

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 1391

AN ACT

To repeal sections 135.713, 135.714, 135.715, 160.400, and 166.700, RSMo, and to enact in lieu thereof five new sections relating to educational opportunities for elementary and secondary school students.

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

Section A. Sections 135.713, 135.714, 135.715, 160.400, and 166.700, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 135.713, 135.714, 135.715, 160.400, and 166.700, to read as follows:

135.713. 1. Any taxpayer who makes a qualifying contribution to an educational assistance organization after August 28, 2021, may claim a credit against the tax otherwise due under chapter 143, other than taxes withheld under sections 143.191 to 143.265, and chapter 153 in an amount equal to one hundred percent of the amount the taxpayer contributed during the tax year for which the credit is claimed. No taxpayer shall claim a credit under sections 135.712 to 135.719 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.

2. The amount of the tax credit claimed shall not exceed fifty percent of the taxpayer's state tax liability for the tax year for which the credit is claimed. The state treasurer shall certify the tax credit amount to the taxpayer. A taxpayer may carry the credit forward to any of such taxpayer's four subsequent tax years. All tax credits

authorized under the program shall not be transferred, sold, or assigned, and are [not] refundable.

3. The cumulative amount of tax credits that may be allocated to all taxpayers contributing to educational assistance organizations in any one calendar year shall not exceed a maximum of [fifty] seventy-five million dollars[, which]. Such maximum amount shall be annually adjusted from the 2021 maximum amount by the state treasurer for inflation based on the Consumer Price Index for All Urban Consumers for the Midwest region, as defined and officially recorded by the United States Department of Labor or its successor, [such annual increase will cease when the amount of tax credits reach seventy-five million dollars] and shall additionally be annually adjusted by any percentage increase in the amount appropriated for pupil transportation under section 163.161 above the threshold of ninety percent of the projected amount necessary to fully fund transportation aid funding for the current fiscal year. The state treasurer shall establish a procedure by which, from the beginning of the calendar year until August first, the cumulative amount of tax credits shall be allocated on a first-come, first-served basis among all educational assistance organizations. If an educational assistance organization fails to use all, or some percentage to be determined by the state treasurer, of its allocated tax credits during this period, the state treasurer may reallocate these unused tax credits to those educational assistance organizations that have used all, or some percentage to be determined by the state treasurer, of their allocated tax credits during this period. The state treasurer may establish more than one period and reallocate more than once during each calendar year. The state treasurer 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 calendar year.

4. A taxpayer who makes a contribution to an education assistance organization shall not designate the student who will receive a scholarship grant.

[5. The provisions of sections 135.712 to 135.719 and sections 166.700 to 166.720 shall be effective in any fiscal year immediately subsequent to any fiscal year in which the amount appropriated for pupil transportation under section 163.161 equals or exceeds forty percent of the projected amount necessary to fully fund transportation aid funding for fiscal year 2021. If the amount appropriated for transportation under section 163.161 in any succeeding year falls below such amount, no additional scholarships for newly qualified students shall be awarded.]

135.714. 1. Each educational assistance organization shall:

(1) Notify the state treasurer of [its] such organization's intent to provide scholarship accounts to qualified students;

(2) Demonstrate to the state treasurer that [it] such organization is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

(3) Provide a state treasurer-approved receipt to taxpayers for contributions made to the organization;

(4) Ensure that grants are distributed to scholarship accounts of qualified students in the following order:

(a) Qualified students that have an approved "individualized education plan" (IEP) developed under the federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400[,] et seq., as amended, or qualified students living in a household whose total annual income

does not exceed an amount equal to one hundred percent of the income standard used to qualify for free and reduced price lunches;

(b) Qualified students living in a household whose total annual income does not exceed an amount equal to two hundred percent of the income standard used to qualify for free and reduced price lunches; and

(c) All other qualified students;

(5) Ensure that:

(a) One hundred percent of [its] such organization's revenues from interest or investments is spent on scholarship accounts;

(b) At least ninety percent of [its] such organization's revenues from qualifying contributions is spent on scholarship accounts; and

(c) Marketing and administrative expenses do not exceed the following limits of [its] such organization's remaining revenue from contributions:

a. Ten percent for the first two hundred fifty thousand dollars;

b. Eight percent for the next five hundred thousand dollars; and

c. Three percent thereafter;

(6) (a) Distribute scholarship account payments either four times per year or in a single lump sum at the beginning of the year as requested by the parent of a qualified student, [not to exceed a total grant amount equal to] based on the state adequacy target as defined in section 163.011 and calculated by the department of elementary and secondary education, subject to the following total grant amount limits:

a. For a qualified student who meets the criteria to be included in a school district's limited English

proficiency pupil count as set forth in subdivision (8) of section 163.011, not more than one hundred sixty percent of the state adequacy target;

b. For a qualified student who is eligible for free or reduced price lunch as approved by the department of elementary and secondary education in accordance with federal regulations, not more than one hundred twenty-five percent of the state adequacy target;

c. For a qualified student who has an approved individualized education plan developed under the federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 et seq., as amended, not more than one hundred seventy-five percent of the state adequacy target; and

d. For all other qualified students, not more than the state adequacy target;

(b) Scholarship account payments distributed under this subdivision shall be in the form of a deposit into the scholarship account of the qualified student;

(7) Provide the state treasurer, upon request, with criminal background checks on all **[its]** such organization's 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, provided that no background check shall be required by the educational assistance organization or the state treasurer for a parent who educates their child at a home school as defined in section 167.031;

(8) Demonstrate **[its]** such organization's financial accountability by:

(a) Submitting to the state treasurer annual audit financial statements by a certified public accountant within

six months of the end of the educational assistance organization's fiscal year; and

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

(9) Ensure that participating students take the state achievement tests or nationally norm-referenced tests that measure learning gains in math and English language arts, and provide for value-added assessment, in grades that require testing under the statewide assessment system set forth in section 160.518;

(10) Allow costs of the testing requirements to be covered by the scholarships distributed by the educational assistance organization;

(11) Provide the parents of each student who was tested with a copy of the results of the tests on an annual basis, beginning with the first year of testing;

(12) Provide the test results to the state treasurer on an annual basis, beginning with the first year of testing;

(13) Report student information that would allow the state treasurer to aggregate data by grade level, gender, family income level, and race;

(14) Provide rates of high school graduation, college attendance, and college graduation for participating students to the state treasurer in a manner consistent with nationally recognized standards;

(15) Provide to the state treasurer the results from an annual parental satisfaction survey, including information about the number of years that the parent's child has participated in the scholarship program. The annual satisfaction survey shall ask parents of scholarship students to express:

(a) Their level of satisfaction with the child's academic achievement, including academic achievement at the

schools the child attends through the scholarship program versus academic achievement at the school previously attended;

(b) Their level of satisfaction with school safety at the schools the child attends through the scholarship program versus safety at the schools previously attended;

(16) Demonstrate [its] such organization's financial viability, if [it] such organization is to receive donations of fifty thousand dollars or more during the school year, by filing with the state treasurer before the start of the school year 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 other financial information that demonstrates the financial viability of the educational assistance organization.

2. The annual audit required under this section shall include:

(1) The name and address of the educational assistance organization;

(2) The name and address of each qualified student for whom a parent opened a scholarship account with the organization;

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

(4) The total number and total dollar amount of scholarship accounts opened during the previous calendar year.

3. The state treasurer shall:

(1) Ensure compliance with all student privacy laws for data in the state treasurer's possession;

(2) Collect all test results;

(3) Provide the test results and associated learning gains to the public via a state website after the third year

of test and test-related data collection. The findings shall be aggregated by the students' grade level, gender, family income level, number of years of participation in the scholarship program, and race; and

(4) Provide graduation rates to the public via a state website after the third year of test and test-related data collection.

4. An educational assistance organization may contract with private financial management firms to manage scholarship accounts with the supervision of the state treasurer.

135.715. 1. [Notwithstanding any provision in section 135.713 to the contrary, the annual increase to the cumulative amount of tax credits under subsection 3 of section 135.713 shall cease when the amount of tax credits reaches fifty million dollars.] The cumulative amount of tax credits that may be allocated to all taxpayers contributing to educational assistance organizations in the first year of the program shall not exceed twenty-five million dollars.

2. The state treasurer shall limit the number of educational assistance organizations that are certified to administer scholarship accounts to no more than ten such organizations in any single school year[, with]. If the total contributions to educational assistance organizations exceed twenty-five million dollars in any school year, the state treasurer may certify one additional educational assistance organization to administer scholarship accounts. No more than [six] seven of such organizations [having] shall have their principal place of business in:

(1) A county of the first classification with more than two hundred sixty thousand but fewer than three hundred thousand inhabitants;

(2) A county with a charter form of government and with more than six hundred thousand but fewer than seven hundred thousand inhabitants;

(3) A county with a charter form of government and with more than three hundred thousand but fewer than four hundred fifty thousand inhabitants;

(4) A county with a charter form of government and with more than nine hundred fifty thousand inhabitants; or

(5) A city not within a county.

3. The state treasurer may delegate any duties assigned to the state treasurer under sections 135.712 to 135.719 and sections 166.700 to 166.720 to the "Missouri Empowerment Scholarship Accounts Board", which is hereby established. The Missouri empowerment scholarship accounts board shall consist of the state treasurer, who shall serve as chair, the commissioner of the department of higher education and workforce development, the commissioner of education, the commissioner of the office of administration, one member appointed by the president pro tempore of the senate, one member appointed by the speaker of the house of representatives, and one member appointed by the governor with the advice and consent of the senate. The appointed members shall serve terms of four years or until their successors have been appointed and qualified. The board shall have all powers and duties assigned to the state treasurer under sections 135.712 to 135.719 and sections 166.700 to 166.720 that are delegated to the board by the state treasurer. Members of the board shall not receive compensation for their service, but may receive reimbursement for necessary expenses.

4. Notwithstanding the provisions of subsection 7 of section 135.716 to the contrary, four percent of the total qualifying contributions received by each educational

assistance organization per calendar year shall be deposited in the Missouri empowerment scholarship accounts fund to be used by the state treasurer for marketing and administrative expenses or the costs incurred in administering the program, whichever is less.

5. Notwithstanding the provisions of subdivision (5) of subsection 2 of section 135.712 to the contrary, the term "qualifying contribution" shall mean a donation of cash, including, but not limited to, checks drawn on a banking institution located in the continental United States in U.S. dollars (other than cashier checks, or third-party checks exceeding ten thousand dollars), money orders, payroll deductions, and electronic fund transfers. This term shall not include stocks, bonds, other marketable securities, or property.

160.400. 1. A charter school is an independent public school.

2. Except as further provided in subsection 4 of this section, charter schools may be operated only:

(1) In a metropolitan school district;

(2) In an urban school district containing most or all of a city with a population greater than three hundred fifty thousand inhabitants;

(3) In a school district that has been classified as unaccredited by the state board of education;

(4) In a school district that has been classified as provisionally accredited by the state board of education and has received scores on its annual performance report consistent with a classification of provisionally accredited or unaccredited for three consecutive school years beginning with the 2012-13 accreditation year under the following conditions:

(a) The eligibility for charter schools of any school district whose provisional accreditation is based in whole or in part on financial stress as defined in sections 161.520 to 161.529, or on financial hardship as defined by rule of the state board of education, shall be decided by a vote of the state board of education during the third consecutive school year after the designation of provisional accreditation; and

(b) The sponsor is limited to the local school board or a sponsor who has met the standards of accountability and performance as determined by the department based on sections 160.400 to 160.425 and section 167.349 and properly promulgated rules of the department; [or]

(5) In a school district located within a county with more than one million inhabitants;

(6) In a school district located within a county with more than one hundred fifty thousand but fewer than two hundred thousand inhabitants;

(7) In a school district located within a county with more than four hundred thousand but fewer than five hundred thousand inhabitants; or

(8) In a school district that has been accredited without provisions, sponsored only by the local school board; provided that no board with a current year enrollment of one thousand five hundred fifty students or greater shall permit more than thirty-five percent of its student enrollment to enroll in charter schools sponsored by the local board under the authority of this subdivision, except that this restriction shall not apply to any school district that subsequently becomes eligible under subdivision (3) or (4) of this subsection or to any district accredited without provisions that sponsors charter schools prior to having a

current year student enrollment of one thousand five hundred fifty students or greater.

3. Except as further provided in subsection 4 of this section, the following entities are eligible to sponsor charter schools:

(1) The school board of the district in any district which is sponsoring a charter school as of August 27, 2012, as permitted under subdivision (1) or (2) of subsection 2 of this section, the special administrative board of a metropolitan school district during any time in which powers granted to the district's board of education are vested in a special administrative board, or if the state board of education appoints a special administrative board to retain the authority granted to the board of education of an urban school district containing most or all of a city with a population greater than three hundred fifty thousand inhabitants, the special administrative board of such school district;

(2) A public four-year college or university with an approved teacher education program that meets regional or national standards of accreditation;

(3) A community college, the service area of which encompasses some portion of the district;

(4) Any private four-year college or university with an enrollment of at least one thousand students, with its primary campus in Missouri, and with an approved teacher preparation program;

(5) Any two-year private vocational or technical school designated as a 501(c)(3) nonprofit organization under the Internal Revenue Code of 1986, as amended, and accredited by the Higher Learning Commission, with its primary campus in Missouri;

(6) The Missouri charter public school commission created in section 160.425.

4. Changes in a school district's accreditation status that affect charter schools shall be addressed as follows, except for the districts described in subdivisions (1) and (2) of subsection 2 of this section:

(1) As a district transitions from unaccredited to provisionally accredited, the district shall continue to fall under the requirements for an unaccredited district until it achieves three consecutive full school years of provisional accreditation;

(2) As a district transitions from provisionally accredited to full accreditation, the district shall continue to fall under the requirements for a provisionally accredited district until it achieves three consecutive full school years of full accreditation;

(3) In any school district classified as unaccredited or provisionally accredited where a charter school is operating and is sponsored by an entity other than the local school board, when the school district becomes classified as accredited without provisions, a charter school may continue to be sponsored by the entity sponsoring it prior to the classification of accredited without provisions and shall not be limited to the local school board as a sponsor.

A charter school operating in a school district identified in subdivision (1) or (2) of subsection 2 of this section may be sponsored by any of the entities identified in subsection 3 of this section, irrespective of the accreditation classification of the district in which it is located. A charter school in a district described in this subsection whose charter provides for the addition of grade levels in subsequent years may continue to add levels until the planned expansion is complete to the extent of grade

levels in comparable schools of the district in which the charter school is operated.

5. The mayor of a city not within a county may request a sponsor under subdivision (2), (3), (4), (5), or (6) of subsection 3 of this section to consider sponsoring a "workplace charter school", which is defined for purposes of sections 160.400 to 160.425 as a charter school with the ability to target prospective students whose parent or parents are employed in a business district, as defined in the charter, which is located in the city.

6. No sponsor shall receive from an applicant for a charter school any fee of any type for the consideration of a charter, nor may a sponsor condition its consideration of a charter on the promise of future payment of any kind.

7. The charter school shall be organized as a Missouri nonprofit corporation incorporated pursuant to chapter 355. The charter provided for herein shall constitute a contract between the sponsor and the charter school.

8. As a nonprofit corporation incorporated pursuant to chapter 355, the charter school shall select the method for election of officers pursuant to section 355.326 based on the class of corporation selected. Meetings of the governing board of the charter school shall be subject to the provisions of sections 610.010 to 610.030.

9. A sponsor of a charter school, its agents and employees are not liable for any acts or omissions of a charter school that it sponsors, including acts or omissions relating to the charter submitted by the charter school, the operation of the charter school and the performance of the charter school.

10. A charter school may affiliate with a four-year college or university, including a private college or university, or a community college as otherwise specified in

subsection 3 of this section when its charter is granted by a sponsor other than such college, university or community college. Affiliation status recognizes a relationship between the charter school and the college or university for purposes of teacher training and staff development, curriculum and assessment development, use of physical facilities owned by or rented on behalf of the college or university, and other similar purposes. A university, college or community college may not charge or accept a fee for affiliation status.

11. The expenses associated with sponsorship of charter schools shall be defrayed by the department of elementary and secondary education retaining one and five-tenths percent of the amount of state and local funding allocated to the charter school under section 160.415, not to exceed one hundred twenty-five thousand dollars, adjusted for inflation. The department of elementary and secondary education shall remit the retained funds for each charter school to the school's sponsor, provided the sponsor remains in good standing by fulfilling its sponsorship obligations under sections 160.400 to 160.425 and 167.349 with regard to each charter school it sponsors, including appropriate demonstration of the following:

(1) Expends no less than ninety percent of its charter school sponsorship funds in support of its charter school sponsorship program, or as a direct investment in the sponsored schools;

(2) Maintains a comprehensive application process that follows fair procedures and rigorous criteria and grants charters only to those developers who demonstrate strong capacity for establishing and operating a quality charter school;

(3) Negotiates contracts with charter schools that clearly articulate the rights and responsibilities of each party regarding school autonomy, expected outcomes, measures for evaluating success or failure, performance consequences based on the annual performance report, and other material terms;

(4) Conducts contract oversight that evaluates performance, monitors compliance, informs intervention and renewal decisions, and ensures autonomy provided under applicable law; and

(5) Designs and implements a transparent and rigorous process that uses comprehensive data to make merit-based renewal decisions.

12. Sponsors receiving funds under subsection 11 of this section shall be required to submit annual reports to the joint committee on education demonstrating they are in compliance with subsection 17 of this section.

13. No university, college or community college shall grant a charter to a nonprofit corporation if an employee of the university, college or community college is a member of the corporation's board of directors.

14. No sponsor shall grant a charter under sections 160.400 to 160.425 and 167.349 without ensuring that a criminal background check and family care safety registry check are conducted for all members of the governing board of the charter schools or the incorporators of the charter school if initial directors are not named in the articles of incorporation, nor shall a sponsor renew a charter without ensuring a criminal background check and family care safety registry check are conducted for each member of the governing board of the charter school.

15. No member of the governing board of a charter school shall hold any office or employment from the board or

the charter school while serving as a member, nor shall the member have any substantial interest, as defined in section 105.450, in any entity employed by or contracting with the board. No board member shall be an employee of a company that provides substantial services to the charter school. All members of the governing board of the charter school shall be considered decision-making public servants as defined in section 105.450 for the purposes of the financial disclosure requirements contained in sections 105.483, 105.485, 105.487, and 105.489.

16. A sponsor shall develop the policies and procedures for:

(1) The review of a charter school proposal including an application that provides sufficient information for rigorous evaluation of the proposed charter and provides clear documentation that the education program and academic program are aligned with the state standards and grade-level expectations, and provides clear documentation of effective governance and management structures, and a sustainable operational plan;

(2) The granting of a charter;

(3) The performance contract that the sponsor will use to evaluate the performance of charter schools. Charter schools shall meet current state academic performance standards as well as other standards agreed upon by the sponsor and the charter school in the performance contract;

(4) The sponsor's intervention, renewal, and revocation policies, including the conditions under which the charter sponsor may intervene in the operation of the charter school, along with actions and consequences that may ensue, and the conditions for renewal of the charter at the end of the term, consistent with subsections 8 and 9 of section 160.405;

(5) Additional criteria that the sponsor will use for ongoing oversight of the charter; and

(6) Procedures to be implemented if a charter school should close, consistent with the provisions of subdivision (15) of subsection 1 of section 160.405.

The department shall provide guidance to sponsors in developing such policies and procedures.

17. (1) A sponsor shall provide timely submission to the state board of education of all data necessary to demonstrate that the sponsor is in material compliance with all requirements of sections 160.400 to 160.425 and section 167.349. The state board of education shall ensure each sponsor is in compliance with all requirements under sections 160.400 to 160.425 and 167.349 for each charter school sponsored by any sponsor. The state board shall notify each sponsor of the standards for sponsorship of charter schools, delineating both what is mandated by statute and what best practices dictate. The state board shall evaluate sponsors to determine compliance with these standards every three years. The evaluation shall include a sponsor's policies and procedures in the areas of charter application approval; required charter agreement terms and content; sponsor performance evaluation and compliance monitoring; and charter renewal, intervention, and revocation decisions. Nothing shall preclude the department from undertaking an evaluation at any time for cause.

(2) If the department determines that a sponsor is in material noncompliance with its sponsorship duties, the sponsor shall be notified and given reasonable time for remediation. If remediation does not address the compliance issues identified by the department, the commissioner of education shall conduct a public hearing and thereafter provide notice to the charter sponsor of corrective action

that will be recommended to the state board of education. Corrective action by the department may include withholding the sponsor's funding and suspending the sponsor's authority to sponsor a school that it currently sponsors or to sponsor any additional school until the sponsor is reauthorized by the state board of education under section 160.403.

(3) The charter sponsor may, within thirty days of receipt of the notice of the commissioner's recommendation, provide a written statement and other documentation to show cause as to why that action should not be taken. Final determination of corrective action shall be determined by the state board of education based upon a review of the documentation submitted to the department and the charter sponsor.

(4) If the state board removes the authority to sponsor a currently operating charter school under any provision of law, the Missouri charter public school commission shall become the sponsor of the school.

18. If a sponsor notifies a charter school of closure under subsection 8 of section 160.405, the department of elementary and secondary education shall exercise its financial withholding authority under subsection 12 of section 160.415 to assure all obligations of the charter school shall be met. The state, charter sponsor, or resident district shall not be liable for any outstanding liability or obligations of the charter school.

166.700. As used in sections 166.700 to 166.720, the following terms mean:

(1) "Curriculum", a complete course of study for a particular content area or grade level, including any supplemental materials;

(2) "District", the same meaning as used in section 160.011;

(3) "Educational assistance organization", the same meaning as used in section 135.712;

(4) "Parent", the same meaning as used in section 135.712;

(5) "Private school", a school that is not a part of the public school system of the state of Missouri and that charges tuition for the rendering of elementary or secondary educational services;

(6) "Program", the same meaning as used in section 135.712;

(7) "Qualified school", a home school as defined in section 167.031 or any of the following entities that is incorporated in Missouri and that does not discriminate on the basis of race, color, or national origin:

(a) A charter school as defined in section 160.400;

(b) A private school;

(c) A public school as defined in section 160.011; or

(d) A public or private virtual school;

(8) "Qualified student", any elementary or secondary school student who is a resident of this state and [resides in any county with a charter form of government or any city with at least thirty thousand inhabitants] who:

(a) Has an approved "individualized education plan" (IEP) developed under the federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400[,] et seq., as amended; or

(b) Is a member of a household whose total annual income does not exceed an amount equal to [two] four hundred percent of the income standard used to qualify for free and reduced price lunches, and that meets at least one of the following qualifications:

a. Attended a public school as a full-time student for at least one semester during the previous twelve months; or

b. Is a child who is eligible to begin kindergarten or first grade under sections 160.051 to 160.055.