

By: Senator(s) Nunnelee

To: Education; Finance

SENATE BILL NO. 2042

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 37-151-93, MISSISSIPPI CODE OF
5 1972, 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 district, or
34 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 or to change the
96 placement of a pupil to the school district's alternative school
97 or home-bound program for misconduct in the school or on school
98 property, as defined in Section 37-11-29, on the road to and from
99 school, or at any school-related activity or event, or for conduct
100 occurring on property other than school property or other than at
101 a school-related activity or event when such conduct by a pupil,
102 in the determination of the school superintendent or principal,
103 renders that pupil's presence in the classroom a disruption to the
104 educational environment of the school or a detriment to the best
105 interest and welfare of the pupils and teacher of such class as a
106 whole, and to delegate such authority to the appropriate officials
107 of the school district;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

316 (cc) Subject to rules and regulations of the State
317 Board of Education, to purchase relocatable classrooms for the use
318 of such school district, in the manner prescribed in Section
319 37-1-13;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

391 affected school districts. The terms of any local maintenance
392 fund payment transfer contract shall be spread upon the minutes of
393 both of the affected school district school boards. The school
394 district accepting any transfer students shall be authorized to
395 accept tuition from such students under the provisions of Section
396 37-15-31(1) and such agreement may remain in effect for any length
397 of time designated in the contract. Any voluntary cash
398 contribution made to a school and any assistance provided by a
399 school tuition organization as described in Section 3 of Senate
400 Bill No. 2042, 2004 Regular Session, may be designated for such
401 tuition payments. The terms of such student transfer contracts
402 and the amounts of any tuition charged any transfer student shall
403 be spread upon the minutes of both of the affected school boards.
404 No school district accepting any transfer students under the
405 provisions of Section 37-15-31(2), which provides for the transfer
406 of certain school district employee dependents, shall be
407 authorized to charge such transfer students any tuition fees.

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

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

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

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

433 **SECTION 8.** This act shall take effect and be in force from
434 and after January 1, 2004.