on school bonds or notes and excluding levies for costs of
collection, shall be placed in the school depository to the credit
of the school district and shall be expended in the manner
provided by law for the purpose of supplementing teachers'
salaries, extending school terms, purchasing furniture, supplies
and materials, and for all other lawful operating and incidental
expenses of such school district, funds for which are not provided
by minimum program fund allotments.

The monies authorized to be received by school districts from
the School Ad Valorem Tax Reduction Fund pursuant to Section
37-61-35 shall be included as ad valorem tax receipts. The
levying authority for the school district, as defined in Section
37-57-1, shall reduce the ad valorem tax levy for such school
district in an amount equal to the amount distributed to such
school district from the School Ad Valorem Tax Reduction Fund each
calendar year pursuant to said Section 37-61-35. Such reduction
shall not be less than the millage rate necessary to generate a
reduction in ad valorem tax receipts equal to the funds
distributed to such school district from the School Ad Valorem Tax
Reduction Fund pursuant to Section 37-61-35. Such reduction shall
not be deemed to be a reduction in the aggregate amount of support
from ad valorem taxation for purposes of Section 37-19-11. The
millage levy certified by the State Board of Education as the uniform minimum ad valorem tax levy or the millage levy that would generate funds in an amount equal to a school district's district entitlement, as defined in Section 37-22-1(2)(e), shall be subject to the provisions of this paragraph.

In any county where there is located a nuclear generating power plant on which a tax is assessed under Section 27-35-309(3), such required levy and revenue produced thereby may be reduced by the levying authority in an amount in proportion to a reduction in the base revenue of any such county from the previous year. Such reduction shall be allowed only if the reduction in base revenue equals or exceeds five percent (5%). "Base revenue" shall mean the revenue received by the county from the ad valorem tax levy plus the revenue received by the county from the tax assessed under Section 27-35-309(3) and authorized to be used for any purposes for which a county is authorized by law to levy an ad valorem tax. For purposes of determining if the reduction equals or exceeds five percent (5%), a levy of millage equal to the prior year's millage shall be hypothetically applied to the current year's ad valorem tax base to determine the amount of revenue to be generated from the ad valorem tax levy. For the purposes of this section and Section 37-57-107, the portion of the base revenue used for the support of any school district shall be deemed to be the aggregate receipts from ad valorem taxes for the support of any school district. This paragraph shall apply to taxes levied for the 1987 fiscal year and for each fiscal year thereafter. If the Mississippi Supreme Court or another court finally adjudicates that the tax levied under Section 27-35-309(3) is unconstitutional, then this paragraph shall stand repealed.

(2) When the tax is levied upon the territory of any school district located in two (2) or more counties, the order of the school board requesting the levying of such tax shall be certified to the levying authority of each of the counties involved, and
each of the levying authorities shall levy the tax in the manner
specified herein. The taxes so levied shall be collected by the
tax collector of the levying authority involved and remitted by
the tax collector to the school depository of the home county to
the credit of the school district involved as provided above,
except that taxes for collection fees may be retained by the
levying authority for deposit into its general fund.

* * *

[From and after July 1, 2002, this section shall read as
follows:]

37-57-105. (1) In addition to the taxes levied under
Section 37-57-1, the levying authority for the school district, as
defined in Section 37-57-1, upon receipt of a certified copy of an
order adopted by the school board of the school district
requesting an ad valorem tax effort in dollars for the support of
the school district, shall, at the same time and in the same
manner as other ad valorem taxes are levied, levy an annual ad
valorem tax in the amount fixed in such order, subject to the
increase limitation prescribed in Section 37-57-107, upon all of
the taxable property of such school district, which shall not be
less than the millage rate certified by the State Board of
Education as the uniform minimum school district ad valorem tax
levy for the support of the adequate education program in such
school district under Section 37-57-1. Provided, however, that
any school district levying less than the uniform minimum school
district ad valorem tax levy on July 1, 1997, shall only be
required to increase its local district maintenance levy in four
(4) mill annual increments in order to attain such millage
requirements. In making such levy, the levying authority shall
levy an additional amount sufficient to cover anticipated
delinquencies and costs of collection so that the net amount of
money to be produced by such levy shall be equal to the amount
which is requested by said school board. The proceeds of such tax
levy, excluding levies for the payment of the principal of and
interest on school bonds or notes and excluding levies for costs
of collection, shall be placed in the school depository to the
credit of the school district and shall be expended in the manner
provided by law for the purpose of supplementing teachers'
salaries, extending school terms, purchasing furniture, supplies
and materials, and for all other lawful operating and incidental
expenses of such school district, funds for which are not provided
by adequate education program fund allotments.

The monies authorized to be received by school districts from
the School Ad Valorem Tax Reduction Fund pursuant to Section
37-61-35 shall be included as ad valorem tax receipts. The
levying authority for the school district, as defined in Section
37-57-1, shall reduce the ad valorem tax levy for such school
district in an amount equal to the amount distributed to such
school district from the School Ad Valorem Tax Reduction Fund each
calendar year pursuant to said Section 37-61-35. Such reduction
shall not be less than the millage rate necessary to generate a
reduction in ad valorem tax receipts equal to the funds
distributed to such school district from the School Ad Valorem Tax
Reduction Fund pursuant to Section 37-61-35. Such reduction shall
not be deemed to be a reduction in the aggregate amount of support
from ad valorem taxation for purposes of Section 37-19-11. The
millage levy certified by the State Board of Education as the
uniform minimum ad valorem tax levy or the millage levy that would
generate funds in an amount equal to a school district's district
entitlement, as defined in Section 37-22-1(2)(e), shall be subject
to the provisions of this paragraph.

In any county where there is located a nuclear generating
power plant on which a tax is assessed under Section 27-35-309(3),
such required levy and revenue produced thereby may be reduced by
the levying authority in an amount in proportion to a reduction in
the base revenue of any such county from the previous year. Such
reduction shall be allowed only if the reduction in base revenue equals or exceeds five percent (5%). "Base revenue" shall mean the revenue received by the county from the ad valorem tax levy plus the revenue received by the county from the tax assessed under Section 27-35-309(3) and authorized to be used for any purposes for which a county is authorized by law to levy an ad valorem tax. For purposes of determining if the reduction equals or exceeds five percent (5%), a levy of millage equal to the prior year's millage shall be hypothetically applied to the current year's ad valorem tax base to determine the amount of revenue to be generated from the ad valorem tax levy. For the purposes of this section and Section 37-57-107, the portion of the base revenue used for the support of any school district shall be deemed to be the aggregate receipts from ad valorem taxes for the support of any school district. This paragraph shall apply to taxes levied for the 1987 fiscal year and for each fiscal year thereafter. If the Mississippi Supreme Court or another court finally adjudicates that the tax levied under Section 27-35-309(3) is unconstitutional, then this paragraph shall stand repealed.

(2) When the tax is levied upon the territory of any school district located in two (2) or more counties, the order of the school board requesting the levying of such tax shall be certified to the levying authority of each of the counties involved, and each of the levying authorities shall levy the tax in the manner specified herein. The taxes so levied shall be collected by the tax collector of the levying authority involved and remitted by the tax collector to the school depository of the home county to the credit of the school district involved as provided above, except that taxes for collection fees may be retained by the levying authority for deposit into its general fund.

**SECTION 2.** Section 37-57-107, Mississippi Code of 1972, is amended as follows:
[Until July 1, 2002, this section shall read as follows:]

37-57-107. (1) Except as otherwise authorized pursuant to an election held under subsection (2) of this section, beginning with the tax levy for the 2003 fiscal year, the aggregate receipts from taxes levied for school district purposes, excluding collection fees, pursuant to Sections 37-57-105 and 37-57-1 shall not exceed the aggregate receipts from those sources during the immediately preceding fiscal year. For the purpose of this limitation, the term "aggregate receipts" when used in connection with the amount of funds generated in a preceding fiscal year shall not include excess receipts required by law to be deposited into a special account, and shall not include amounts received by school districts from the School Ad Valorem Tax Reduction Fund pursuant to Section 37-61-35. The additional revenue from the ad valorem tax on any newly constructed properties or any existing properties added to the tax rolls or any properties previously exempt which were not assessed in the next preceding year may be excluded from the limitation set forth herein. Taxes levied for payment of principal of and interest on general obligation school bonds issued heretofore or hereafter shall be excluded from the limitation set forth herein. Any additional millage levied to fund any new program mandated by the Legislature shall be excluded from the limitation for the first year of the levy and included within such limitation in any year thereafter. For the purposes of this section, the term "new program" shall include, but shall not be limited to: (a) the Early Childhood Education Program required to commence with the 1986-1987 school year as provided by Section 37-21-7 and any additional millage levied and the revenue generated therefrom, which is excluded from the limitation for the first year of the levy, to support the mandated Early Childhood Education Program, which shall be specified on the minutes of the school board and of the governing body making such tax levy; (b)
any additional millage levied and the revenue generated therefrom which shall be excluded from the limitation for the first year of the levy, for the purpose of generating additional local contribution funds required for the minimum education program for the 1987 fiscal year and for each fiscal year thereafter through the 1996 fiscal year under Section 37-19-35; (c) any additional millage levied and the revenue generated therefrom which shall be excluded from the limitation for the first and each subsequent year of the levy, for the purpose of generating additional local contributions mandated under Section 37-57-105 requiring the board of trustees of a school district to reach the millage levy certified by the State Board of Education as the uniform minimum school district ad valorem tax levy or the millage levy which would generate funds in an amount equal to a school district’s "district entitlement" as defined in Section 37-22-1(2)(e); and (d) any additional millage levied and the revenue generated therefrom which shall be excluded from the limitation for the first year of the levy, for the purpose of support and maintenance of any agricultural high school which has been transferred to the control, operation and maintenance of the school board by the board of trustees of the community college district under provisions of Section 37-29-272.

(2) If a school board has determined the need for additional revenues, the school board may adopt an order requesting that the levying authority, as defined in Section 37-57-1, call and hold an election on the question of exceeding the limitation prescribed in this section. However, before the order requesting the election is adopted, the school board shall advertise its intention to do so and shall hold a public meeting on the proposed increase in accordance with Section 27-39-207. The order, notice and manner of holding the election shall be as prescribed by law for the holding of elections for the issuance of bonds by the *** school boards. The ballot shall contain the language "For the School Tax
Increase" and "Against the School Tax Increase" and shall state the specific amount of the proposed tax increase. The results of the election shall be certified to the school board. If three-fifths (3/5) or more of the qualified electors voting in the election vote in favor of the question, then the stated increase requested by the school board shall be approved. Revenues collected for the fiscal year in excess of the * * * limitation pursuant to an election shall be included in the tax base for the purpose of determining aggregate receipts for which the * * * limitation applies for subsequent fiscal years.

(3) Except as otherwise provided for excess revenues generated pursuant to an election, if revenues collected as the result of the taxes levied for the fiscal year pursuant to this section and Section 37-57-1 exceed the * * * limitation, then it shall be the mandatory duty of the school board of the school district to deposit such excess receipts over and above the * * * limitation into a special account and credit it to the fund for which the levy was made. It will be the further duty of such board to hold said funds and invest the same as authorized by law. Such excess funds shall be calculated in the budgets for the school districts for the purpose for which such levies were made, for the succeeding fiscal year. Taxes imposed for the succeeding year shall be reduced by the amount of excess funds available. Under no circumstances shall such excess funds be expended during the fiscal year in which such excess funds are collected.

(4) For the purposes of determining ad valorem tax receipts for a preceding fiscal year under this section, the term "fiscal year" means the fiscal year beginning October 1 and ending September 30.

[From and after July 1, 2002, this section shall read as follows:]

37-57-107. (1) Except as otherwise authorized pursuant to an election held under subsection(2) of this section, beginning with...
the tax levy for the 2003 fiscal year ***, the aggregate receipts from taxes levied for school district purposes, excluding collection fees, pursuant to Sections 37-57-105 and 37-57-1 shall not exceed the aggregate receipts from those sources during *** the immediately preceding *** fiscal year ***. For the purpose of this limitation, the term "aggregate receipts" when used in connection with the amount of funds generated in a preceding fiscal year shall not include excess receipts required by law to be deposited into a special account, and shall not include any amounts received by school districts from the School Ad Valorem Tax Reduction Fund pursuant to Section 37-61-35. The additional revenue from the ad valorem tax on any newly constructed properties or any existing properties added to the tax rolls or any properties previously exempt which were not assessed in the next preceding year may be excluded from the *** limitation set forth herein. Taxes levied for payment of principal of and interest on general obligation school bonds issued heretofore or hereafter shall be excluded from the *** limitation set forth herein. Any additional millage levied to fund any new program mandated by the Legislature shall be excluded from the limitation for the first year of the levy and included within such limitation in any year thereafter. For the purposes of this section, the term "new program" shall include, but shall not be limited to: (a) the Early Childhood Education Program required to commence with the 1986-1987 school year as provided by Section 37-21-7 and any additional millage levied and the revenue generated therefrom, which is excluded from the limitation for the first year of the levy, to support the mandated Early Childhood Education Program, which shall be specified on the minutes of the school board and of the governing body making such tax levy; (b) any additional millage levied and the revenue generated therefrom which shall be excluded from the limitation for the first year of the levy, for the purpose of generating additional local
contribution funds required for the adequate education program for
the 2003 fiscal year and for each fiscal year thereafter under
Section 37-151-7(2); and (c) any additional millage levied and the
revenue generated therefrom which shall be excluded from the
limitation for the first year of the levy, for the purpose of
support and maintenance of any agricultural high school which has
been transferred to the control, operation and maintenance of the
school board by the board of trustees of the community college
district under provisions of Section 37-29-272.

(2) If a school board has determined the need for additional
revenues, the school board may adopt an order requesting that the
levying authority, as defined in Section 37-57-1, call and hold an
election on the question of exceeding the limitation prescribed in
this section. However, before the order requesting the election
is adopted, the school board shall advertise its intention to do
so and shall hold a public meeting on the proposed increase in
accordance with Section 27-39-207. The order, notice and manner
of holding the election shall be as prescribed by law for the
holding of elections for the issuance of bonds by the * * * school
boards. The ballot shall contain the language "For the School Tax
Increase" and "Against the School Tax Increase" and shall state
the specific amount of the proposed tax increase. The results of
the election shall be certified to the school board. If
three-fifths (3/5) or more of the qualified electors voting in the
election vote in favor of the question, then the stated increase
requested by the school board shall be approved. Revenues
collected for the fiscal year in excess of the * * * limitation
pursuant to an election shall be included in the tax base for the
purpose of determining aggregate receipts for which the * * *
limitation applies for subsequent fiscal years.

(3) Except as otherwise provided for excess revenues
generated pursuant to an election, if revenues collected as the
result of the taxes levied for the fiscal year pursuant to this
section and Section 37-57-1 exceed the * * * limitation, then it
shall be the mandatory duty of the school board of the school
district to deposit such excess receipts over and above the * * *
limitation into a special account and credit it to the fund for
which the levy was made. It will be the further duty of such
board to hold said funds and invest the same as authorized by law.
Such excess funds shall be calculated in the budgets for the
school districts for the purpose for which such levies were made,
for the succeeding fiscal year. Taxes imposed for the succeeding
year shall be reduced by the amount of excess funds available.
Under no circumstances shall such excess funds be expended during
the fiscal year in which such excess funds are collected.

(4) For the purposes of determining ad valorem tax receipts
for a preceding fiscal year under this section, the term "fiscal
year" means the fiscal year beginning October 1 and ending
September 30.

amended as follows:

27-39-207. (1) Unless the increased revenue in a budget is
derived solely from the expansion of a school district's ad
valorem tax base, a school district shall not budget an increase
in an ad valorem tax effort in dollars for support of the school
district unless it first advertises its intention to request an
election on the increase at the same time that it advertises its
intention to fix its budget for the next fiscal year.

(2) A request for an election on an ad valorem tax effort in
dollars for the support of the school district in excess of the
certified tax rate pursuant to Sections 37-57-105 and 37-57-107
shall not be made until an order has been approved by the school
board of the school district in accordance with the following
procedure:

(a) The school board of the school district shall
advertise its intent to request an election on exceeding the
certified tax rate in a newspaper of general circulation in the
county. The advertisement shall be no less than one-fourth (1/4)
page in size and the type used shall be no smaller than eighteen
(18) point and surrounded by a one-fourth-inch (1/4") solid black
border. The advertisement shall not be placed in any portion of
the newspaper where legal notices and classified advertisements
appear. The advertisement shall appear in a newspaper that is
published at least five (5) days a week, unless the only newspaper
in the county is published less than five (5) days a week. The
newspaper selected shall be one of general interest, readership
and circulation in all areas of the community. The advertisement
shall be published once each week for the two-week period
preceding the adoption of the final budget. The advertisement
shall provide that the school board of the school district will
meet on a certain day, date, time and place fixed in the
advertisement, which shall be no less than seven (7) days after
the day the first advertisement is published. The meeting on the
proposed increase may coincide with the hearing on the proposed
budget of the school board of the school district.

(b) When the advertisement is required, it shall be in
the following form:

"NOTICE OF TAX INCREASE - (Name of the school district)
The (name of the school district) will hold a public hearing
on its proposed school district budget for fiscal year (insert the
year) on (date and time) at (meeting place). At this meeting, a
proposed ad valorem tax effort increase will be considered.
The (name of the school district) is now operating with
projected total budget revenue of $_______. (____ percent) or
$_______, of such revenue is obtained through ad valorem taxes.
For next fiscal year, the proposed budget has total projected
revenue of $_______. Of that amount, (____ percent) or
$_______, is proposed to be financed through a total ad valorem
tax levy.

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For the next fiscal year, the (name of the school district) plans to increase your ad valorem tax millage rate by ____ mills from ____ mills to ____ mills. (This portion of the notice shall not be required if the school district does not propose an increase in the ad valorem tax millage rate.)

This increase in ad valorem tax revenue means that you will pay more in ad valorem taxes on your home, automobile tag, utilities, business fixtures and equipment and rental real property.

Any citizen of (name of the school district) is invited to attend this public hearing on the proposed ad valorem tax increase, and will be allowed to speak for a reasonable amount of time and offer tangible evidence before any vote is taken."

(3) The school board of the school district, after the hearing has been held in accordance with the above procedures, may adopt an order requesting an election on the levying of an ad valorem tax effort in dollars in excess of the certified tax rate. If such order is not adopted on the day of the public hearing, the scheduled date, time and place for consideration and adoption of the order shall be announced at the public hearing.

(4) All hearings shall be open to the public. The school board of the school district shall permit all interested parties desiring to be heard an opportunity to present oral testimony within reasonable time limits and offer tangible evidence.

(5) Each school board of a school district shall notify the taxing entity of the date, time and place of its public hearing. No school board of a school district may schedule its hearing at the same time as another overlapping school district in the same county.

SECTION 4. Section 37-57-104, Mississippi Code of 1972, which requires an election for certain ad valorem tax increases in school districts levying more than fifty-five (55) mills, is repealed.
SECTION 5. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws.

SECTION 6. The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

SECTION 7. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.