

# SENATE MOTION

**MADAM PRESIDENT:**

**I move** that Engrossed House Bill 1001 be amended to read as follows:

- 1           Page 105, between lines 3 and 4, begin a new paragraph and insert:  
2           "SECTION 45. IC 6-3.1-30.5 IS ADDED TO THE INDIANA  
3           CODE AS A NEW CHAPTER TO READ AS FOLLOWS  
4           [EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)]:  
5           **Chapter 30.5. School Scholarship Tax Credit**  
6           **Sec. 1. As used in this chapter, "credit" refers to a credit**  
7           **granted under this chapter.**  
8           **Sec. 2. As used in this chapter, "school scholarship program"**  
9           **refers to a grant program that is certified as a school scholarship**  
10           **program by the department of education under IC 20-50.**  
11           **Sec. 3. As used in this chapter, "pass through entity" means:**  
12           **(1) a corporation that is exempt from the adjusted gross**  
13           **income tax under IC 6-3-2-2.8(2);**  
14           **(2) a partnership;**  
15           **(3) a limited liability company; or**  
16           **(4) a limited liability partnership.**  
17           **Sec. 4. As used in this chapter, "scholarship granting**  
18           **organization" refers to an organization that:**  
19           **(1) is exempt from federal income taxation under Section**  
20           **501(c)(3) of the Internal Revenue Code; and**  
21           **(2) conducts a school scholarship program.**  
22           **Sec. 5. As used in this chapter, "state tax liability" means a**  
23           **taxpayer's total tax liability that is incurred under:**  
24           **(1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);**  
25           **(2) IC 6-5.5 (the financial institutions tax); and**  
26           **(3) IC 27-1-18-2 (the insurance premiums tax);**  
27           **as computed after the application of the credits that under**  
28           **IC 6-3.1-1-2 are to be applied before the credit provided by this**  
29           **chapter.**  
30           **Sec. 6. As used in this chapter, "taxpayer" means an individual**  
31           **or entity that has any state tax liability.**

1           **Sec. 7. A taxpayer that makes a charitable contribution to a**  
2 **scholarship granting organization for use by the scholarship**  
3 **granting organization in a school scholarship program is entitled**  
4 **to a credit against the taxpayer's tax liability in the taxable year in**  
5 **which the taxpayer makes the charitable contribution.**

6           **Sec. 8. The amount of a taxpayer's credit is equal to thirty-five**  
7 **percent (35%) of the amount of the charitable contribution made**  
8 **to the scholarship granting organization for a school scholarship**  
9 **program.**

10          **Sec. 9. A taxpayer is not entitled to a carryover, carryback, or**  
11 **refund of an unused credit.**

12          **Sec. 10. (a) If:**

13           **(1) a pass through entity does not have state tax liability**  
14 **against which the credit may be applied; and**

15           **(2) the pass through entity would be eligible for a credit if the**  
16 **pass through entity were a taxpayer;**

17 **a shareholder, partner, or member of the pass through entity is**  
18 **entitled to a credit under this chapter.**

19          **(b) The amount of the credit to which a shareholder, partner, or**  
20 **member of a pass through entity is entitled is equal to:**

21           **(1) the credit determined for the pass through entity for the**  
22 **taxable year; multiplied by**

23           **(2) the percentage of the pass through entity's distributive**  
24 **income to which the shareholder, partner, or member is**  
25 **entitled.**

26          **Sec. 11. To apply a credit against the taxpayer's state tax**  
27 **liability, a taxpayer must claim the credit on the taxpayer's annual**  
28 **state tax return or returns in the manner prescribed by the**  
29 **department. The taxpayer shall submit to the department the**  
30 **information that the department determines is necessary for the**  
31 **department to determine whether the taxpayer is eligible for the**  
32 **credit.**

33          **Sec. 12. A charitable contribution shall be treated as having**  
34 **been given for a school scholarship program if the charitable**  
35 **contribution is given to a scholarship granting organization that**  
36 **conducts a school scholarship program and either the:**

37           **(1) taxpayer designates in a writing delivered to the**  
38 **scholarship granting organization not later than the date the**  
39 **charitable contribution is made that the charitable**  
40 **contribution is to be used only for a school scholarship**  
41 **program; or**

42           **(2) scholarship granting organization provides the taxpayer**  
43 **with written confirmation that the charitable contribution**  
44 **will be dedicated for use in a school scholarship program.**

45          **Sec. 13. The total amount of tax credits awarded under this**  
46 **chapter may not exceed five million dollars (\$5,000,000) in any**  
47 **state fiscal year.**

48          **Sec. 14. The department shall provide on the Internet web site**

1 used by the department the following information:

- 2 (1) The application for the credit provided in this chapter.  
 3 (2) A timeline for receiving the credit provided in this chapter.  
 4 (3) The total amount of credits awarded under this chapter  
 5 during the current calendar year.

6 SECTION 13. IC 20-50 IS ADDED TO THE INDIANA CODE AS  
 7 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON  
 8 PASSAGE]:

9 **ARTICLE 50. EDUCATIONAL SCHOLARSHIPS**

10 **Chapter 1. Definitions**

11 **Sec. 1. The definitions in this chapter apply throughout this**  
 12 **article.**

13 **Sec. 2. "Agreement" refers to an agreement between the**  
 14 **department of state revenue and an applicant that applies for**  
 15 **certification of a school scholarship program.**

16 **Sec. 3. "Contribution" refers to a contribution to a scholarship**  
 17 **granting organization for a school scholarship program.**

18 **Sec. 4. "Educational scholarship" refers to a grant to pay the**  
 19 **tuition and fees that would otherwise be charged to:**

- 20 (1) an eligible student; or  
 21 (2) a parent of an eligible student.

22 **Sec. 5. "Eligible student" refers to an individual who:**

- 23 (1) has legal settlement in Indiana;  
 24 (2) is at least five (5) years of age and less than twenty-two  
 25 (22) years of age on the date in the school year specified in  
 26 IC 20-33-2-7; and  
 27 (3) either:

- 28 (A) qualifies for the federal free or reduced price lunch  
 29 program; or  
 30 (B) received a scholarship under this article in the  
 31 immediately preceding school year or the immediately  
 32 preceding term of the current school year and qualified  
 33 under clause (A) in the first year that the individual  
 34 received a scholarship under this article.

35 **Sec. 6. "Federal free or reduced price lunch program" refers to**  
 36 **the national free or reduced price lunch program established under**  
 37 **42 U.S.C. 1751 et seq.**

38 **Sec. 7. "School scholarship" refers to an educational scholarship**  
 39 **awarded by a scholarship granting organization.**

40 **Sec. 8. "Participating school" refers to a public or nonpublic**  
 41 **school:**

- 42 (1) that an eligible student is required to pay tuition to attend;  
 43 and  
 44 (2) that voluntarily agrees to enroll an eligible student.

45 **The term does not include a public school in a school corporation**  
 46 **where the eligible student has legal settlement under IC 20-26-11.**

47 **Sec. 9. "Scholarship granting organization" refers to an**  
 48 **organization that:**

1 (1) is exempt from federal income taxation under Section  
2 501(c)(3) of the Internal Revenue Code; and

3 (2) is organized at least in part to grant educational  
4 scholarships.

5 **Sec. 10. "Tuition and fees" means tuition, fees, and other costs**  
6 **that:**

7 (1) an eligible student; or

8 (2) a parent of an eligible student;

9 is required to pay to enroll the eligible student in an elementary  
10 school program or high school program of a participating school.  
11 The term includes any payment for textbooks, transportation, and  
12 uniforms if the payments are typical for all other students  
13 attending the participating school.

14 **Chapter 2. Exchange of Information; Rules**

15 **Sec. 1. The department of state revenue shall maintain a**  
16 **publically available list of the school scholarship programs that are**  
17 **certified by the department of state revenue. The list must contain**  
18 **names, addresses, and any other information that the department**  
19 **of state revenue determines is necessary for the public to determine**  
20 **which scholarship granting organizations conduct school**  
21 **scholarship programs. A current list must be posted on any**  
22 **Internet web site used by the department of state revenue to**  
23 **provide information to the public about educational matters.**

24 **Chapter 3. Educational Scholarship Organizations;**  
25 **Certification; Administration of Contributions**

26 **Sec. 1. As used in this chapter, "scholarship" refers to a school**  
27 **scholarship.**

28 **Sec. 2. A scholarship granting organization may apply to the**  
29 **department of state revenue for certification of an educational**  
30 **scholarship program as a school scholarship program.**

31 **Sec. 3. An educational scholarship program qualifies for**  
32 **certification as a school scholarship program if the applicant for**  
33 **certification:**

34 (1) is a scholarship granting organization;

35 (2) applies to the department of state revenue on the form and  
36 in the manner prescribed by the department of state revenue;

37 (3) enters into an agreement with the department of state  
38 revenue to comply with this article; and

39 (4) demonstrates the applicant's financial viability to the  
40 department of state revenue, if the applicant will receive at  
41 least fifty thousand dollars (\$50,000) in contributions in a  
42 school year, by filing with the department of state revenue  
43 before the beginning of the school year financial information  
44 that demonstrates the financial viability of the scholarship  
45 granting organization.

46 **Sec. 4. The department of state revenue shall certify all**  
47 **qualifying applicants for certification as scholarship granting**  
48 **organizations.**

1           **Sec. 5. An agreement must require a scholarship granting**  
 2 **organization to do the following:**

3           **(1) Provide a department of state revenue approved receipt to**  
 4 **taxpayers for contributions made to the scholarship granting**  
 5 **organization that will be used in a scholarship program. The**  
 6 **department of state revenue shall prescribe a standardized**  
 7 **form for a receipt to be issued by a scholarship granting**  
 8 **organization to a taxpayer that indicates the value of a**  
 9 **contribution and the amount of the contribution that is being**  
 10 **designated for use in a scholarship program.**

11           **(2) Distribute at least ninety percent (90%) of the total**  
 12 **amount of contributions as scholarships to eligible students.**

13           **(3) Distribute one hundred percent (100%) of any income**  
 14 **earned on contributions as scholarships to eligible students.**

15           **(4) Conduct criminal background checks on all the**  
 16 **scholarship granting organization's employees and board**  
 17 **members and exclude from employment or governance any**  
 18 **individual who might reasonably pose a risk to the**  
 19 **appropriate use of contributed funds.**

20           **(5) Maintain with the department of state revenue proof of the**  
 21 **scholarship granting organization's continuing financial**  
 22 **viability in the form required in section 3(4) of this chapter**  
 23 **for each school year in which the scholarship granting**  
 24 **organization will receive at least fifty thousand dollars**  
 25 **(\$50,000) in contributions.**

26           **(6) Make the reports required by this chapter.**

27           **Sec. 6. An agreement must prohibit a scholarship granting**  
 28 **organization from distributing scholarships for use by an eligible**  
 29 **student to:**

30           **(1) enroll in a school that has:**

31                   **(A) paid staff or board members; or**

32                   **(B) relatives of paid staff or board members;**

33           **in common with the scholarship granting support**  
 34 **organization;**

35           **(2) enroll in a school that the scholarship granting**  
 36 **organization knows does not qualify as a participating school;**  
 37 **or**

38           **(3) pay tuition and fees for a public school where the eligible**  
 39 **student is entitled to enroll without the payment of tuition.**

40           **Sec. 7. (a) A scholarship granting organization must publicly**  
 41 **report to the department of state revenue by August 1 of each year**  
 42 **the following information regarding the organization's**  
 43 **scholarships in the previous school year:**

44           **(1) The name and address of the scholarship granting**  
 45 **organization.**

46           **(2) The total number and total dollar amount of contributions**  
 47 **received during the previous school year.**

48           **(3) The:**

1 (A) total number and total dollar amount of scholarships  
2 awarded during the previous school year; and

3 (B) total number and total dollar amount of scholarships  
4 awarded during the previous school year to students  
5 qualifying for the federal free and reduced price lunch  
6 program.

7 (b) The report must be certified under penalties of perjury by  
8 the chief executive officer of the scholarship granting organization.

9 Sec. 8. The department of state revenue shall prescribe a  
10 standardized form for scholarship granting organizations to report  
11 information required under this chapter.

12 Sec. 9. The department of state revenue may, in a proceeding  
13 under IC 4-21.5, suspend or terminate the certification of an  
14 organization as a scholarship granting organization if the  
15 department of state revenue establishes that the scholarship  
16 granting organization has intentionally and substantially failed to  
17 comply with the requirements of this article or an agreement  
18 entered into under this article.

19 Sec. 10. If the department of state revenue suspends or  
20 terminates the certification of an organization as a scholarship  
21 granting organization, the department of state revenue shall notify  
22 affected scholarship students and their parents of the decision as  
23 quickly as possible. A scholarship student affected by a suspension  
24 or termination of a scholarship granting organization's  
25 certification shall remain an eligible student under this article until  
26 the end of the school year after the school year in which the  
27 scholarship granting organization's certification is suspended or  
28 terminated, regardless of whether the scholarship student qualifies  
29 for the federal free or reduced price lunch program.

30 Sec. 11. The department of state revenue may conduct either a  
31 financial review or an audit of a scholarship granting organization  
32 if the department has evidence of fraud."

33 Page 132, between lines 8 and 9, begin a new paragraph and insert:  
34 "SECTION 117. [EFFECTIVE JANUARY 1, 2007  
35 (RETROACTIVE)] (a) IC 6-3.1-30.5, as added by this act, applies to  
36 contributions made in taxable years beginning after December 31,  
37 2006.

38 (b) The division of family resources, after consultation with the  
39 department of state revenue, may adopt temporary rules in the  
40 manner provided for the adoption of emergency rules to implement  
41 IC 20-50, as added by this act. A temporary rule adopted under  
42 this SECTION expires on the earliest of the following:

43 (1) The date another temporary rule is adopted under this  
44 SECTION that supersedes or repeals the previously adopted  
45 temporary rule.

46 (2) The date that a permanent rule adopted under IC 4-22-2  
47 supersedes or repeals a temporary rule adopted under this  
48 SECTION.

- 1           **(3) The date specified in the temporary rule.**
- 2           **(4) June 30, 2009."**
- 3           Renumber all SECTIONS consecutively.  
(Reference is to EHB 1001 as printed April 6, 2007.)

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Senator STEELE