SECOND REGULAR SESSION

HOUSE BILL NO. 1702

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES THOMPSON (Sponsor), JETTON, HOSKINS, CROWELL, EL-AMIN, BEARDEN, HUBBARD, DEMPSEY, VILLA, WRIGHT, HILGEMANN, PARKER, KRATKY, HUNTER, CORCORAN, COOPER (120), KELLY (36), BEHNEN, DOUGHERTY, BYRD, GREEN, REINHART, MEINERS, PRATT, MEADOWS, CRAWFORD, HANAWAY, SEIGFREID, STEVENSON, SPRENG, CUNNINGHAM (86), McKENNA, STEFANICK, HARRIS (110), SCHOEMEHL, PURGASON, MILLER, RUPP, MOORE, YATES, LUETKEMEYER, PHILLIPS, WILSON (130), SMITH (118), RECTOR, NIEVES, JACKSON, DAVIS (19), SCHAAF, QUINN, HOBBS, SCHLOTTACH, DEEKEN, RUESTMAN, BROWN, HENKE, LIESE, WALSH, COOPER (155), ICET, MAYER, SELF, BIVINS, SHOEMAKER, MYERS, ROARK, GOODMAN, BRUNS, HOLAND, SCHNEIDER, DUSENBERG, LIPKE, TAYLOR, GUEST, JOHNSON (61), MUCKLER, MORRIS, RICHARD, THRELKELD, KELLY (144), SUTHERLAND, ANGST, DETHROW, KING, KINGERY, LEMBKE, EMERY, WOOD, WILSON (119), DIXON, CUNNINGHAM (145), MAY, ST. ONGE, PORTWOOD AND MARSH (Co-sponsors).

Read 1st time March 31, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4997L.01I

AN ACT

To repeal section 163.036, RSMo, and to enact in lieu thereof two new sections relating to a tax credit for certain education-related charitable donations.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 163.036, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 135.610 and 163.036, to read as follows:

135.610. 1. As used in this section, the following terms mean:

(1) "Administrator", the administrator of the designated nonprofit oversight organization;

(2) "Designated nonprofit oversight organization", a charitable organization in this state that is exempt from federal taxation pursuant to the Internal Revenue Code, as amended, designated to certify nonprofit educational assistance organizations, approve applications for the tax credit allowed by this section, and coordinate with the director in administering the tax credit allowed by this section;

(3) "Director", the director of the department of economic development;

(4) "Income eligible student", any elementary or secondary school student who attends a school in a metropolitan or urban school district containing the greater part of

the population of any home rule city with more than four hundred thousand inhabitants and located in more than one county or in any city not within a county whose parents' or guardians' income is no more than one hundred seventy-five percent of the level that would make the student eligible for a free or reduced price school lunch pursuant to the National School Lunch Act;

(5) "Nonprofit educational assistance organization", a charitable organization in this state that is exempt from federal taxation pursuant to the Internal Revenue Code, as amended, is certified by the director, and that allocates at least ninety percent of its annual revenue derived from contributions for which a credit is claimed pursuant to this section for educational assistance. The term nonprofit educational assistance organization does not include an organization that only provides scholarships to students of one particular school;

(6) "Qualified school", any elementary or secondary school situated in this state which a child may attend to satisfy the requirements of section 167.031, RSMo, and is not in violation of the Civil Rights Act of 1964;

(7) "Qualified student", an income eligible student who in the previous school year was enrolled in a state-funded school or who had received a scholarship as a qualified student and is not enrolled in a state-funded public school in the year in which the nonprofit educational assistance organization is providing a scholarship to that student. The term shall include all income eligible kindergarten students;

(8) "Qualifying contribution", a donation of cash, stock, bonds, or other marketable securities for purposes of claiming a tax credit pursuant to this section;

(9) "State tax liability", any liability incurred by a taxpayer pursuant to chapters 143, 147, and 153, RSMo, excluding withholding taxes pursuant to sections 143.191 to 143.265, RSMo, and related provisions;

(10) "Taxpayer", an individual subject to the state income tax imposed in chapter 143, RSMo, an individual, a firm, a partner in a firm, corporation, or a shareholder in an S corporation doing business in this state and subject to the state income tax imposed by chapter 143, RSMo, or a corporation subject to the annual corporation franchise tax imposed by chapter 147, RSMo, or an express company which pays an annual tax on its gross receipts in this state pursuant to chapter 153, RSMo.

2. For all tax years beginning on or after January 1, 2004, any taxpayer who makes contributions to a nonprofit educational assistance organization may claim a credit against the tax otherwise due pursuant to chapter 143, RSMo, other than taxes withheld pursuant to sections 143.191 to 143.265, RSMo, and chapters 147 and 153, RSMo, in an amount equal to fifty percent of the amount the taxpayer contributed during the tax year for which

the credit is claimed; except that, no taxpayer shall claim a credit pursuant to this section for any contribution made by the taxpayer, or an agent of the taxpayer, on behalf of the taxpayer's dependent, or in the case of a business taxpayer, on behalf of the business's agent's dependent. Any amount of contribution subtracted from federal adjusted gross income or federal taxable income shall be added back in the determination of Missouri adjusted gross income or Missouri taxable income before the credit can be claimed.

3. The amount of the tax credit claimed shall not exceed the amount of the taxpayer's state tax liability for the tax year that the credit is claimed. Any amount of credit that the taxpayer is prohibited by this section from claiming in a tax year may be carried forward to any of the taxpayer's four subsequent taxable years. The tax credit authorized in this section shall be limited to those claims related to actual tax liabilities that are excluded from the definition of total state revenues in section 17, article X, Constitution of Missouri, which require no appropriation by the general assembly from the state treasury, and which serve the public purpose of providing educational opportunities for students under subsection 6 of this section. Except for any credit carried over pursuant to this section, no taxpayer shall claim a credit pursuant to this section unless the amount contributed to a nonprofit educational assistance organization is two hundred dollars or more.

4. The cumulative amount of tax credits which may be allocated to all taxpayers contributing to a nonprofit educational assistance organization in any one fiscal year shall not exceed ten million dollars. The director shall establish a procedure by which, from the beginning of the fiscal year until some point in time later in the fiscal year to be determined by the director, the cumulative amount of tax credits are apportioned among all nonprofit educational assistance organizations. To the maximum extent possible, the director shall establish the procedure described in this subsection in such a manner as to ensure that taxpayers can claim all the tax credits possible up to the cumulative amount of tax credits available for the fiscal year. The director shall certify to the organizations the amount of eligible tax credits that can be taken by the organizations.

5. The director shall determine, at least annually, which organizations in this state may be classified as a nonprofit educational assistance organization. The director may require a charity seeking classification as a nonprofit educational assistance organization to provide any information reasonably necessary to make such a determination. The director shall classify an organization as a nonprofit educational assistance organization if the organization qualifies as a nonprofit educational assistance organization as defined in this section. To qualify as a nonprofit educational assistance organization, the organization shall meet the following conditions:

(a) At least seventy percent of all qualifying contributions it receives during any given state fiscal year are allocated for the purpose of providing scholarships to any qualified student who attends a qualified school, and the organization gives priority in awarding scholarships to those students who demonstrate the greatest need for such scholarships, as defined by: children of inmates; children residing in a low-performing schools area; children residing within the boundaries of schools targeted for improvement under the No Child Left Behind Act of 2001 pursuant to public law 107-110; children residing within the boundaries of concerned schools and academically deficient schools pursuant to section 160.538, RSMo; children of schools in provisionally accredited districts; children attending schools in districts that have participated in federal court ordered desegregation; students with a current grade point average of 2.5 or less on a 4.0 scale; or, children enrolled in classes that do not meet the Missouri school improvement minimum standards for class size used for accreditation purposes. Scholarship moneys may be used to cover applicable tuition, transportation, textbooks, supplies, and other related educational or extracurricular expenses. Any qualifying contributions not required to be allocated in accordance with this paragraph may be used to provide scholarships for income eligible students who attend qualified schools or may be used for the purposes set forth in paragraph (c) of this subdivision;

(b) Does not provide any scholarship to any qualified student for a single school year that exceeds three thousand eight hundred dollars, which amount shall annually be increased for inflation based on increases in the Consumer Price Index rounded to the nearest fifty dollar increment, except that the nonprofit educational assistance organization may award scholarships to children with disabilities who are age three or older in any amount that is substantially comparable to the amount the state would have paid for such child, and except that scholarships may be awarded in amounts in excess of the limitation if the increased amount of any such scholarships is offset by a reduction in the monetary amount of the scholarships provided by the nonprofit educational assistance organization to nonqualifying students. To qualify for a scholarship, children with disabilities are not required to meet the income eligible student definition if the disabled child's parents or guardians have unreimbursed medical expenses in excess of seven and one-half percent of federal adjusted gross income;

(c) A nonprofit education assistance organization may allocate up to thirty percent of any qualifying contributions it receives during any given state fiscal year that are not required to be allocated pursuant to paragraphs (a) and (b) of this subdivision to directly assist any income eligible student who attends a public school in defraying the costs of private instructional assistance, including any related private educational supplies; for

transportation to any public school to the extent that such transportation is not paid for by a school district or the state; for offsetting fees for out-of-school programs; for apprenticeship programs; for scholarship assistance for dropouts to pursue a GED or its equivalent; for grants for public school academic or extracurricular programs or for income eligible or qualified students to attend a qualified school;

(d) All interest accruing from contributions shall be used for educational assistance; and

(e) All marketing and administrative expenses for the nonprofit educational assistance organization shall be no more than eight percent of the qualifying contributions it raises.

6. A nonprofit education assistance organization shall report annually to the director the names of the participating qualified schools.

7. The director shall establish a procedure by which a taxpayer can determine if an organization has been classified as a nonprofit educational assistance organization, and by which taxpayers can claim the tax credit pursuant to this section.

8. The funding authorized in this section shall be considered private, voluntary, nongovernmental funding. The providing of assistance by a nonprofit educational assistance organization shall not be construed to be a public appropriation, or the providing of public assistance to any school.

9. The director may certify and enter into a contract with a designated nonprofit organization for the purpose of administering this section. A designated nonprofit oversight organization may be subject to an audit by the director. To qualify for designation, a nonprofit organization shall:

(a) Have the administrative capability to promote the success of the tax credit allowed by this section by recruiting and coordinating activities with all interested nonprofit educational assistance organizations in this state and certifying those nonprofit educational assistance organizations that meet the certification criteria set forth in subdivision (4) of this section;

(b) Demonstrate the ability to handle large volumes of and amounts of financial transactions and be able to resolve Internal Revenue Service compliance issues;

(c) Review the staff qualifications, evaluate fundraising capabilities, and confirm exempt status of the nonprofit educational assistance organizations;

(d) Create a standardized application for use by nonprofit educational assistance organizations;

(e) Produce an annual report for the general assembly;

(f) Complete other duties as required by the director; and

(g) The designated nonprofit oversight organization shall receive no more than two percent of the qualifying contributions for marketing and administrative expenses or the costs incurred in administering the program, whichever is less, or if a designated nonprofit oversight organization is not selected, up to two percent shall be received by the department of economic development for administering the program. The remaining funds shall be distributed to the educational assistance organizations for student scholarships.

10. This section is subject to the provisions of section 1.140, RSMo. The department of revenue and the department of economic development may promulgate rules and regulations for the administration of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

11. Any school district that is not a metropolitan or urban school district in any city not within a county or containing the greater part of the population of any home rule city with more than four hundred thousand inhabitants and located in more than one county may opt to participate in the program authorized in this section upon the adoption of a resolution by a majority of the school board members present and the submission of the resolution to the department of elementary and secondary education.

163.036. 1. In computing the amount of state aid a school district is entitled to receive under section 163.031, a school district may use an estimate of the number of eligible pupils for the ensuing year, the number of eligible pupils for the immediately preceding year or the number of eligible pupils for the second preceding school year, whichever is greater**, except that the eligible pupil count shall be adjusted such that no school district shall receive state aid for any pupil who is no longer enrolled in the school district as the result of using the proceeds of an educational scholarship to transfer to another qualified school provided pursuant to section 135.610, RSMo**. Except as otherwise provided in subsection 3 of this section, any error made in the apportionment of state aid because of a difference between the actual number of eligible pupils and the estimated number of eligible pupils shall be corrected as provided in section 163.091, except that if the amount paid to a district estimating eligible pupils exceeds the amount to which the district was actually entitled by more than five percent, interest at the rate of six percent shall be charged on the excess and shall be added to the amount to be deducted from the district's apportionment the next succeeding year.

2. Notwithstanding the provisions of subsection 1 of this section or any other provision of law, the state board of education shall make an adjustment for the immediately preceding year for any increase in the actual number of eligible pupils above the number on which the state aid in section 163.031 was calculated. Said adjustment shall be made in the manner providing for correction of errors under subsection 1 of this section.

3. (1) For any district which has, for at least five years immediately preceding the year in which the error is discovered, adopted a calendar for the school term in which elementary schools are in session for twelve months of each calendar year, any error made in the apportionment of state aid to such district because of a difference between the actual number of eligible pupils and the estimated number of eligible pupils shall be corrected as provided in section 163.091 and subsection 1 of this section, except that if the amount paid exceeds the amount to which the district was actually entitled by more than five percent and the district provides written application to the state board requesting that the deductions be made pursuant to subdivision (2) of this subsection, then the amounts shall be deducted pursuant to subdivision (2) of this subsection.

(2) For deductions made pursuant to this subdivision, interest at the rate of six percent shall be charged on the excess and shall be included in the amount deducted and the total amount of such excess plus accrued interest shall be deducted from the district's apportionment in equal monthly amounts beginning with the succeeding school year and extending for a period of months specified by the district in its written request and no longer than sixty months.

4. For the purposes of distribution of state school aid pursuant to section 163.031, a school district may elect to use the district's equalized assessed valuation for the preceding year, or an estimate of the current year's assessed valuation if the current year's equalized assessed valuation is estimated to be more than ten percent less than the district's equalized assessed valuation for the preceding year. A district shall give prior notice to the department of its intention to use the current year's assessed valuation pursuant to this subsection. Any error made in the apportionment of state aid because of a difference between the actual equalized assessed valuation for the current year and the estimated equalized assessed valuation for the current year shall be corrected as provided in section 163.091, except that if the amount paid to a district estimating current equalized assessed valuation exceeds the amount to which the district was actually entitled, interest at the rate of six percent shall be charged on the excess and shall be added to the amount to be deducted from the district's apportionment the next succeeding year.

5. For the purposes of distribution of state school aid pursuant to section 163.031, a school district with ten percent or more of its assessed valuation that is owned by one person or

corporation as commercial or personal property who is delinquent in a property tax payment may elect, after receiving notice from the county clerk on or before March fifteenth, except in the year enacted, that more than ten percent of its current taxes due the preceding December thirty-first by a single property owner are delinquent, to use on line 2 of the state aid formula the district's equalized assessed valuation for the preceding year or the actual assessed valuation of the year for which the taxes are delinquent less the assessed valuation of property for which the current year's property tax is delinquent. To qualify for use of the actual assessed valuation of the year for which the taxes are delinquent less the assessed valuation of property for which the current year's property tax is delinquent, a district must notify the department of elementary and secondary education on or before April first, except in the year enacted, of the current year amount of delinquent taxes, the assessed valuation of such property for which delinquent taxes are owed and the total assessed valuation of the district for the year in which the taxes were due but not paid. Any district giving such notice to the department of elementary and secondary education shall present verification of the accuracy of such notice obtained from the clerk of the county levying delinquent taxes. When any of the delinquent taxes identified by such notice are paid during a four-year period following the due date, the county clerk shall give notice to the district and the department of elementary and secondary education, and state aid paid to the district shall be reduced by an amount equal to the delinquent taxes received plus interest. The reduction in state aid shall occur over a period not to exceed five years and the interest rate on excess state aid not refunded shall be six percent annually.

6. If a district receives state aid based on equalized assessed valuation as determined by subsection 5 of this section and if prior to such notice the district was paid state aid pursuant to subdivision (2) of subsection 5 of section 163.031, the amount of state aid paid during the year of such notice and the first year following shall equal the sum of state aid paid pursuant to line 1 minus line 10 as defined in subsections 1, 2, 3 and 6 of section 163.031 plus the difference between the state aid amount being paid after such notice minus the amount of state aid the district would have received pursuant to line 1 minus line 10 as defined in subsections 1, 2, 3 and 6 of section 163.031 before such notice. To be eligible to receive state aid based on this provision the district must levy during the first year following such notice at least the maximum levy permitted school districts by article X, section 11(b) of the Missouri Constitution and have a voluntary rollback of its tax rate which is no greater than one cent per one hundred dollars assessed valuation.