

FIRST REGULAR SESSION

SENATE BILL NO. 42

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CUNNINGHAM.

Pre-filed December 1, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

0509S.011

AN ACT

To repeal sections 163.011, 168.106, and 313.778, RSMo, and to enact in lieu thereof seven new sections relating to the teacher choice compensation package.

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

Section A. Sections 163.011, 168.106, and 313.778, RSMo, are repealed
2 and seven new sections enacted in lieu thereof, to be known as sections 163.011,
3 168.106, 168.745, 168.747, 168.749, 168.750, and 313.778, to read as follows:

163.011. As used in this chapter unless the context requires otherwise:

2 (1) "Adjusted operating levy", the sum of tax rates for the current year for
3 teachers' and incidental funds for a school district as reported to the proper
4 officer of each county pursuant to section 164.011, RSMo;

5 (2) "Average daily attendance", the quotient or the sum of the quotients
6 obtained by dividing the total number of hours attended in a term by resident
7 pupils between the ages of five and twenty-one by the actual number of hours
8 school was in session in that term. To the average daily attendance of the
9 following school term shall be added the full-time equivalent average daily
10 attendance of summer school students. "Full-time equivalent average daily
11 attendance of summer school students" shall be computed by dividing the total
12 number of hours, except for physical education hours that do not count as credit
13 toward graduation for students in grades nine, ten, eleven, and twelve, attended
14 by all summer school pupils by the number of hours required in section 160.011,
15 RSMo, in the school term. For purposes of determining average daily attendance
16 under this subdivision, the term "resident pupil" shall include all children
17 between the ages of five and twenty-one who are residents of the school district
18 and who are attending kindergarten through grade twelve in such district. If a

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 child is attending school in a district other than the district of residence and the
20 child's parent is teaching in the school district or is a regular employee of the
21 school district which the child is attending, then such child shall be considered
22 a resident pupil of the school district which the child is attending for such period
23 of time when the district of residence is not otherwise liable for tuition. Average
24 daily attendance for students below the age of five years for which a school
25 district may receive state aid based on such attendance shall be computed as
26 regular school term attendance unless otherwise provided by law;

27 (3) "Current operating expenditures":

28 (a) For the fiscal year 2007 calculation, "current operating expenditures"
29 shall be calculated using data from fiscal year 2004 and shall be calculated as all
30 expenditures for instruction and support services except capital outlay and debt
31 service expenditures minus the revenue from federal categorical sources; food
32 service; student activities; categorical payments for transportation costs pursuant
33 to section 163.161; state reimbursements for early childhood special education;
34 the career ladder entitlement for the district, as provided for in sections 168.500
35 to 168.515, RSMo; the vocational education entitlement for the district, as
36 provided for in section 167.332, RSMo; and payments from other districts;

37 (b) In every fiscal year subsequent to fiscal year 2007, current operating
38 expenditures shall be the amount in paragraph (a) **of this subdivision** plus any
39 increases in state funding pursuant to sections 163.031 and 163.043 subsequent
40 to fiscal year 2005, not to exceed five percent, per recalculation, of the state
41 revenue received by a district in the 2004-05 school year from the foundation
42 formula, line 14, gifted, remedial reading, exceptional pupil aid, fair share, and
43 free textbook payments for any district from the first preceding calculation of the
44 state adequacy target;

45 (4) "District's tax rate ceiling", the highest tax rate ceiling in effect
46 subsequent to the 1980 tax year or any subsequent year. Such tax rate ceiling
47 shall not contain any tax levy for debt service;

48 (5) "Dollar-value modifier", an index of the relative purchasing power of
49 a dollar, calculated as one plus fifteen percent of the difference of the regional
50 wage ratio minus one, provided that the dollar value modifier shall not be applied
51 at a rate less than 1.0:

52 (a) "County wage per job", the total county wage and salary disbursements
53 divided by the total county wage and salary employment for each county and the
54 city of St. Louis as reported by the Bureau of Economic Analysis of the United

55 States Department of Commerce for the fourth year preceding the payment year;

56 (b) "Regional wage per job":

57 a. The total Missouri wage and salary disbursements of the metropolitan

58 area as defined by the Office of Management and Budget divided by the total

59 Missouri metropolitan wage and salary employment for the metropolitan area for

60 the county signified in the school district number or the city of St. Louis, as

61 reported by the Bureau of Economic Analysis of the United States Department

62 of Commerce for the fourth year preceding the payment year and recalculated

63 upon every decennial census to incorporate counties that are newly added to the

64 description of metropolitan areas; or if no such metropolitan area is established,

65 then:

66 b. The total Missouri wage and salary disbursements of the micropolitan

67 area as defined by the Office of Management and Budget divided by the total

68 Missouri micropolitan wage and salary employment for the micropolitan area for

69 the county signified in the school district number, as reported by the Bureau of

70 Economic Analysis of the United States Department of Commerce for the fourth

71 year preceding the payment year, if a micropolitan area for such county has been

72 established and recalculated upon every decennial census to incorporate counties

73 that are newly added to the description of micropolitan areas; or

74 c. If a county is not part of a metropolitan or micropolitan area as

75 established by the Office of Management and Budget, then the county wage per

76 job, as defined in paragraph (a) of this subdivision, shall be used for the school

77 district, as signified by the school district number;

78 (c) "Regional wage ratio", the ratio of the regional wage per job divided by

79 the state median wage per job;

80 (d) "State median wage per job", the fifty-eighth highest county wage per

81 job;

82 (6) "Free and reduced lunch pupil count", the number of pupils eligible for

83 free and reduced lunch on the last Wednesday in January for the preceding school

84 year who were enrolled as students of the district, as approved by the department

85 in accordance with applicable federal regulations;

86 (7) "Free and reduced lunch threshold" shall be calculated by dividing the

87 total free and reduced lunch pupil count of every performance district that falls

88 entirely above the bottom five percent and entirely below the top five percent of

89 average daily attendance, when such districts are rank-ordered based on their

90 current operating expenditures per average daily attendance, by the total average

91 daily attendance of all included performance districts;

92 (8) "Limited English proficiency pupil count", the number in the preceding
93 school year of pupils aged three through twenty-one enrolled or preparing to
94 enroll in an elementary school or secondary school who were not born in the
95 United States or whose native language is a language other than English or are
96 Native American or Alaskan native, or a native resident of the outlying areas,
97 and come from an environment where a language other than English has had a
98 significant impact on such individuals' level of English language proficiency, or
99 are migratory, whose native language is a language other than English, and who
100 come from an environment where a language other than English is dominant; and
101 have difficulties in speaking, reading, writing, or understanding the English
102 language sufficient to deny such individuals the ability to meet the state's
103 proficient level of achievement on state assessments described in Public Law
104 107-10, the ability to achieve successfully in classrooms where the language of
105 instruction is English, or the opportunity to participate fully in society;

106 (9) "Limited English proficiency threshold" shall be calculated by dividing
107 the total limited English proficiency pupil count of every performance district that
108 falls entirely above the bottom five percent and entirely below the top five percent
109 of average daily attendance, when such districts are rank-ordered based on their
110 current operating expenditures per average daily attendance, by the total average
111 daily attendance of all included performance districts;

112 (10) "Local effort":

113 (a) For the fiscal year 2007 calculation, "local effort" shall be computed as
114 the equalized assessed valuation of the property of a school district in calendar
115 year 2004 divided by one hundred and multiplied by the performance levy less the
116 percentage retained by the county assessor and collector plus one hundred
117 percent of the amount received in fiscal year 2005 for school purposes from
118 intangible taxes, fines, escheats, payments in lieu of taxes and receipts from
119 state-assessed railroad and utility tax, one hundred percent of the amount
120 received for school purposes pursuant to the merchants' and manufacturers' taxes
121 under sections 150.010 to 150.370, RSMo, one hundred percent of the amounts
122 received for school purposes from federal properties under sections 12.070 and
123 12.080, RSMo, except when such amounts are used in the calculation of federal
124 impact aid pursuant to P.L. 81-874, fifty percent of Proposition C revenues
125 received for school purposes from the school district trust fund under section
126 163.087, and one hundred percent of any local earnings or income taxes received

127 by the district for school purposes. Under this paragraph, for a special district
128 established under sections 162.815 to 162.940, RSMo, in a county with a charter
129 form of government and with more than one million inhabitants, a tax levy of zero
130 shall be utilized in lieu of the performance levy for the special school district;

131 (b) In every year subsequent to fiscal year 2007, "local effort" shall be the
132 amount calculated under paragraph (a) of this subdivision plus any increase in
133 the amount received for school purposes from fines. If a district's assessed
134 valuation has decreased subsequent to the calculation outlined in paragraph (a)
135 of this subdivision, the district's local effort shall be calculated using the district's
136 current assessed valuation in lieu of the assessed valuation utilized in calculation
137 outlined in paragraph (a) of this subdivision;

138 (11) "Membership" shall be the average of:

139 (a) The number of resident full-time students and the full-time equivalent
140 number of part-time students who were enrolled in the public schools of the
141 district on the last Wednesday in September of the previous year and who were
142 in attendance one day or more during the preceding ten school days; and

143 (b) The number of resident full-time students and the full-time equivalent
144 number of part-time students who were enrolled in the public schools of the
145 district on the last Wednesday in January of the previous year and who were in
146 attendance one day or more during the preceding ten school days, plus the
147 full-time equivalent number of summer school pupils. "Full-time equivalent
148 number of part-time students" is determined by dividing the total number of
149 hours for which all part-time students are enrolled by the number of hours in the
150 school term. "Full-time equivalent number of summer school pupils" is
151 determined by dividing the total number of hours for which all summer school
152 pupils were enrolled by the number of hours required pursuant to section
153 160.011, RSMo, in the school term. Only students eligible to be counted for
154 average daily attendance shall be counted for membership;

155 (12) "Operating levy for school purposes", the sum of tax rates levied for
156 teachers' and incidental funds plus the operating levy or sales tax equivalent
157 pursuant to section 162.1100, RSMo, of any transitional school district containing
158 the school district, in the payment year, not including any equalized operating
159 levy for school purposes levied by a special school district in which the district is
160 located;

161 (13) "Performance district", any district that has met all performance
162 standards and indicators as established by the department of elementary and

163 secondary education for purposes of accreditation under section 161.092, RSMo,
164 and as reported on the final annual performance report for that district each year;

165 (14) "Performance levy", three dollars and forty-three cents;

166 (15) "School purposes" pertains to teachers' and incidental funds;

167 (16) "Special education pupil count", the number of public school students
168 with a current individualized education program and receiving services from the
169 resident district as of December first of the preceding school year, except for
170 special education services provided through a school district established under
171 sections 162.815 to 162.940, RSMo, in a county with a charter form of government
172 and with more than one million inhabitants, in which case the sum of the
173 students in each district within the county exceeding the special education
174 threshold of each respective district within the county shall be counted within the
175 special district and not in the district of residence for purposes of distributing the
176 state aid derived from the special education pupil count;

177 (17) "Special education threshold" shall be calculated by dividing the total
178 special education pupil count of every performance district that falls entirely
179 above the bottom five percent and entirely below the top five percent of average
180 daily attendance, when such districts are rank-ordered based on their current
181 operating expenditures per average daily attendance, by the total average daily
182 attendance of all included performance districts;

183 (18) "State adequacy target", the sum of the current operating
184 expenditures of every performance district that falls entirely above the bottom
185 five percent and entirely below the top five percent of average daily attendance,
186 when such districts are rank-ordered based on their current operating
187 expenditures per average daily attendance, divided by the total average daily
188 attendance of all included performance districts [plus the total amount of funds
189 placed in the schools first elementary and secondary education improvement fund
190 in the preceding fiscal year divided by the total average daily attendance of all
191 school districts for the preceding fiscal year]. The department of elementary and
192 secondary education shall first calculate the state adequacy target for fiscal year
193 2007 and recalculate the state adequacy target every two years using the most
194 current available data[; provided that the state adequacy target shall be
195 recalculated every year to reflect the per-pupil amount of funds placed in the
196 schools first elementary and secondary education improvement fund in the
197 preceding fiscal year]. The recalculation shall never result in a decrease from the
198 previous state adequacy target amount. Should a recalculation result in an

199 increase in the state adequacy target amount, fifty percent of that increase shall
200 be included in the state adequacy target amount in the year of recalculation, and
201 fifty percent of that increase shall be included in the state adequacy target
202 amount in the subsequent year. The state adequacy target may be adjusted to
203 accommodate available appropriations;

204 (19) "Teacher", any teacher, teacher-secretary, substitute teacher,
205 supervisor, principal, supervising principal, superintendent or assistant
206 superintendent, school nurse, social worker, counselor or librarian who shall,
207 regularly, teach or be employed for no higher than grade twelve more than
208 one-half time in the public schools and who is certified under the laws governing
209 the certification of teachers in Missouri;

210 (20) "Weighted average daily attendance", the average daily attendance
211 plus the product of twenty-five hundredths multiplied by the free and reduced
212 lunch pupil count that exceeds the free and reduced lunch threshold, plus the
213 product of seventy-five hundredths multiplied by the number of special education
214 pupil count that exceeds the special education threshold, and plus the product of
215 six-tenths multiplied by the number of limited English proficiency pupil count
216 that exceeds the limited English proficiency threshold. For special districts
217 established under sections 162.815 to 162.940, RSMo, in a county with a charter
218 form of government and with more than one million inhabitants, weighted
219 average daily attendance shall be the average daily attendance plus the product
220 of twenty-five hundredths multiplied by the free and reduced lunch pupil count
221 that exceeds the free and reduced lunch threshold, plus the product of
222 seventy-five hundredths multiplied by the sum of the special education pupil
223 count that exceeds the threshold for each county district, plus the product of
224 six-tenths multiplied by the limited English proficiency pupil count that exceeds
225 the limited English proficiency threshold. None of the districts comprising a
226 special district established under sections 162.815 to 162.940, RSMo, in a county
227 with a charter form of government and with more than one million inhabitants,
228 shall use any special education pupil count in calculating their weighted average
229 daily attendance.

168.106. The contract between a school district and a permanent teacher
2 shall be known as an indefinite contract and shall continue in effect for an
3 indefinite period, subject only to:

4 (1) Compulsory or optional retirement when the teacher reaches the age
5 of retirement provided by law, or regulation established by the local board of

6 education;

7 (2) Modification by a succeeding indefinite contract or contracts in the
8 manner hereinafter provided;

9 (3) The death of the teacher;

10 (4) Resignation of the teacher with the written consent of the school
11 board;

12 (5) Termination by the board of education after a hearing as hereinafter
13 provided; [and]

14 (6) The revocation of the teacher's certificate; and

15 (7) **A decision by the teacher to follow the teacher choice**
16 **compensation package under sections 168.745 to 168.750 in a district**
17 **and give up the right to an indefinite contract.**

168.745. 1. **There is hereby created the "Teacher Choice**
2 **Compensation Package" to permit performance-based salary stipends**
3 **upon the decision of the teacher as described in section 168.747, to**
4 **reward teachers for objectively demonstrated superior performance.**

5 2. **There is hereby created the "Teacher Choice Compensation**
6 **Fund" in the state treasury. The fund shall be administered by the**
7 **department of elementary and secondary education. The state**
8 **treasurer shall be custodian of the fund and may approve**
9 **disbursements from the fund in accordance with sections 30.170 and**
10 **30.180, RSMo.**

11 3. **The teacher choice compensation fund shall consist of all**
12 **moneys transferred to it under this section, and all moneys otherwise**
13 **appropriated to or donated to it. Notwithstanding the provisions of**
14 **section 33.080, RSMo, to the contrary, any moneys remaining in the**
15 **fund at the end of the biennium shall not revert to the credit of the**
16 **general revenue fund. The state treasurer shall invest moneys in the**
17 **fund in the same manner as other funds are invested. Any interest and**
18 **moneys earned on such investments shall be credited to the fund.**

168.747. 1. **To be eligible for the teacher choice compensation**
2 **package, all classroom personnel reported as a code forty, fifty, or sixty**
3 **through the core data system of the department of elementary and**
4 **secondary education shall opt out of his or her indefinite contract**
5 **under section 168.106 for the duration of employment with the district.**
6 **A teacher may decide to end his or her eligibility for the teacher choice**
7 **stipend but may not resume permanent teacher status with that**

8 district. A probationary teacher may opt out of consideration for a
9 permanent contract in the second or subsequent years of employment
10 by the district to participate in the teacher choice compensation
11 package but may not return to permanent status in that district or
12 resume the process for qualification for an indefinite contract in that
13 district. A teacher who has chosen the teacher choice compensation
14 package and changes employment to another district may choose to
15 resume the process for qualification for an indefinite contract in that
16 district or may choose to remain in the teacher choice compensation
17 package of the new district.

18 2. Teachers shall qualify annually in October for the stipends
19 described in section 168.749. Stipends shall be offered in five thousand
20 dollar increments, up to fifteen thousand dollars, but shall not exceed
21 fifty percent of a teacher's base salary, before deductions for
22 retirement but including designated pay for additional duties such as
23 coaching, sponsoring, or mentoring. Any stipend received under
24 section 168.749 shall be in addition to the base salary to which the
25 teacher would otherwise be entitled. Teachers receiving the stipend
26 shall receive any pay and benefits received by teachers of similar
27 training, experience, and duties. Such stipends shall not be considered
28 compensation for retirement purposes.

29 3. Subject to appropriation, the department of elementary and
30 secondary education shall make a payment to the district in the amount
31 of the stipend, to be delivered as a lump sum in January following the
32 October of qualification. If the amount appropriated is not enough to
33 fund the total of five thousand dollar increment payments, the
34 department may prorate the payments.

35 4. Every person employed by the district in a teaching position,
36 regardless of the certification status of the person, who qualifies under
37 any of the indicators listed in section 168.749 is eligible for the teacher
38 choice compensation package. Teachers who are employed less than
39 full-time are eligible for teacher choice stipends on a pro-rated
40 basis. Any teacher who is dismissed for cause who has otherwise
41 qualified for a teacher choice stipend shall forfeit the stipend for that
42 year.

168.749. 1. Beginning with school year 2010-2011, teachers who
2 elect to participate in the teacher choice compensation package shall

3 be eligible for stipends based on the following criteria:

4 (1) Score on a value-added test instrument or instruments. Such
5 instruments shall be defined as those which give a reliable
6 measurement of the skills and knowledge transferred to students
7 during the time they are in a teacher's classroom and shall be selected
8 by the school district from one or more of the following assessments:

9 (a) A list of recognized value-added instruments developed by
10 the department of elementary and secondary education;

11 (b) Scores on the statewide assessments established under
12 section 160.518, RSMo, may be used for this purpose, and the
13 department of elementary and secondary education shall develop a
14 procedure for identifying the value added by teachers that addresses
15 the fact that not all subjects are tested at all grade levels each year
16 under the state assessment program;

17 (c) Scores on annual tests required by the federal Elementary
18 and Secondary Education Act reauthorization of 2002 for third through
19 eighth grade may be used as value-added instruments if found
20 appropriate after consideration and approval by the state board of
21 education;

22 (d) A district may choose an instrument after a public hearing
23 of the district board of education on the matter, with the reasons for
24 the selection entered upon the minutes of the meeting; provided,
25 however, that this option shall not be available to districts after scores
26 are established for paragraphs (a), (b), and (c) of this subdivision;

27 (2) Evaluations by principals or other administrators with
28 expertise to evaluate classroom performance;

29 (3) Evaluations by parents and by students at their appropriate
30 developmental level.

31 Model instruments for these evaluations shall be developed or
32 identified by the department of elementary and secondary
33 education. Districts may use such models, may use other existing
34 models, or may develop their own instruments. A district that develops
35 its own instrument shall not use that instrument as its sole method of
36 evaluation.

37 2. The department of elementary and secondary education shall
38 develop criteria for determining eligibility for stipend increments,
39 including a range of target scores on assessments for use by the

40 districts. The test-score options listed in subdivision (1) of subsection
41 1 of this section shall be given higher weight than the evaluation
42 options listed in subdivisions (2) and (3) of subsection 1 of this
43 section. The decision of individual districts about the qualifications for
44 each increment based on the evaluations listed in subdivisions (2) and
45 (3) of subsection 1 of this section and for value-added instruments for
46 which target scores have not been developed by the department of
47 elementary and secondary education may address the district's unique
48 characteristics but shall require demonstrably superior performance
49 on the part of the teacher, based primarily on improved student
50 achievement while taking into account classroom demographics
51 including but not limited to students' abilities, special needs, and class
52 size.

168.750. Any rule or portion of a rule, as that term is defined in
2 section 536.010, RSMo, that is created under the authority delegated in
3 sections 168.745 to 168.749 shall become effective only if it complies
4 with and is subject to all of the provisions of chapter 536, RSMo, and,
5 if applicable, section 536.028, RSMo. This section and chapter 536,
6 RSMo, are nonseverable and if any of the powers vested with the
7 general assembly pursuant to chapter 536, RSMo, to review, to delay
8 the effective date, or to disapprove and annul a rule are subsequently
9 held unconstitutional, then the grant of rulemaking authority and any
10 rule proposed or adopted after August 28, 2009, shall be invalid and
11 void.

313.778. 1. There is hereby created in the state treasury the "Schools
2 First Elementary and Secondary Education Improvement Fund", which shall
3 consist of taxes on excursion gambling boat proceeds as provided in subsection 2
4 of section 160.534, RSMo, to be used solely for the purpose of increasing funding
5 for elementary and secondary education. The schools first elementary and
6 secondary education improvement fund shall be state revenues collected from
7 gaming activities for purposes of article III, section 39(d) of the
8 constitution. [Moneys in the schools first elementary and secondary education
9 improvement fund shall be kept separate from the general revenue fund as well
10 as any other funds or accounts in the state treasury.] The state treasurer shall
11 be custodian of the fund and may approve disbursements from the fund in
12 accordance with sections 30.170 and 30.180, RSMo. Notwithstanding the
13 provisions of section 33.080, RSMo, to the contrary, any moneys remaining in the

14 fund at the end of the biennium shall not revert to the credit of the general
15 revenue fund. The state treasurer shall invest moneys in the fund in the same
16 manner as other funds are invested. Any interest and moneys earned on such
17 investments shall be credited to the fund.

18 **2. Moneys in the fund shall be transferred to the fund created in**
19 **section 168.745, RSMo, to be used for purposes of sections 168.745 to**
20 **168.750, RSMo.**

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