

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 639
93RD GENERAL ASSEMBLY

Reported from the Special Committee on Urban Issues March 15, 2005, with recommendation that the House Committee Substitute for House Bill No. 639 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

0341L.11C

AN ACT

To repeal section 163.036, RSMo, and to enact in lieu thereof nine new sections relating to educational tax credits, with an emergency provision.

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

Section A. Section 163.036, RSMo, is repealed and nine new sections enacted in lieu thereof, to be known as sections 135.610, 135.612, 135.614, 135.616, 135.618, 135.620, 135.622, 135.624, and 163.036, to read as follows:

135.610. Sections 135.610 to 135.624 shall be known and cited as the "Betty L. Thompson Scholarship Program".

135.612. As used in sections 135.610 to 135.624, the following terms mean:

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

(2) "Director", the director of the department of economic development or any designated oversight organization if an organization is chosen;

(3) "Educational assistance organization", a charitable organization registered in this state that is exempt from federal taxation under the Internal Revenue Code, as amended, is certified by the director, and that allocates all of its annual revenue with the exception of marketing and administrative expenses in subsection 5 of section 135.616 derived from contributions for which a credit is claimed under this section for educational assistance and which does not provide scholarships to students of only one particular school;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

12 (4) "Income eligible student", any elementary or secondary school-aged student
13 whose parents' or guardians' income is no more than one hundred eighty-five percent of
14 the level that would make the student eligible for a free or reduced price school lunch
15 under the National School Lunch Act, 42 U.S.C. 1751 et seq., and who attends a school
16 located in a metropolitan district or an urban school district containing the greater part
17 of the population of any home rule city with more than four hundred thousand inhabitants
18 and located in more than one county or any district which is designated as unaccredited
19 or provisionally accredited under the Missouri school improvement program or successor
20 program, or a student of school age who resides in such a district but who is not currently
21 attending any school and who does not hold a high school diploma or a GED, and children
22 age three or older with disabilities regardless of the parent's income if the disabled child's
23 parents or guardians have unreimbursed medical expenses in excess of seven and one-half
24 percent of federal adjusted gross income;

25 (5) "Oversight organization", a charitable organization in this state that is exempt
26 from federal taxation under the Internal Revenue Code, as amended, designated to certify
27 nonprofit educational assistance organizations, approve applications for the tax credit
28 allowed by this section, and coordinate with the director in administering the tax credit
29 allowed by this section;

30 (6) "Qualified school", any elementary or secondary school situated in this state
31 which a child may attend to satisfy the requirements of section 167.031, RSMo, and does
32 not discriminate on the basis of race, color, or national origin, and which complies with the
33 requirements of this section;

34 (7) "Qualified student", an income eligible student who during the previous school
35 year was enrolled in a state-funded public school or who had received a scholarship as a
36 qualified student and is not enrolled in a state-funded public school in the year in which
37 the educational assistance organization is providing a scholarship to that student. The
38 term qualified student shall include all income eligible kindergarten and first-grade
39 students, and all income eligible school-aged students moving from outside the state;

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

42 (9) "State tax liability", any liability incurred by a taxpayer under chapters 143,
43 147, and 153, RSMo, excluding withholding taxes under sections 143.191 to 143.265, RSMo,
44 and related provisions;

45 (10) "Taxpayer", an individual subject to the state income tax imposed in chapter
46 143, RSMo, an individual, a firm, a partner in a firm, corporation, or a shareholder in an
47 S corporation doing business in this state and subject to the state income tax imposed by

48 chapter 143, RSMo, or a corporation subject to the annual corporation franchise tax
49 imposed by chapter 147, RSMo, or an express company which pays an annual tax on its
50 gross receipts in this state under chapter 153, RSMo.

135.614. 1. For all tax years beginning on or after January 1, 2005, any taxpayer
2 who makes contributions to a nonprofit educational assistance organization may claim a
3 credit against the tax otherwise due under chapter 143, RSMo, other than taxes withheld
4 under sections 143.191 to 143.265, RSMo, and chapters 147 and 153, RSMo, in an amount
5 equal to eighty percent of the amount the taxpayer contributed during the tax year for
6 which the credit is claimed; except that, no taxpayer shall claim a credit under sections
7 135.610 to 135.624 for any contribution made by the taxpayer, or an agent of the taxpayer,
8 on behalf of the taxpayer's dependent, or in the case of a business taxpayer, on behalf of
9 the business's agent's dependent. Any amount of contribution subtracted from federal
10 adjusted gross income or federal taxable income shall be added back in the determination
11 of Missouri adjusted gross income or Missouri taxable income before the credit can be
12 claimed.

13 2. The amount of the tax credit claimed shall not exceed the amount of the
14 taxpayer's state tax liability for the tax year that the credit is claimed. The department of
15 economic development shall certify the tax credit amount to the taxpayer and to the
16 department of revenue. Any amount of credit that the taxpayer is prohibited by sections
17 135.610 to 135.624 from claiming in a tax year may be carried forward to any of the
18 taxpayer's four subsequent taxable years. The tax credit authorized in sections 135.610 to
19 135.624 shall be limited to those claims related to actual tax liabilities that are excluded
20 from the definition of total state revenues in article X, section 17, Constitution of Missouri,
21 which require no appropriation by the general assembly from the state treasury, and which
22 serve the public purpose of providing educational opportunities for students under section
23 135.616.

24 3. The cumulative amount of tax credits which may be allocated to all taxpayers
25 contributing to an educational assistance organization in any one fiscal year shall not
26 exceed forty million dollars, which amount shall annually be adjusted for inflation based
27 on the consumer price index. The director shall establish a procedure by which, from the
28 beginning of the fiscal year until some point in time later in the fiscal year to be determined
29 by the director, the cumulative amount of tax credits is apportioned among all nonprofit
30 educational assistance organizations. To the maximum extent possible, the director shall
31 establish the procedure described in this subsection in such a manner as to ensure that
32 taxpayers can claim all the tax credits possible up to the cumulative amount of tax credits

33 available for the fiscal year. The director shall certify to the organizations the amount of
34 eligible tax credits that can be taken by the organizations.

135.616. 1. The director shall classify an organization as an educational assistance
2 organization if the organization qualifies as defined in this section and if the organization
3 meets the following conditions:

4 (1) At least eighty-six percent of all qualifying contributions it receives during any
5 given state fiscal year are allocated for the purpose of providing scholarships to any
6 qualified student who attends a qualified school, and the organization gives priority in
7 awarding scholarships to those students who demonstrate the greatest need for such
8 scholarships. These needs may include but are not limited to: children of inmates; any
9 student who has been suspended at least two times for a total of at least twelve days or who
10 has been expelled; any student scoring at the two lowest levels of proficiency on the
11 statewide assessments administered under section 160.518, RSMo; any student with a
12 grade point average of 2.5 or lower; any child of school age in foster care; any child with
13 a disability or any child assigned to a priority school or low performing district as
14 described in subsection (4) of section 135.610. It shall be the responsibility of the school
15 district to notify the parents or guardians of any student who has been suspended at least
16 two times for a total of at least twelve days or who has been expelled; any student scoring
17 at the two lowest levels of proficiency on the statewide assessments administered under
18 section 160.518, RSMo; and any student with a grade point average of 2.5 or lower, that
19 the student may be eligible for a scholarship. If a child transfers out of a qualified school
20 into another qualified school, the remaining scholarship moneys shall be transferred with
21 the student to be distributed to the new school, on a prorated basis. Except as provided in
22 subdivision (3) of this subsection, the remaining scholarship moneys shall revert back to
23 the scholarship organization if a student transfers out of a qualified school into a public
24 school. Scholarship moneys may be used to cover applicable tuition, transportation,
25 textbooks, supplies, and other related educational or extracurricular expenses. Any
26 qualifying contributions not required to be allocated in accordance with this paragraph
27 may be used to provide scholarships for income eligible students who attend qualified
28 schools or may be used for the purposes set forth in subdivision (3) of this subsection;

29 (2) The organization does not provide scholarships to the qualified student that
30 exceed an average of four thousand dollars, which amount shall annually be adjusted for
31 inflation based on the Consumer Price Index rounded to the nearest fifty dollar increment,
32 except that the educational assistance organization may award scholarships to qualified
33 children with disabilities who are age three or older in any amount that is substantially

34 comparable to the amount that would have been paid for comparable services for the
35 education of such child except that scholarships may be awarded in amounts in excess of
36 the limitation up to six thousand five hundred dollars for nondisabled students, which
37 amount shall annually be adjusted for inflation based on the consumer price index;

38 (3) An educational assistance organization may allocate up to fourteen percent of
39 any qualifying contributions it receives during any given state fiscal year that are not
40 required to be allocated under subdivisions (1) and (2) of this subsection to directly assist
41 any income eligible student who attends a public school in defraying the costs of private
42 instructional assistance, including any related private educational supplies; for offsetting
43 fees for out-of-school educational programs; for apprenticeship programs; for scholarship
44 assistance for dropouts to pursue a GED or its equivalent; for grants for public school
45 academic or extracurricular programs or for income eligible or qualified students to attend
46 a qualified school;

47 (4) All interest accruing from contributions shall be used for educational assistance;

48 (5) All marketing and administrative expenses for the educational assistance
49 organization shall be no more than ten percent for the first one hundred thousand dollars;
50 eight percent for the next four hundred thousand dollars; six percent for the next five
51 hundred thousand dollars; and three percent thereafter of the qualifying contributions it
52 raises; and

53 (6) No credits may be awarded until qualified applicants have been identified and
54 potential vacancies identified, or until qualified applicants have been placed.

55 2. An educational assistance organization shall report annually to the director the
56 names of the participating qualified schools and scholarship recipients. Classification as
57 an educational assistance organization shall continue from year to year upon submission
58 of required information under sections 135.610 to 135.624, in the absence of credible
59 evidence of fraud or abuse. The director shall establish procedures to prevent the issuance
60 of duplicate scholarships.

135.618. 1. The director shall establish a procedure by which a taxpayer can
2 determine if an organization has been classified as an educational assistance organization,
3 and by which taxpayers can claim the tax credit under this section.

4 2. The director shall provide a consistent format for profiles of qualified schools,
5 to be posted on the department's web site, containing the following information:

6 (1) Link to the qualified school's web site, if applicable;

7 (2) Mission statement, years of operation, academic program, and types of students
8 served;

9 (3) Education, credentials, qualifications, and experience of teaching and
10 administrative staff;

11 (4) The most recent year's scores from an assessment administered under
12 subsection 3 of this section and the results of the most recent year's parental satisfaction
13 survey administered under this section; and

14 (5) Names of educational assistance organizations supplying scholarships to the
15 school.

16 3. The director shall ensure that the qualified schools, excluding home schools who
17 must meet the requirements of section 167.031, RSMo, meet the following accountability
18 requirements before receiving scholarship funds:

19 (1) Filing of a statement of intent to participate that includes the information listed
20 in subdivisions (1), (2), and (3) of subsection 2 of this section;

21 (2) Annual reporting of the information required under subsection 2 of this section.
22 No public reporting of information required under sections 135.610 to 135.624 shall be
23 personally identifiable to an individual student;

24 (3) Fiscal soundness as evidenced by three years in existence, a surety bond, or
25 letter of credit covering the amount of funds received on behalf of scholarship recipients
26 under sections 135.610 to 135.624 or accreditation;

27 (4) Accreditation by a regional or national accrediting agency or for a school that
28 is not currently accredited, provisional approval pending the achievement of accreditation
29 no later than the fourth school year of participation;

30 (5) Criminal background check for the owner or operator and all personnel with
31 direct student contact;

32 (6) Administration of the statewide assessments under section 160.518, RSMo, a
33 nationally recognized norm-referenced assessment, or an assessment of educational
34 functioning level for adult basic education that meets the guidelines for the national
35 reporting system for adult education and literacy, such as, but not limited to the test for
36 adult basic education, for all scholarship students except those whose individualized
37 education plan specifies such assessment would not be appropriate, provided that such
38 assessments or tests shall not be required to be given more frequently in a grade than the
39 statewide assessments are given;

40 (7) Annual administration of a parental satisfaction survey; and

41 (8) Evidence of the annual transmittal of the information required by subsection
42 2 of this section and this subsection to parents and evidence of its availability to applicants.

43 4. Notwithstanding the accountability requirements of subsection 3 of this section,

44 pupils who are home schooled under section 167.031, RSMo, may receive a scholarship
45 under sections 135.610 to 135.624 up to the amount of money spent on educational
46 expenses, excluding any payment to the pupil's parent or guardian for instructional
47 services.

48 5. The results of the assessments administered in subdivision (6) of subsection 3 of
49 this section shall be compiled annually by the director, and reported to the governor and
50 general assembly.

135.620. Qualified schools shall have on record a form signed by the parent or
2 guardian of the scholarship recipients agreeing to the release of the following information
3 to the director:

4 (1) The student's participation as a scholarship recipient under sections 135.610 to
5 135.624;

6 (2) Testing results under section 160.518, RSMo; and

7 (3) The parental satisfaction survey.
8

9 As a condition of participation, the parents, guardians, and scholarship recipients under
10 sections 135.610 and 135.624 shall agree to abide by the code of conduct and any parental
11 involvement requirements unless the qualifying school agrees to a waiver of any
12 requirements.

135.622. The funding authorized in sections 135.610 to 135.624 shall be considered
2 private, voluntary, nongovernmental funding. The providing of assistance by an
3 educational assistance organization shall not be construed to be a public appropriation or
4 the providing of public assistance to any school.

135.624. 1. The director may certify and enter into a contract with an oversight
2 organization located in the state of Missouri for the purpose of administering sections
3 135.610 to 135.624. An oversight organization shall be subject to an audit by the director.
4 To qualify for designation, an oversight organization shall:

5 (1) Have the administrative capability to promote the success of the tax credit
6 allowed by this section by recruiting and coordinating activities with all interested
7 educational assistance organizations in this state and certifying those educational assistance
8 organizations that meet the certification criteria set forth in subsection 3 of this section;

9 (2) Demonstrate the ability to handle large volumes of and amounts of financial
10 transactions, have not filed for bankruptcy and is able to resolve Internal Revenue Service
11 compliance issues;

12 (3) Review the staff qualifications, evaluate fund-raising capabilities, and confirm

13 exempt status of the educational assistance organizations;

14 (4) Create a standardized application for use by nonprofit educational assistance
15 organizations; and

16 (5) Produce an annual report for the general assembly.

17 2. The director shall encourage newly-opened schools established to meet the needs
18 of students receiving scholarships under sections 135.610 to 135.624 to give priority to
19 locating such schools in districts with provisional accreditation.

20 3. The oversight organization or the department of economic development if an
21 oversight organization is not selected shall receive no more than two percent of the
22 qualifying contributions for marketing and administrative expenses or the costs incurred
23 in administering the program, whichever is less. The director shall establish procedures
24 to ensure the percentage of funds for administration of the program is directed to the
25 oversight organization or the department of economic development in a timely manner
26 with the necessary information to verify the correct amount has been transmitted. The
27 remaining funds shall be distributed to the educational assistance organizations for student
28 scholarships.

29 4. This section is subject to the provisions of section 1.140, RSMo. The department
30 of revenue and the department of economic development may promulgate rules and
31 regulations for the administration of this section. Any rule or portion of a rule, as that
32 term is defined in section 536.010, RSMo, that is created under the authority delegated in
33 this section shall become effective only if it complies with and is subject to all of the
34 provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section
35 and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general
36 assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to
37 disapprove and annul a rule are subsequently held unconstitutional, then the grant of
38 rulemaking authority and any rule proposed or adopted after August 28, 2005, shall be
39 invalid and void.

40 5. Any school district that is not explicitly made eligible for the program through
41 the definitions in section 135.612 may opt to participate in the program authorized in
42 sections 135.610 to 135.624 upon the adoption of a resolution by a majority of the school
43 board members present and the submission of the resolution to the department of
44 elementary and secondary education.

45 6. Pursuant to section 23.253, RSMo, of the Missouri Sunset Act:

46 (1) The provisions of the new program authorized under sections 135.610 to
47 135.624 shall automatically sunset six years after the effective date of these sections, unless

48 **reauthorized by an act of the general assembly; and**

49 **(2) If such program is reauthorized, the program authorized under sections 135.610**
50 **to 135.624 shall automatically sunset twelve years after the effective date of the**
51 **reauthorization of these sections; and**

52 **(3) Sections 135.610 to 135.624 shall terminate on September first of the calendar**
53 **year immediately following the calendar year in which the program authorized under these**
54 **sections is sunset.**

55 **7. If the scholarship program sunsets as provided in subsection 6 of this section,**
56 **students receiving scholarships at the time the program is sunset shall continue to receive**
57 **such scholarship moneys until the student completes the twelfth grade.**

163.036. 1. In computing the amount of state aid a school district is entitled to receive
2 for the minimum school term only under section 163.031, a school district may use an estimate
3 of the number of eligible pupils for the current year, the number of eligible pupils for the
4 immediately preceding year or the number of eligible pupils for the second preceding school
5 year, whichever is greater, **except that the eligible pupil count shall be adjusted such that no**
6 **school district shall receive state aid for any pupil who is no longer enrolled in the school**
7 **district as the result of using the proceeds of an educational scholarship to transfer to**
8 **another qualified school under section 135.610, RSMo.** Beginning with the 2005-2006 school
9 year, the summer school add-on for eligible pupils as defined in subdivision (8) of section
10 163.011 shall include only those eligible pupils that attend summer school in the current year.
11 Beginning with the 2004- 2005 school year, when a district's official calendar for the current year
12 contributes to a more than ten percent reduction in the average daily attendance for kindergarten
13 compared to the immediately preceding year, the eligible pupil payment attributable to
14 kindergarten shall include only the current year kindergarten average daily attendance. Except
15 as otherwise provided in subsection 3 of this section, any error made in the apportionment of
16 state aid because of a difference between the actual number of eligible pupils and the estimated
17 number of eligible pupils shall be corrected as provided in section 163.091, except that if the
18 amount paid to a district estimating eligible pupils exceeds the amount to which the district was
19 actually entitled by more than five percent, interest at the rate of six percent shall be charged on
20 the excess and shall be added to the amount to be deducted from the district's apportionment the
21 next succeeding year.

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

26 correction of errors under subsection 1 of this section.

27 3. (1) For any district which has, for at least five years immediately preceding the year
28 in which the error is discovered, adopted a calendar for the school term in which elementary
29 schools are in session for twelve months of each calendar year, any error made in the
30 apportionment of state aid to such district because of a difference between the actual number of
31 eligible pupils and the estimated number of eligible pupils shall be corrected as provided in
32 section 163.091 and subsection 1 of this section, except that if the amount paid exceeds the
33 amount to which the district was actually entitled by more than five percent and the district
34 provides written application to the state board requesting that the deductions be made pursuant
35 to subdivision (2) of this subsection, then the amounts shall be deducted pursuant to subdivision
36 (2) of this subsection.

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

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

54 5. For the purposes of distribution of state school aid pursuant to section 163.031, a
55 school district with ten percent or more of its assessed valuation that is owned by one person or
56 corporation as commercial or personal property who is delinquent in a property tax payment may
57 elect, after receiving notice from the county clerk on or before March fifteenth, except in the year
58 enacted, that more than ten percent of its current taxes due the preceding December thirty-first
59 by a single property owner are delinquent, to use on line 2 of the state aid formula the district's
60 equalized assessed valuation for the preceding year or the actual assessed valuation of the year

61 for which the taxes are delinquent less the assessed valuation of property for which the current
62 year's property tax is delinquent. To qualify for use of the actual assessed valuation of the year
63 for which the taxes are delinquent less the assessed valuation of property for which the current
64 year's property tax is delinquent, a district must notify the department of elementary and
65 secondary education on or before April first, except in the year enacted, of the current year
66 amount of delinquent taxes, the assessed valuation of such property for which delinquent taxes
67 are owed and the total assessed valuation of the district for the year in which the taxes were due
68 but not paid. Any district giving such notice to the department of elementary and secondary
69 education shall present verification of the accuracy of such notice obtained from the clerk of the
70 county levying delinquent taxes. When any of the delinquent taxes identified by such notice are
71 paid during a four-year period following the due date, the county clerk shall give notice to the
72 district and the department of elementary and secondary education, and state aid paid to the
73 district shall be reduced by an amount equal to the delinquent taxes received plus interest. The
74 reduction in state aid shall occur over a period not to exceed five years and the interest rate on
75 excess state aid not refunded shall be six percent annually.

76 6. If a district receives state aid based on equalized assessed valuation as determined by
77 subsection 5 of this section and if prior to such notice the district was paid state aid pursuant to
78 subdivision (2) of subsection 5 of section 163.031, the amount of state aid paid during the year
79 of such notice and the first year following shall equal the sum of state aid paid pursuant to line
80 1 minus line 10 as defined in subsections 1, 2, 3 and 6 of section 163.031 plus the difference
81 between the state aid amount being paid after such notice minus the amount of state aid the
82 district would have received pursuant to line 1 minus line 10 as defined in subsections 1, 2, 3 and
83 6 of section 163.031 before such notice. To be eligible to receive state aid based on this
84 provision the district must levy during the first year following such notice at least the maximum
85 levy permitted school districts by article X, section 11(b) of the Missouri Constitution and have
86 a voluntary rollback of its tax rate which is no greater than one cent per one hundred dollars
87 assessed valuation.

Section B. Because of the immediate need to assist students in certain school districts,
2 the enactment of section A of this act is deemed necessary for the immediate preservation of the
3 public health, welfare, peace and safety, and is hereby declared to be an emergency act within
4 the meaning of the constitution, and the enactment of section A of this act shall be in full force
5 and effect upon its passage and approval.