SECOND REGULAR SESSION

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1886

94TH GENERAL ASSEMBLY

Reported from the Special Committee on Student Achievement February 28, 2008 with recommendation that House Committee Substitute for House Bill No. 1886 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

4675L.02C

AN ACT

To amend chapter 163, RSMo, by adding thereto six new sections relating to the Missouri special needs scholarship tax credit program.

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

Section A. Chapter 163, RSMo, is amended by adding thereto six new sections, to be known as sections 163.403, 163.405, 163.407, 163.409, 163.411, and 163.415, to read as follows:

163.403. Sections 163.403 to 163.415 shall be known and may be cited as "Bryce's Law".

163.405. 1. As used in sections 163.403 to 163.415, the following terms mean:

(1) "Autism spectrum disorder", pervasive developmental disorder; Asperger's syndrome; childhood disintegrative disorder; Rett's syndrome; and autism;

(2) "Contribution", a donation of cash, stock, bonds, or other marketable securities, or real property;

(3) "Department", the department of economic development;

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

(5) "Educational scholarships", grants to students to cover all or part of the tuition and fees at either a qualified nonpublic school or a qualified public school, including transportation;

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.

(6) "Eligible student", any elementary or secondary student who attended public school in Missouri the preceding semester, or who will be attending school in Missouri for the first time, with an individualized education program, including but not limited to students who are mentally handicapped, speech and language impaired, deaf or hard of hearing, visually impaired, dual sensory impaired, physically impaired, emotionally handicapped, specific learning disabled, diagnosed with an autism spectrum disorder, or hospitalized or homebound due to illness or disability;

(7) "Parent", includes a guardian, custodian, or other person with authority to act on behalf of the child;

(8) "Program", the program established in sections 163.403 to 163.415;

(9) "Qualified school", either a public elementary or secondary school outside of the district in which a student resides or a nonpublic elementary or secondary school in Missouri that complies with all of the requirements of the program and complies with all state laws that apply to nonpublic schools regarding criminal background checks for employees and exclude from employment any person not permitted by state law to work in a nonpublic school;

(10) "Scholarship granting organization", a charitable organization which is exempt from federal income tax that complies with the requirements of this program and provides education scholarships to students attending qualified schools of their parents' choice;

(11) "State tax liability", in the case of a business taxpayer, any liability incurred by such taxpayer under chapters 143, 147, 148, and 153, RSMo, excluding sections 143.191 to 143.265, RSMo, and related provisions, and in the case of an individual taxpayer, any liability incurred by such taxpayer under chapter 143, RSMo, excluding sections 143.191 to 143.265, RSMo, and related provisions;

(12) "Taxpayer", a person, firm, a partner in a firm, corporation, or a shareholder in an S corporation doing business in the state of Missouri and subject to the state income tax imposed by the provisions of chapter 143, RSMo, or a corporation subject to the annual corporation franchise tax imposed by the provisions of chapter 147, RSMo, or an insurance company paying an annual tax on its gross premium receipts in this state, or other financial institution paying taxes to the state of Missouri or any political subdivision of this state under the provisions of chapter 148, RSMo, or an express company which pays an annual tax on its gross receipts in this state under chapter 153, RSMo, or an individual subject to the state income tax imposed by the provisions of chapter 143, RSMo, or any charitable organization which is exempt from federal income tax and whose Missouri

unrelated business taxable income, if any, would be subject to the state income tax imposed under chapter 143, RSMo.

2. For all tax years beginning on or after January 1, 2008, a taxpayer shall be allowed to claim a tax credit against the taxpayer's state tax liability in an amount equal to eighty percent of the amount such taxpayer contributed to a scholarship granting organization. No taxpayer shall be issued more than eight hundred thousand dollars in tax credits authorized under this section per tax year.

3. The amount of the tax credit claimed shall not exceed fifty percent of a taxpayer's state tax liability for the taxable year for which the credit is claimed. However, any tax credit that cannot be claimed in the taxable year the contribution was made may be carried over to the next four succeeding taxable years until the full credit has been claimed.

4. The director shall determine, at least annually, which organizations in this state may be classified as scholarship granting organizations. The director may require of an organization seeking to be classified as a scholarship granting organization whatever information which is reasonably necessary to make such a determination. The director shall classify an organization as a scholarship granting organization if such organization meets the definition set forth in subsection 1 of this section.

5. The director shall establish a procedure by which a taxpayer can determine if an organization has been classified as a scholarship granting organization. Scholarship granting organizations shall be permitted to decline a contribution from a taxpayer.

6. Each scholarship granting organization shall provide information to the director concerning the identity of each taxpayer making a contribution to the scholarship granting organization who is claiming a tax credit under this section and the amount of the contribution. The director shall provide the information to the director of revenue. The director shall be subject to the confidentiality and penalty provisions of section 32.057, RSMo, relating to the disclosure of tax information.

7. The director shall annually make a determination on the number of students in Missouri with an individualized education program. Up to ten percent of these students may receive a scholarship from a scholarship granting organization in that year. The director shall publicly announce the number of special needs scholarship opportunities available each year. Once a scholarship granting organization has decided to provide a student with a scholarship, it shall promptly notify the director. The director shall keep a running tally of the number of scholarships granted in the order in which they were reported. Once the tally reaches the annual limit of eligible students, the director shall notify all of the participating scholarship granting organizations that they may not issue

any more scholarships and any more receipts for contributions. If the scholarship granting organizations have not expended all of their available scholarship funds in that year at the time when the limit is reached, the available scholarship funds may be carried over into the next year. These unexpended funds shall not be counted as part of the requirement in subdivision (3) of subsection 1 of section 163.407 for that year. Any receipt for a scholarship contribution issued by a scholarship granting organization before the director has publicly announced the student limit has been reached shall be valid for a taxpayer claiming a credit.

8. Notwithstanding any other law to the contrary, any tax credits granted under this section may be assigned, transferred, sold, or otherwise conveyed without consent or approval. Such taxpayer, hereinafter the assignor for purposes of this section, may sell, assign, exchange, or otherwise transfer earned tax credits:

(1) For no less than seventy-five percent of the par value of such credits; and

(2) In an amount not to exceed one hundred percent of annual earned credits.

163.407. 1. Each scholarship granting organization participating in the program under sections 163.403 to 163.415 shall:

(1) Notify the department of its intent to provide educational scholarships to students attending qualified schools;

(2) Provide a department-approved receipt to taxpayers for contributions made to the organization;

(3) Ensure that at least ninety percent of its revenue from donations is spent on educational scholarships, and that all revenue from interest or investments is spent on educational scholarships;

(4) Distribute periodic scholarship payments as checks made out to a student's parent and mailed to the qualified school where the student is enrolled. The parent or guardian must endorse the check before it can be deposited;

(5) Cooperate with the department to conduct criminal background checks on all of its employees and board members and exclude from employment or governance any individual who might reasonably pose a risk to the appropriate use of contributed funds;

(6) Ensure that scholarships are portable during the school year and can be used at any qualified school that accepts the eligible student according to a parent's wishes. If a student moves to a new qualified school during a school year, the scholarship amount may be prorated;

(7) Demonstrate its financial accountability by:

(a) Submitting a financial information report for the organization that complies with uniform financial accounting standards established by the department and conducted by a certified public accountant; and

(b) Having the auditor certify that the report is free of material misstatements;

(8) Demonstrate its financial viability, if the organization is to receive donations of fifty thousand dollars or more during the school year, by filing with the department prior to the start of the school year:

(a) A surety bond payable to the state in an amount equal to the aggregate amount of contributions expected to be received during the school year; or

(b) Financial information that demonstrates the financial viability of the scholarship granting organization.

2. Each scholarship granting organization shall ensure participating schools that accept its scholarship students shall:

(1) Comply with all health and safety laws or codes that apply to nonpublic schools;

(2) Hold a valid occupancy permit if required by its municipality;

(3) Certify that it will comply with 42 USC 1981; and

(4) Provide academic accountability to parents of the students in the program by regularly reporting to the parent on the student's progress.

3. Scholarship granting organizations shall not provide educational scholarships for students to attend any school with paid staff or board members who are relatives within the first degree of consanguinity or affinity.

4. A scholarship granting organization shall publicly report to the department, by June first of each year, the following information prepared by a certified public accountant regarding its grants in the previous calendar year:

(1) The name and address of the scholarship granting organization;

(2) The total number and total dollar amount of contributions received during the previous calendar year; and

(3) The total number and total dollar amount of educational scholarships awarded during the previous calendar year, and the total number and total dollar amount of educational scholarships awarded during the previous year to students eligible for free and reduced lunch.

163.409. 1. The department shall adopt rules and regulations consistent with sections 163.403 to 163.415 as necessary to implement the program.

2. The department shall provide a standardized format for a receipt to be issued by a scholarship granting organization to a taxpayer to indicate the value of a contribution

received. The department shall require a taxpayer to provide a copy of this receipt when claiming the Missouri special needs scholarship tax credit.

3. The department shall provide a standardized format for scholarship granting organizations to report the information in section 163.407.

4. The department may conduct either a financial review or audit of a scholarship granting organization.

5. If the department believes that a scholarship granting organization has intentionally and substantially failed to comply with the requirements of section 163.407, the department may hold a hearing before the director, or his or her designee, to bar a scholarship granting organization from participating in the program. The director, or his or her designee, shall issue a decision within thirty days. A scholarship granting organization may appeal the director's decision to the administrative hearing commission for a hearing in accordance with the provisions of chapter 621, RSMo.

6. If the scholarship granting organization is barred from participating in the program, the department shall notify affected scholarship students and their parents of this decision within fifteen days.

7. 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, 2008, shall be invalid and void.

163.411. 1. The department shall conduct a study of the program with funds other than state funds. The department may contract with one or more qualified researchers who have previous experience evaluating similar programs. The department may accept grants to assist in funding this study.

2. The study shall assess:

(1) The level of participating students' satisfaction with the program;

(2) The level of parental satisfaction with the program;

(3) The percentage of participating students who were bullied or harassed because of their special needs status at their resident school district compared to the percentage so bullied or harassed at their qualified school;

(4) The percentage of participating students who exhibited behavioral problems at their resident school district compared to the percentage exhibiting behavioral problems at their qualified school;

(5) The class size experienced by participating students at their resident school district and at their qualified school; and

(6) The fiscal impact to the state and resident school districts of the program.

3. The study shall be completed using appropriate analytical and behavioral sciences methodologies to ensure public confidence in the study.

4. The department shall provide the general assembly with a final copy of the evaluation of the program by December 31, 2013.

5. The public and nonpublic participating schools from which students transfer to participate in the program shall cooperate with the research effort by providing student assessment instrument scores and any other data necessary to complete this study.

6. The general assembly may require periodic updates on the status of the study from the department. The individuals completing the study shall make their data and methodology available for public review while complying with the requirements of the Family Educational Rights and Privacy Act, as amended.

163.415. Pursuant to section 23.253, RSMo, of the Missouri sunset act:

(1) The provisions of the new program authorized under sections 163.403 to 163.415 shall sunset automatically on December thirty-first six years after the effective date of sections 163.403 to 163.415 unless reauthorized by an act of the general assembly; and

(2) If such program is reauthorized, the program authorized under sections 163.403 to 163.415 shall sunset automatically on December thirty-first twelve years after the effective date of the reauthorization of sections 163.403 to 163.415; and

(3) Sections 163.403 to 163.415 shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under sections 163.403 to 163.415 is sunset.

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