

By: Senator(s) Nunnelee

To: Education; Finance

SENATE BILL NO. 2043

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 of their parent's or guardian's
31 choice, or for reimbursement to public qualified schools for
32 expenses incurred in enrolling students lawfully transferred to
33 such a school from outside the school district, or both.

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

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

55 (b) The income tax credit provided in subsection (1) of
56 this section for a voluntary cash contribution to a qualified
57 school that is a public school shall be equal to the amount of the
58 contribution to such school during the taxable year, not to exceed
59 the lesser of Two Hundred Dollars (\$200.00) or the amount of
60 income tax imposed upon the taxpayer for the taxable year reduced
61 by the sum of all other credits allowable to such taxpayer under



62 the state income tax laws, except credit for tax payments made by
63 or on behalf of the taxpayer. In the case of married individuals
64 filing separate returns, each person may claim an amount not to
65 exceed one-half (1/2) of the tax credit which would have been
66 allowed for a joint return. Any unused portion of the credit may
67 be carried forward for the next five (5) succeeding tax years.

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

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

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

78 37-7-301. The school boards of all school districts shall
79 have the following powers, authority and duties in addition to all
80 others imposed or granted by law, to wit:

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

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

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

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



94 (e) To suspend or to expel a pupil or to change the
95 placement of a pupil to the school district's alternative school
96 or home-bound program for misconduct in the school or on school
97 property, as defined in Section 37-11-29, on the road to and from
98 school, or at any school-related activity or event, or for conduct
99 occurring on property other than school property or other than at
100 a school-related activity or event when such conduct by a pupil,
101 in the determination of the school superintendent or principal,
102 renders that pupil's presence in the classroom a disruption to the
103 educational environment of the school or a detriment to the best
104 interest and welfare of the pupils and teacher of such class as a
105 whole, and to delegate such authority to the appropriate officials
106 of the school district;

107 (f) To visit schools in the district, in their
108 discretion, in a body for the purpose of determining what can be
109 done for the improvement of the school in a general way;

110 (g) To support, within reasonable limits, the
111 superintendent, principal and teachers where necessary for the
112 proper discipline of the school;

113 (h) To exclude from the schools students with what
114 appears to be infectious or contagious diseases; provided,
115 however, such student may be allowed to return to school upon
116 presenting a certificate from a public health officer, duly
117 licensed physician or nurse practitioner that the student is free
118 from such disease;

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

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

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



127 (1) To prescribe and enforce rules and regulations not
128 inconsistent with law or with the regulations of the State Board
129 of Education for their own government and for the government of
130 the schools, and to transact their business at regular and special
131 meetings called and held in the manner provided by law;

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

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

137 (o) To make orders directed to the superintendent of
138 schools for the issuance of pay certificates for lawful purposes
139 on any available funds of the district and to have full control of
140 the receipt, distribution, allotment and disbursement of all funds
141 provided for the support and operation of the schools of such
142 school district whether such funds be derived from state
143 appropriations, local ad valorem tax collections, or otherwise;

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

148 (q) To provide athletic programs and other school
149 activities and to regulate the establishment and operation of such
150 programs and activities;

151 (r) To join, in their discretion, any association of
152 school boards and other public school-related organizations, and
153 to pay from local funds other than minimum foundation funds, any
154 membership dues;

155 (s) To expend local school activity funds, or other
156 available school district funds, other than minimum education
157 program funds, for the purposes prescribed under this paragraph.
158 "Activity funds" shall mean all funds received by school officials
159 in all school districts paid or collected to participate in any



160 school activity, such activity being part of the school program
161 and partially financed with public funds or supplemented by public
162 funds. The term "activity funds" shall not include any funds
163 raised and/or expended by any organization unless commingled in a
164 bank account with existing activity funds, regardless of whether
165 the funds were raised by school employees or received by school
166 employees during school hours or using school facilities, and
167 regardless of whether a school employee exercises influence over
168 the expenditure or disposition of such funds. Organizations shall
169 not be required to make any payment to any school for the use of
170 any school facility if, in the discretion of the local school
171 governing board, the organization's function shall be deemed to be
172 beneficial to the official or extracurricular programs of the
173 school. For the purposes of this provision, the term
174 "organization" shall not include any organization subject to the
175 control of the local school governing board. Activity funds may
176 only be expended for any necessary expenses or travel costs,
177 including advances, incurred by students and their chaperons in
178 attending any in-state or out-of-state school-related programs,
179 conventions or seminars and/or any commodities, equipment, travel
180 expenses, purchased services or school supplies which the local
181 school governing board, in its discretion, shall deem beneficial
182 to the official or extracurricular programs of the district,
183 including items which may subsequently become the personal
184 property of individuals, including yearbooks, athletic apparel,
185 book covers and trophies. Activity funds may be used to pay
186 travel expenses of school district personnel. The local school
187 governing board shall be authorized and empowered to promulgate
188 rules and regulations specifically designating for what purposes
189 school activity funds may be expended. The local school governing
190 board shall provide (i) that such school activity funds shall be
191 maintained and expended by the principal of the school generating
192 the funds in individual bank accounts, or (ii) that such school



193 activity funds shall be maintained and expended by the
194 superintendent of schools in a central depository approved by the
195 board. The local school governing board shall provide that such
196 school activity funds be audited as part of the annual audit
197 required in Section 37-9-18. The State Auditor shall prescribe a
198 uniform system of accounting and financial reporting for all
199 school activity fund transactions;

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

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

206 (v) (i) To lease a school building from an individual,
207 partnership, nonprofit corporation or a private for-profit
208 corporation for the use of such school district, and to expend
209 funds therefor as may be available from any nonminimum program
210 sources. The school board of the school district desiring to
211 lease a school building shall declare by resolution that a need
212 exists for a school building and that the school district cannot
213 provide the necessary funds to pay the cost or its proportionate
214 share of the cost of a school building required to meet the
215 present needs. The resolution so adopted by the school board
216 shall be published once each week for three (3) consecutive weeks
217 in a newspaper having a general circulation in the school district
218 involved, with the first publication thereof to be made not less
219 than thirty (30) days prior to the date upon which the school
220 board is to act on the question of leasing a school building. If
221 no petition requesting an election is filed prior to such meeting
222 as hereinafter provided, then the school board may, by resolution
223 spread upon its minutes, proceed to lease a school building. If
224 at any time prior to said meeting a petition signed by not less
225 than twenty percent (20%) or fifteen hundred (1500), whichever is



226 less, of the qualified electors of the school district involved
227 shall be filed with the school board requesting that an election
228 be called on the question, then the school board shall, not later
229 than the next regular meeting, adopt a resolution calling an
230 election to be held within such school district upon the question
231 of authorizing the school board to lease a school building. Such
232 election shall be called and held, and notice thereof shall be
233 given, in the same manner for elections upon the questions of the
234 issuance of the bonds of school districts, and the results thereof
235 shall be certified to the school board. If at least three-fifths
236 (3/5) of the qualified electors of the school district who voted
237 in such election shall vote in favor of the leasing of a school
238 building, then the school board shall proceed to lease a school
239 building. The term of the lease contract shall not exceed twenty
240 (20) years, and the total cost of such lease shall be either the
241 amount of the lowest and best bid accepted by the school board
242 after advertisement for bids or an amount not to exceed the
243 current fair market value of the lease as determined by the
244 averaging of at least two (2) appraisals by certified general
245 appraisers licensed by the State of Mississippi. The term "school
246 building" as used in this item (v) shall be construed to mean any
247 building or buildings used for classroom purposes in connection
248 with the operation of schools and shall include the site therefor,
249 necessary support facilities, and the equipment thereof and
250 appurtenances thereto such as heating facilities, water supply,
251 sewage disposal, landscaping, walks, drives and playgrounds. The
252 term "lease" as used in this item (v)(i) may include a
253 lease/purchase contract;

254 (ii) If two (2) or more school districts propose
255 to enter into a lease contract jointly, then joint meetings of the
256 school boards having control may be held but no action taken shall
257 be binding on any such school district unless the question of
258 leasing a school building is approved in each participating school



259 district under the procedure hereinabove set forth in item (v)(i).
260 All of the provisions of item (v)(i) regarding the term and amount
261 of the lease contract shall apply to the school boards of school
262 districts acting jointly. Any lease contract executed by two (2)
263 or more school districts as joint lessees shall set out the amount
264 of the aggregate lease rental to be paid by each, which may be
265 agreed upon, but there shall be no right of occupancy by any
266 lessee unless the aggregate rental is paid as stipulated in the
267 lease contract. All rights of joint lessees under the lease
268 contract shall be in proportion to the amount of lease rental paid
269 by each;

270 (w) To employ all noninstructional and noncertificated
271 employees and fix the duties and compensation of such personnel
272 deemed necessary pursuant to the recommendation of the
273 superintendent of schools;

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

276 (y) Subject to rules and regulations of the State Board
277 of Education, to purchase, own and operate trucks, vans and other
278 motor vehicles, which shall bear the proper identification
279 required by law;

280 (z) To expend funds for the payment of substitute
281 teachers and to adopt reasonable regulations for the employment
282 and compensation of such substitute teachers;

283 (aa) To acquire in its own name by purchase all real
284 property which shall be necessary and desirable in connection with
285 the construction, renovation or improvement of any public school
286 building or structure. Whenever the purchase price for such real
287 property is greater than Fifty Thousand Dollars (\$50,000.00), the
288 school board shall not purchase the property for an amount
289 exceeding the fair market value of such property as determined by
290 the average of at least two (2) independent appraisals by
291 certified general appraisers licensed by the State of Mississippi.



292 If the board shall be unable to agree with the owner of any such
293 real property in connection with any such project, the board shall
294 have the power and authority to acquire any such real property by
295 condemnation proceedings pursuant to Section 11-27-1 et seq.,
296 Mississippi Code of 1972, and for such purpose, the right of
297 eminent domain is hereby conferred upon and vested in said board.
298 Provided further, that the local school board is authorized to
299 grant an easement for ingress and egress over sixteenth section
300 land or lieu land in exchange for a similar easement upon
301 adjoining land where the exchange of easements affords substantial
302 benefit to the sixteenth section land; provided, however, the
303 exchange must be based upon values as determined by a competent
304 appraiser, with any differential in value to be adjusted by cash
305 payment. Any easement rights granted over sixteenth section land
306 under such authority shall terminate when the easement ceases to
307 be used for its stated purpose. No sixteenth section or lieu land
308 which is subject to an existing lease shall be burdened by any
309 such easement except by consent of the lessee or unless the school
310 district shall acquire the unexpired leasehold interest affected
311 by the easement;

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

315 (cc) Subject to rules and regulations of the State
316 Board of Education, to purchase relocatable classrooms for the use
317 of such school district, in the manner prescribed in Section
318 37-1-13;

319 (dd) Enter into contracts or agreements with other
320 school districts, political subdivisions or governmental entities
321 to carry out one or more of the powers or duties of the school
322 board, or to allow more efficient utilization of limited resources
323 for providing services to the public;



324 (ee) To provide for in-service training for employees
325 of the district. Until June 30, 1994, the school boards may
326 designate two (2) days of the minimum school term, as defined in
327 Section 37-19-1, for employee in-service training for
328 implementation of the new statewide testing system as developed by
329 the State Board of Education. Such designation shall be subject
330 to approval by the State Board of Education pursuant to uniform
331 rules and regulations;

332 (ff) As part of their duties to prescribe the use of
333 textbooks, to provide that parents and legal guardians shall be
334 responsible for the textbooks and for the compensation to the
335 school district for any books which are not returned to the proper
336 schools upon the withdrawal of their dependent child. If a
337 textbook is lost or not returned by any student who drops out of
338 the public school district, the parent or legal guardian shall
339 also compensate the school district for the fair market value of
340 the textbooks;

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

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

348 (ii) Fund-raising activities conducted or
349 authorized by the board for the sale of school pictures, the
350 rental of caps and gowns or the sale of graduation invitations for
351 which the school board receives a commission, rebate or fee shall
352 contain a disclosure statement advising that a portion of the
353 proceeds of the sales or rentals shall be contributed to the
354 student activity fund;

355 (hh) To allow individual lessons for music, art and
356 other curriculum-related activities for academic credit or



357 nonacademic credit during school hours and using school equipment
358 and facilities, subject to uniform rules and regulations adopted
359 by the school board;

360 (ii) To charge reasonable fees for participating in an
361 extracurricular activity for academic or nonacademic credit for
362 necessary and required equipment such as safety equipment, band
363 instruments and uniforms;

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

367 (kk) To exercise such powers as may be reasonably
368 necessary to carry out the provisions of this section; * * *

369 (ll) To expend funds for the services of nonprofit arts
370 organizations or other such nonprofit organizations who provide
371 performances or other services for the students of the school
372 district; and

373 (mm) To accept any contribution or other term of
374 financial assistance.

375 **SECTION 5.** Section 37-151-93, Mississippi Code of 1972, is
376 amended as follows:

377 37-151-93. (1) Legally transferred students going from one
378 school district to another shall be counted for adequate education
379 program allotments by the school district wherein the pupils
380 attend school, but shall be counted for transportation allotment
381 purposes in the school district which furnishes or provides the
382 transportation. The school boards of the school districts which
383 approve the transfer of a student under the provisions of Section
384 37-15-31 shall enter into an agreement and contract for the
385 payment or nonpayment of any portion of their local maintenance
386 funds which they deem fair and equitable in support of any
387 transferred student. Except as provided in subsection (2) of this
388 section, local maintenance funds shall be transferred only to the
389 extent specified in the agreement and contract entered into by the



390 affected school districts. The terms of any local maintenance
391 fund payment transfer contract shall be spread upon the minutes of
392 both of the affected school district school boards. The school
393 district accepting any transfer students shall be authorized to
394 accept tuition from such students under the provisions of Section
395 37-15-31(1) and such agreement may remain in effect for any length
396 of time designated in the contract. Any voluntary cash
397 contribution made to a school and any assistance provided by a
398 school tuition organization as described in Section 3 of Senate
399 Bill No. 2043, 2003 Regular Session, may be designated for such
400 tuition payments. The terms of such student transfer contracts
401 and the amounts of any tuition charged any transfer student shall
402 be spread upon the minutes of both of the affected school boards.
403 No school district accepting any transfer students under the
404 provisions of Section 37-15-31(2), which provides for the transfer
405 of certain school district employee dependents, shall be
406 authorized to charge such transfer students any tuition fees.

407 (2) Local maintenance funds shall be paid by the home school
408 district to the transferee school district for students granted
409 transfers under the provisions of Sections 37-15-29(3) and
410 37-15-31(3), Mississippi Code of 1972, not to exceed the "base
411 student cost" as defined in Section 37-151-5, Mississippi Code of
412 1972, multiplied by the number of such legally transferred
413 students.

414 **SECTION 6.** Nothing in this act shall affect or defeat any
415 claim, assessment, appeal, suit, right or cause of action for
416 taxes due or accrued under the income tax laws before the date on
417 which this act becomes effective, whether such claims,
418 assessments, appeals, suits or actions have been begun before the
419 date on which this act becomes effective or are begun thereafter;
420 and the provisions of the income tax laws are expressly continued
421 in full force, effect and operation for the purpose of the
422 assessment, collection and enrollment of liens for any taxes due



423 or accrued and the execution of any warrant under such laws before
424 the date on which this act becomes effective, and for the
425 imposition of any penalties, forfeitures or claims for failure to
426 comply with such laws.

427 **SECTION 7.** The Legislature declares that the provisions of
428 this act are not severable and that this act would not have been
429 enacted without the inclusion of all provisions. If any provision
430 of this act is for any reason held invalid, the entire act is
431 invalid.

432 **SECTION 8.** This act shall take effect and be in force from
433 and after January 1, 2003.

