

**First Regular Session
Sixty-fourth General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 03-0510.01 Jason Gelender

HOUSE BILL 03-1137

HOUSE SPONSORSHIP

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A BILL FOR AN ACT

101 **CONCERNING A CREDIT AGAINST STATE INCOME TAX FOR**
102 **CONTRIBUTIONS TO NONPROFIT ORGANIZATIONS THAT PROVIDE**
103 **RESOURCES FOR EDUCATION, AND MAKING AN APPROPRIATION**
104 **IN CONNECTION THEREWITH.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

For any income tax year commencing on or after January 1, 2003, but before January 1, 2013, allows an income tax credit to any taxpayer who makes a qualifying contribution to a specified designated nonprofit organization that the contributor designates to be forwarded to a certified nonprofit educational assistance organization that will use the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

HOUSE
Amended 3rd Reading
March 24, 2003

HOUSE
Amended 2nd Reading
March 14, 2003

contribution to provide scholarships or other specified forms of assistance to income-qualified students who attend eligible schools that agree to provide annual testing to measure the academic agreement and growth of such students or to make donations to qualified public school foundations.

Specifies that if the amount of the credit exceeds a taxpayer's income tax liability, the excess may be carried forward for up to five years. Specifies that a qualifying contribution is a donation of money of not less than \$25 or more than \$25,000 if made by an individual, not less than \$50 or more than \$50,000 if made by 2 individuals filing a joint income tax return, or not less than \$1,000 or more than \$50,000 if made by any taxpayer that is an entity other than an individual.

Limits the total amount of credits to be awarded annually. Specifies procedural requirements for claiming the credit.

Specifies the criteria that a foundation must meet to be a qualified school district foundation. Requires the department of revenue to contractually designate a nonprofit organization to certify nonprofit educational assistance organizations, to forward qualifying contributions to the qualified school district foundations and certified nonprofit educational assistance organizations, and to administer the credit. Specifies requirements that an organization must meet to be selected as the designated nonprofit organization. Establishes certification criteria for nonprofit educational assistance organizations, including a requirement that a nonprofit educational assistance organization allocate between 25% and 40% of the qualifying contributions it receives to qualified school district foundations or for the purpose of assisting income-qualified students who attend public elementary schools or public secondary schools in Colorado in defraying specified types of education-related costs.

Requires the designated nonprofit organization to approve applications for tax credits up to the limit on the total amount of credits to be awarded annually for such contributions in the order for which the credits were applied. Specifies the process by which contributions and applications for approval of a tax credit are made to the designated nonprofit organization.

Requires the designated nonprofit organization to submit an annual report to the state auditor and the legislative audit committee that evaluates the implementation of the credit and provides information concerning the amounts of credits claimed and allowed. Allows the state auditor to audit the report.

Requires the state auditor to submit a report on the implementation and effects of the credit to the house and senate education committees by a specified date, and specifies the information that the report must include. Requires the state auditor to consult with the department of education in preparing the report.

Makes legislative findings and declarations. Defines terms.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 22-2-112 (1), Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

4 **22-2-112. Commissioner - duties.** (1) Subject to the supervision
5 of the state board, the commissioner has the following duties:

6 (p) TO ENTER INTO AGREEMENTS AS DESCRIBED IN SECTION
7 39-22-529 (2) (c) (II), C.R.S., WITH ELIGIBLE SCHOOLS, AS DEFINED IN
8 SECTION 39-22-529 (2) (c), C.R.S.

9 **SECTION 2.** Part 5 of article 22 of title 39, Colorado Revised
10 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
11 read:

12 **39-22-529. Credits for contributions to nonprofit educational**
13 **assistance organizations - legislative declaration - administration of**
14 **credit.** (1) **Legislative declaration.** THE GENERAL ASSEMBLY HEREBY
15 FINDS AND DECLARES THAT:

16 (a) THE EDUCATIONAL DEVELOPMENT AND ACADEMIC GROWTH OF
17 YOUNG PEOPLE ARE CRITICAL TO THEIR FUTURE SUCCESS AND THE FUTURE
18 SUCCESS OF THE STATE;

19 (b) EACH CHILD IS UNIQUE AND HAS INDIVIDUAL NEEDS THAT MAY
20 BE SERVED BY EXPANDED EDUCATIONAL OPPORTUNITIES;

21 (c) THE DROPOUT RATE CONCERNS THIS STATE AND IT IS IN THE
22 INTEREST OF ALL COLORADANS FOR THE STATE TO TAKE STEPS TO REDUCE
23 THE DROPOUT RATE; AND

24 (d) THE CREDIT AGAINST STATE INCOME TAX AUTHORIZED BY THIS
25 SECTION FOR ANY CONTRIBUTIONS DESIGNATED BY THE CONTRIBUTOR FOR

1 FORWARDING TO A CERTIFIED NONPROFIT EDUCATIONAL ASSISTANCE
2 ORGANIZATION THAT PROVIDES SCHOLARSHIPS WILL EXPAND THE NUMBER
3 AND DIVERSITY OF EDUCATIONAL OPPORTUNITIES AVAILABLE TO CHILDREN
4 OF FAMILIES THAT HAVE LIMITED FINANCIAL RESOURCES AND INCREASE
5 THE ACADEMIC ACHIEVEMENTS AND PROGRESS OF THE CHILDREN OF
6 COLORADO.

7 (2) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT
8 OTHERWISE REQUIRES:

9 (a) "CERTIFIED NONPROFIT EDUCATIONAL ASSISTANCE
10 ORGANIZATION" MEANS A NONPROFIT EDUCATIONAL ASSISTANCE
11 ORGANIZATION THAT IS CERTIFIED PURSUANT TO SUBSECTION (5) OF THIS
12 SECTION.

13 (b) "DESIGNATED NONPROFIT ORGANIZATION" MEANS THE
14 NONPROFIT ORGANIZATION CONTRACTED WITH BY THE DEPARTMENT OF
15 REVENUE PURSUANT TO SUBSECTION (4) OF THIS SECTION.

16 (c) "ELIGIBLE SCHOOL" MEANS A NONPUBLIC ELEMENTARY SCHOOL
17 OR SECONDARY SCHOOL, OR A CERTIFIED EDUCATIONAL CLINIC, AS
18 DEFINED IN SECTION 22-27-102 (2), C.R.S., THAT IS LOCATED WITHIN
19 COLORADO, THAT DOES NOT DISCRIMINATE ON THE BASIS OF DISABILITY,
20 RACE, COLOR, RELIGION, ETHNIC BACKGROUND, OR NEED FOR SPECIAL
21 SERVICES, AND THAT HAS ENTERED INTO AN AGREEMENT WITH THE
22 COMMISSIONER OF EDUCATION, AS AUTHORIZED BY SECTION 22-2-112 (1)
23 (p), C.R.S., THAT REQUIRES ANY STUDENT WHO ATTENDS THE NONPUBLIC
24 SCHOOL OR CERTIFIED EDUCATIONAL CLINIC AND RECEIVES A
25 SCHOLARSHIP FROM A CERTIFIED NONPROFIT EDUCATIONAL ASSISTANCE
26 ORGANIZATION TO TAKE ALL STATEWIDE ASSESSMENTS REQUIRED OF
27 STUDENTS AT THE SAME GRADE LEVEL WHO ATTEND PUBLIC SCHOOLS

1 UNDER THE COLORADO STUDENT ASSESSMENT PROGRAM ESTABLISHED IN
2 PART 4 OF ARTICLE 7 OF TITLE 22, C.R.S., AND THAT ALSO ALLOWS THE
3 SCHOOL TO HAVE THE STUDENT ANNUALLY TESTED BY A RECOGNIZED
4 TESTING FIRM AND PAID FOR BY THE APPLICABLE PRIVATE SCHOOL SO THAT
5 THE STUDENT'S ACADEMIC ACHIEVEMENT AND GROWTH CAN BE MEASURED
6 IN ACCORDANCE WITH PART 6 OF ARTICLE 7 OF TITLE 22, C.R.S.

7 (d) (I) "FUNDED PUBLIC-TO-PRIVATE STUDENT" MEANS AN
8 INCOME-QUALIFIED STUDENT ATTENDING AN ELIGIBLE SCHOOL WHO:

9 (A) WAS ENROLLED IN A PUBLIC SCHOOL OR CHARTER SCHOOL OF
10 A SCHOOL DISTRICT IN COLORADO AND WAS NOT ENROLLED IN ANY
11 PRIVATE SCHOOL, HAD NOT PARTICIPATED IN A NONPUBLIC HOME-BASED
12 EDUCATION PROGRAM, AND HAD NOT PARTICIPATED IN HOME INSTRUCTION
13 BY A LICENSED OR CERTIFIED TEACHER DURING THE ACADEMIC YEAR THAT
14 IMMEDIATELY PRECEDED ANY ACADEMIC YEAR IN WHICH A CERTIFIED
15 NONPROFIT EDUCATIONAL ASSISTANCE ORGANIZATION PROVIDES A
16 SCHOLARSHIP IN AN AMOUNT EQUAL TO AT LEAST FIFTY PERCENT OF THE
17 STUDENT'S ANNUAL TUITION TO THE STUDENT; OR

18 (B) IF THE STUDENT HAS RECEIVED SCHOLARSHIPS FROM A
19 CERTIFIED NONPROFIT EDUCATIONAL ASSISTANCE ORGANIZATION IN TWO
20 OR MORE CONSECUTIVE STATE FISCAL YEARS, WAS ENROLLED IN A PUBLIC
21 SCHOOL OR CHARTER SCHOOL OF A SCHOOL DISTRICT IN COLORADO AND
22 WAS NOT ENROLLED IN ANY PRIVATE SCHOOL, HAD NOT PARTICIPATED IN
23 A NONPUBLIC HOME-BASED EDUCATION PROGRAM, AND HAD NOT
24 PARTICIPATED IN HOME INSTRUCTION BY A LICENSED OR CERTIFIED
25 TEACHER DURING THE ACADEMIC YEAR THAT IMMEDIATELY PRECEDED THE
26 FIRST ACADEMIC YEAR IN WHICH A CERTIFIED NONPROFIT EDUCATIONAL
27 ASSISTANCE ORGANIZATION PROVIDES A SCHOLARSHIP IN AN AMOUNT

1 EQUAL TO AT LEAST FIFTY PERCENT OF THE STUDENT'S ANNUAL TUITION TO
2 THE STUDENT.

3 (II) FOR PURPOSES OF THIS PARAGRAPH (d), "ACADEMIC YEAR"
4 MEANS AN ACADEMIC YEAR AS DEFINED IN SECTION 22-33-102 (1), C.R.S.

5 (e) "INCOME-QUALIFIED STUDENT" MEANS AN ELEMENTARY
6 SCHOOL OR SECONDARY SCHOOL STUDENT WHO:

7 (I) IS A MEMBER OF A HOUSEHOLD WHOSE ANNUAL HOUSEHOLD
8 INCOME FOR THE CALENDAR YEAR PRECEDING ANY YEAR IN WHICH A
9 SCHOLARSHIP IS TO BE AWARDED TO THE STUDENT BY A CERTIFIED
10 NONPROFIT EDUCATIONAL ASSISTANCE ORGANIZATION DOES NOT EXCEED
11 ONE HUNDREDEIGHTY-FIVE PERCENT OF THE FEDERAL POVERTY LEVEL; OR

12 (II) IS A MEMBER OF A HOUSEHOLD:

13 (A) WHOSE ANNUAL HOUSEHOLD INCOME FOR THE CALENDAR
14 YEAR THAT PRECEDED THE FIRST YEAR IN WHICH THE STUDENT WAS
15 AWARDED A SCHOLARSHIP BY A CERTIFIED NONPROFIT EDUCATIONAL
16 ASSISTANCE ORGANIZATION DID NOT EXCEED ONE HUNDRED EIGHTY-FIVE
17 PERCENT OF THE FEDERAL POVERTY LEVEL; AND

18 (B) WHOSE ANNUAL HOUSEHOLD INCOME WHILE THE STUDENT HAS
19 BEEN RECEIVING SCHOLARSHIPS FROM A CERTIFIED NONPROFIT
20 EDUCATIONAL ASSISTANCE ORGANIZATION HAS SUBSEQUENTLY EXCEEDED
21 ONE HUNDRED EIGHTY-FIVE PERCENT OF THE FEDERAL POVERTY LEVEL
22 FOR A PERIOD OF NOT MORE THAN TWO CONSECUTIVE CALENDAR YEARS.

23 (f) "NONPROFIT EDUCATIONAL ASSISTANCE ORGANIZATION" MEANS
24 A NONPROFIT ORGANIZATION THAT IS DEDICATED TO PROVIDING FINANCIAL
25 ASSISTANCE TO DEFRAY EDUCATIONAL EXPENSES OF ELEMENTARY SCHOOL
26 AND SECONDARY SCHOOL STUDENTS.

27 (g) "QUALIFIED SCHOOL DISTRICT FOUNDATION" MEANS A

1 NONPROFIT FOUNDATION CREATED BY A SCHOOL DISTRICT TO RECEIVE AND
2 EXPEND MONETARY CONTRIBUTIONS THAT:

3 (I) IS EXEMPT FROM FEDERAL TAXATION UNDER SECTION 501 (c)
4 (3) OF THE INTERNAL REVENUE CODE; AND

5 (II) BEFORE ACCEPTING ANY DONATION FROM A CERTIFIED
6 NONPROFIT EDUCATIONAL ASSISTANCE ORGANIZATION, PROVIDES TO THE
7 ORGANIZATION A STATEMENT FROM THE BOARD OF THE FOUNDATION OR
8 OTHER GOVERNING BODY OF THE FOUNDATION THAT INDICATES THAT THE
9 DONATION WILL BE USED FOR THE SOLE PURPOSE OF IMPROVING THE
10 ACADEMIC PERFORMANCE OF THE STUDENTS OF ANY PUBLIC SCHOOL
11 WITHIN THE DISTRICT THAT HAS BEEN ASSIGNED AN ACADEMIC
12 PERFORMANCE RATING OF "LOW" PURSUANT TO SECTION 22-7-604 (5) (b)
13 (I)(D), C.R.S., OR "UNSATISFACTORY" PURSUANT TO SECTION 22-7-604 (5)
14 (b) (I) (E), C.R.S., FOR THE SCHOOL YEAR IN WHICH THE QUALIFYING
15 CONTRIBUTION IS MADE OR FOR AT LEAST ONE OF THE THREE PRECEDING
16 SCHOOL YEARS.

17 (h) "QUALIFYING CONTRIBUTION" MEANS ONE OR MORE
18 DONATIONS OF MONEY MADE ON OR AFTER JULY 1, 2003, TO THE
19 DESIGNATED NONPROFIT ORGANIZATION AND DESIGNATED BY THE
20 CONTRIBUTOR FOR FORWARDING TO A CERTIFIED NONPROFIT
21 EDUCATIONAL ASSISTANCE ORGANIZATION OF NOT LESS THAN
22 TWENTY-FIVE DOLLARS AND NOT MORE THAN TWENTY-FIVE THOUSAND
23 DOLLARS IN THE AGGREGATE IN ANY INCOME TAX YEAR IF MADE BY AN
24 INDIVIDUAL, NOT LESS THAN FIFTY DOLLARS AND NOT MORE THAN FIFTY
25 THOUSAND DOLLARS IN THE AGGREGATE IN ANY INCOME TAX YEAR IF
26 MADE BY TWO INDIVIDUALS FILING A JOINT INCOME TAX RETURN, OR NOT
27 LESS THAN ONE THOUSAND DOLLARS AND NOT MORE THAN FIFTY

1 THOUSAND DOLLARS IN THE AGGREGATE IN ANY INCOME TAX YEAR IF
2 MADE BY ANY TAXPAYER THAT IS AN ENTITY OTHER THAN AN INDIVIDUAL.
3 "QUALIFYING CONTRIBUTION" DOES NOT INCLUDE A PAYMENT FOR
4 TUITION, ACTIVITY FEES, OR OTHER EDUCATIONAL EXPENSES OF THE
5 TAXPAYER MAKING THE PAYMENT, A SPOUSE OR DEPENDENT OF SUCH
6 TAXPAYER, OR ANY INDIVIDUAL STUDENT IDENTIFIED BY NAME BY SUCH
7 TAXPAYER AS THE INTENDED BENEFICIARY OF THE PAYMENT.

8 (3) **Income tax credit.** (a) (I) FOR ANY INCOME TAX YEAR
9 COMMENCING ON OR AFTER JANUARY 1, 2003, BUT BEFORE JANUARY 1,
10 2013, THERE SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY
11 THIS ARTICLE TO ANY TAXPAYER WHO MAKES A QUALIFYING
12 CONTRIBUTION TO THE DESIGNATED NONPROFIT ORGANIZATION FOR
13 FORWARDING TO A CERTIFIED NONPROFIT EDUCATIONAL ASSISTANCE
14 ORGANIZATION AND RECEIVES APPROVAL OF AN APPLICATION FOR AND A
15 RECEIPT FOR A TAX CREDIT FROM THE DESIGNATED NONPROFIT
16 ORGANIZATION IN ACCORDANCE WITH PARAGRAPH (c) OF SUBSECTION (6)
17 OF THIS SECTION.

18 (II) THE CREDIT ALLOWED BY THIS PARAGRAPH (a) SHALL BE IN AN
19 AMOUNT EQUAL TO FIFTY PERCENT OF THE TOTAL AMOUNT OF THE
20 TAXPAYER'S QUALIFYING CONTRIBUTIONS MADE DURING THE INCOME TAX
21 YEAR FOR WHICH THE CREDIT IS CLAIMED. HOWEVER, THE TOTAL AMOUNT
22 OF CREDITS APPROVED BY THE DESIGNATED NONPROFIT ORGANIZATION
23 SHALL NOT EXCEED:

24 (A) THREE MILLION DOLLARS FOR THE CALENDAR YEAR
25 COMMENCING JANUARY 1, 2003;

26 (B) FOUR MILLION DOLLARS FOR THE CALENDAR YEAR
27 COMMENCING JANUARY 1, 2004;

1 (C) FIVE MILLION DOLLARS FOR THE CALENDAR YEAR
2 COMMENCING JANUARY 1, 2005;

3 (D) SIX MILLION DOLLARS FOR THE CALENDAR YEAR COMMENCING
4 JANUARY 1, 2006;

5 (E) SEVEN MILLION DOLLARS FOR THE CALENDAR YEAR
6 COMMENCING JANUARY 1, 2007;

7 (F) EIGHT MILLION DOLLARS FOR THE CALENDAR YEAR
8 COMMENCING JANUARY 1, 2008;

9 (G) NINE MILLION DOLLARS FOR THE CALENDAR YEAR
10 COMMENCING JANUARY 1, 2009; AND

11 (H) TEN MILLION DOLLARS FOR THE CALENDAR YEAR
12 COMMENCING JANUARY 1, 2010, AND FOR EACH SUCCEEDING CALENDAR
13 YEAR THAT COMMENCES BEFORE JANUARY 1, 2013.

14 (III) IF THE AMOUNT OF THE CREDIT ALLOWED BY THIS PARAGRAPH
15 (a) EXCEEDS THE AMOUNT OF INCOME TAXES DUE ON THE TAXPAYER'S
16 INCOME IN THE INCOME TAX YEAR FOR WHICH THE CREDIT IS BEING
17 CLAIMED, THE AMOUNT OF THE CREDIT NOT USED AS AN OFFSET AGAINST
18 INCOME TAXES IN SAID INCOME TAX YEAR MAY BE CARRIED FORWARD AND
19 USED AS A CREDIT AGAINST SUBSEQUENT TAX YEARS' INCOME TAX
20 LIABILITY FOR A PERIOD NOT TO EXCEED FIVE YEARS AND SHALL BE
21 APPLIED FIRST TO THE EARLIEST INCOME TAX YEARS POSSIBLE. ANY
22 CREDIT REMAINING AFTER SAID PERIOD SHALL NOT BE REFUNDED OR
23 CREDITED TO THE TAXPAYER.

24 (b) THE DESIGNATED NONPROFIT ORGANIZATION SHALL APPROVE
25 APPLICATIONS FOR TAX CREDITS AUTHORIZED BY PARAGRAPH (a) OF THIS
26 SUBSECTION (3) IN THE ORDER FOR WHICH THEY WERE APPLIED AND SHALL
27 NOT APPROVE CREDITS IN EXCESS OF THE MAXIMUM AMOUNT OF CREDITS

1 THAT MAY BE CLAIMED BY ALL TAXPAYERS IN ANY CALENDAR YEAR
2 PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS SUBSECTION
3 (3).

4 (c) IN THE CASE OF A TAXPAYER THAT IS A PARTNERSHIP, S
5 CORPORATION, OR OTHER SIMILAR PASS-THROUGH ENTITY, THE AMOUNT
6 OF ANY CREDIT ALLOWED PURSUANT TO THIS SUBSECTION (3) SHALL BE
7 ALLOCATED TO THE ENTITY'S PARTNERS, MEMBERS, OR SHAREHOLDERS IN
8 PROPORTION TO THE PARTNERS', MEMBERS', OR SHAREHOLDERS'
9 DISTRIBUTIVE SHARES OF INCOME FROM SUCH ENTITY.

10 (d) ON OR BEFORE JANUARY 20, 2004, AND ON OR BEFORE EACH
11 SUCCEEDING JANUARY 20 THROUGH JANUARY 20, 2013, THE DESIGNATED
12 NONPROFIT ORGANIZATION SHALL PROVIDE A REPORT TO THE EXECUTIVE
13 DIRECTOR. THE REPORT SHALL IDENTIFY EACH TAXPAYER WHO MAY
14 CLAIM A CREDIT FOR QUALIFYING CONTRIBUTIONS MADE DURING THE
15 PRECEDING CALENDAR YEAR BY NAME, ADDRESS, AND SOCIAL SECURITY
16 NUMBER OR OTHER FEDERAL TAX IDENTIFICATION NUMBER, AND SHALL
17 LIST THE AMOUNT OF THE CREDIT ALLOWED TO BE CLAIMED BY EACH
18 TAXPAYER. THE REPORT SHALL LIST ANY CONTRIBUTION MADE BY A
19 PASS-THROUGH ENTITY BY THE NAMES OF THE TAXPAYERS WHO WILL
20 ULTIMATELY CLAIM A CREDIT FOR THE CONTRIBUTION. THE DESIGNATED
21 NONPROFIT ORGANIZATION SHALL MAINTAIN THE RECORDS OF A CREDIT
22 APPLICATION AND APPROVED CONTRIBUTION FOR AT LEAST THE FOUR
23 CALENDAR YEARS FOLLOWING THE YEAR IN WHICH THE CONTRIBUTION IS
24 MADE.

25 (4) **Designated nonprofit organization.** THE DEPARTMENT OF
26 REVENUE SHALL ENTER INTO A CONTRACT WITH A NONPROFIT
27 ORGANIZATION UNDER WHICH THE NONPROFIT ORGANIZATION SHALL BE

1 DESIGNATED TO CERTIFY NONPROFIT EDUCATIONAL ASSISTANCE
2 ORGANIZATIONS, ACCEPT QUALIFYING CONTRIBUTIONS, APPROVE
3 APPLICATIONS FOR THE CREDIT ALLOWED BY SUBSECTION (3) OF THIS
4 SECTION, DISTRIBUTE QUALIFYING CONTRIBUTIONS TO CERTIFIED
5 NONPROFIT EDUCATIONAL ASSISTANCE ORGANIZATIONS, AND COORDINATE
6 WITH THE DEPARTMENT IN ADMINISTERING THE CREDIT ALLOWED BY
7 SUBSECTION (3) OF THIS SECTION. TO QUALIFY FOR DESIGNATION, A
8 NONPROFIT ORGANIZATION SHALL:

9 (a) BE EXEMPT FROM TAXATION UNDER SECTION 501 (c) (3) OF THE
10 INTERNAL REVENUE CODE; AND

11 (b) HAVE THE ADMINISTRATIVE CAPABILITY TO PROMOTE THE
12 SUCCESS OF THE CREDIT ALLOWED BY SUBSECTION (3) OF THIS SECTION BY
13 RECRUITING AND COORDINATING ACTIVITIES WITH ALL INTERESTED
14 NONPROFIT EDUCATIONAL ASSISTANCE ORGANIZATIONS IN COLORADO AND
15 CERTIFYING THOSE NONPROFIT EDUCATIONAL ASSISTANCE ORGANIZATIONS
16 THAT MEET THE CERTIFICATION CRITERIA SET FORTH IN SUBSECTION (5) OF
17 THIS SECTION.

18 (5) **Certification of nonprofit educational assistance**
19 **organizations.** (a) THE DESIGNATED NONPROFIT ORGANIZATION SHALL
20 CERTIFY ANY NONPROFIT EDUCATIONAL ASSISTANCE ORGANIZATION THAT
21 APPLIES FOR CERTIFICATION AND MEETS THE REQUIREMENTS OF THIS
22 SUBSECTION (5). INITIAL CERTIFICATION SHALL LAST FOR A PERIOD OF
23 TWO YEARS AND SHALL BE RENEWED FOR ADDITIONAL TWO-YEAR PERIODS
24 UNLESS A CERTIFIED NONPROFIT EDUCATIONAL ASSISTANCE ORGANIZATION
25 FAILS TO REMAIN IN COMPLIANCE WITH THE REQUIREMENTS OF THIS
26 SUBSECTION (5). EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF
27 THIS SUBSECTION (5), A NONPROFIT EDUCATIONAL ASSISTANCE

1 ORGANIZATION SEEKING CERTIFICATION SHALL DEMONSTRATE THAT IT:

2 (I) OPERATES IN COLORADO;

3 (II) IS EXEMPT FROM FEDERAL INCOME TAXES PURSUANT TO
4 SECTION 501 (c) (3) OF THE INTERNAL REVENUE CODE;

5 (III) WORKS WITH LOW-INCOME POPULATIONS LIKELY TO BENEFIT
6 FROM QUALIFYING CONTRIBUTIONS MADE BECAUSE OF THE CREDIT
7 ALLOWED BY SUBSECTION (3) OF THIS SECTION;

8 (IV) ALLOCATES ALL QUALIFYING CONTRIBUTIONS IT RECEIVES
9 FROM THE DESIGNATED NONPROFIT ORGANIZATION PURSUANT TO THIS
10 SECTION FOR THE PURPOSE OF PROVIDING SCHOLARSHIPS TO
11 INCOME-QUALIFIED STUDENTS WHO ATTEND ELIGIBLE SCHOOLS, EXCEPT AS
12 OTHERWISE PROVIDED IN SUBPARAGRAPH (VI) OF THIS PARAGRAPH (a);

13 (V) RECEIVES QUALIFIED CONTRIBUTIONS IN ANY FISCAL YEAR IN
14 AN AMOUNT THAT DOES NOT EXCEED TWICE THE AMOUNT OF THE PRODUCT
15 OF STATE SAVINGS PER PUPIL AND THE NUMBER OF FUNDED
16 PUBLIC-TO-PRIVATE STUDENTS ASSISTED BY THE NONPROFIT EDUCATIONAL
17 ASSISTANCE ORGANIZATION, COUNTING ANY FUNDED PUBLIC-TO-PRIVATE
18 STUDENT WHO IS A CHILD WITH DISABILITIES, AS DEFINED IN SECTION
19 22-20-103 (1.5), C.R.S., AS TWO PUBLIC-TO-PRIVATE STUDENTS. FOR
20 PURPOSES OF THIS SUBPARAGRAPH (V), "STATE SAVINGS PER PUPIL" MEANS
21 AN AMOUNT EQUAL TO [REDACTED] THE AMOUNT OF THE TOTAL PROGRAM OF
22 ALL SCHOOL DISTRICTS IN THE STATE FOR ANY BUDGET YEAR, AS DEFINED
23 IN SECTION 22-54-103 (3), C.R.S., DIVIDED BY THE TOTAL FUNDED PUPIL
24 COUNT OF ALL SCHOOL DISTRICTS FOR THE BUDGET YEAR AND MULTIPLIED
25 BY:

26 (A) FIFTY PERCENT FOR THE CALENDAR YEAR COMMENCING
27 JANUARY 1, 2003;

1 (B) SEVENTY PERCENT FOR THE CALENDAR YEARS COMMENCING
2 JANUARY 1, 2004, AND JANUARY 1, 2005;

3 (C) SEVENTY-FIVE PERCENT FOR THE CALENDAR YEARS
4 COMMENCING JANUARY 1, 2006, JANUARY 1, 2007, JANUARY 1, 2008, AND
5 JANUARY 1, 2009; AND

6 (D) EIGHTY PERCENT FOR THE CALENDAR YEAR COMMENCING
7 JANUARY 1, 2010, AND FOR EACH SUCCEEDING CALENDAR YEAR THAT
8 COMMENCES BEFORE JANUARY 1, 2013.

9 (VI) ALLOCATES AT LEAST TWENTY-FIVE PERCENT BUT NO MORE
10 THAN FORTY PERCENT OF THE AGGREGATE AMOUNT OF ALL QUALIFYING
11 CONTRIBUTIONS IT RECEIVES TO QUALIFIED SCHOOL DISTRICT
12 FOUNDATIONS OR FOR THE PURPOSE OF ASSISTING INCOME-QUALIFIED
13 STUDENTS WHO ATTEND PUBLIC ELEMENTARY SCHOOLS OR PUBLIC
14 SECONDARY SCHOOLS IN COLORADO IN DEFRAYING EDUCATION-RELATED
15 COSTS, INCLUDING, BUT NOT LIMITED TO, THE COSTS OF:

16 (A) INDIVIDUAL OR GROUP TUTORING SERVICES PROVIDED APART
17 FROM THE REGULAR INSTRUCTIONAL PROGRAM OF A PUBLIC ELEMENTARY
18 SCHOOL OR A PUBLIC SECONDARY SCHOOL BY ANY FOR-PROFIT,
19 NONPROFIT, OR PUBLIC SCHOOL BASED ENTITY;

20 (B) EDUCATIONAL SUPPLIES AND MATERIALS USED IN CONNECTION
21 WITH SUCH INDIVIDUAL OR GROUP TUTORING SERVICES;

22 (C) INTER-SCHOOL DISTRICT TRANSPORTATION TO AND FROM ANY
23 SCHOOL TO THE EXTENT THAT A SCHOOL DISTRICT OR THE STATE DOES NOT
24 PAY FOR THE TRANSPORTATION; AND

25 (D) TUITION AND FEES CHARGED BY PUBLIC SCHOOLS.

26 (b) THE DESIGNATED NONPROFIT ORGANIZATION MAY GRANT
27 INITIAL CERTIFICATION TO A NONPROFIT EDUCATIONAL ASSISTANCE

1 ORGANIZATION THAT OPERATES IN COLORADO AND IS EXEMPT FROM
2 FEDERAL INCOME TAXES PURSUANT TO SECTION 501 (c) (3) OF THE
3 INTERNAL REVENUE CODE, BUT THAT DOES NOT MEET ALL OF THE OTHER
4 REQUIREMENTS OF PARAGRAPH (a) OF THIS SUBSECTION (5) SO LONG AS
5 THE NONPROFIT EDUCATIONAL ASSISTANCE ORGANIZATION AGREES IN
6 WRITING TO CONDUCT ITS FUTURE ACTIVITIES IN ACCORDANCE WITH THOSE
7 REQUIREMENTS.

8 (c) AN UNCERTIFIED OR CERTIFIED NONPROFIT EDUCATIONAL
9 ASSISTANCE ORGANIZATION APPLYING FOR INITIAL CERTIFICATION OR
10 RENEWAL OF CERTIFICATION SHALL ALLOW THE DESIGNATED NONPROFIT
11 ORGANIZATION ACCESS TO ANY DOCUMENTS THAT THE DESIGNATED
12 NONPROFIT ORGANIZATION REASONABLY REQUIRES TO MAKE A
13 CERTIFICATION DETERMINATION.

14 (6) **Contribution and credit approval process - distribution of**
15 **contributions.** (a) FOR APPROVAL OF THE CREDIT ALLOWED BY
16 SUBSECTION (3) OF THIS SECTION, A TAXPAYER SHALL APPLY TO THE
17 DESIGNATED NONPROFIT ORGANIZATION BY MAKING A QUALIFYING
18 CONTRIBUTION TO THE DESIGNATED NONPROFIT ORGANIZATION,
19 IDENTIFYING A CERTIFIED NONPROFIT EDUCATIONAL ASSISTANCE
20 ORGANIZATION TO WHICH THE DESIGNATED NONPROFIT ORGANIZATION
21 SHALL FORWARD THE CONTRIBUTION, AND SUBMITTING AN APPLICATION
22 FOR APPROVAL OF THE CREDIT IN ACCORDANCE WITH ANY RULES
23 PROMULGATED BY THE EXECUTIVE DIRECTOR PURSUANT TO SUBSECTION
24 (8) OF THIS SECTION.

25 (b) BEFORE ACCEPTING ANY CONTRIBUTION AND ACCOMPANYING
26 APPLICATION FOR THE CREDIT ALLOWED BY SUBSECTION (3) OF THIS
27 SECTION, THE DESIGNATED NONPROFIT ORGANIZATION SHALL INFORM THE

1 CONTRIBUTOR IF THE DESIGNATED NONPROFIT ORGANIZATION WILL BE
2 UNABLE TO APPROVE THE CREDIT APPLICATION BECAUSE:

3 (I) THE DESIGNATED NONPROFIT ORGANIZATION HAS ALREADY
4 APPROVED CREDITS IN THE MAXIMUM AMOUNTS ALLOWED PURSUANT TO
5 SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (3) OF THIS
6 SECTION FOR THE CALENDAR YEAR IN WHICH THE CONTRIBUTION IS TO BE
7 MADE; OR

8 (II) THE NONPROFIT EDUCATIONAL ASSISTANCE ORGANIZATION
9 DESIGNATED BY THE CONTRIBUTOR TO RECEIVE THE CONTRIBUTION IS NOT
10 QUALIFIED OR CERTIFIED, WHICHEVER IS APPLICABLE.

11 (c) UPON RECEIVING A QUALIFYING CONTRIBUTION AND
12 APPROVING AN APPLICATION FOR THE CREDIT ALLOWED BY SUBSECTION (3)
13 OF THIS SECTION, THE DESIGNATED NONPROFIT ORGANIZATION SHALL ISSUE
14 A RECEIPT TO THE CONTRIBUTOR ON A STANDARDIZED FORM PROVIDED TO
15 THE DESIGNATED NONPROFIT ORGANIZATION BY THE DEPARTMENT OF
16 REVENUE THAT VERIFIES THE CONTRIBUTOR'S RIGHT TO CLAIM THE CREDIT.
17 THE RECEIPT SHALL INCLUDE THE NAME OF THE CERTIFIED NONPROFIT
18 EDUCATIONAL ASSISTANCE ORGANIZATION, THE NAME OF THE TAXPAYER,
19 THE AMOUNT OF THE QUALIFYING CONTRIBUTION, THE DATE THE
20 QUALIFYING CONTRIBUTION WAS MADE, AND ANY ADDITIONAL
21 INFORMATION THAT THE DEPARTMENT MAY REQUIRE. A PASS-THROUGH
22 ENTITY THAT MAKES A QUALIFYING CONTRIBUTION SHALL PROVIDE THE
23 DESIGNATED NONPROFIT ORGANIZATION WITH SUFFICIENT INFORMATION
24 SO THAT THE DESIGNATED NONPROFIT ORGANIZATION MAY ISSUE A RECEIPT
25 FOR EACH PARTNER, MEMBER, OR SHAREHOLDER OF THE PASS-THROUGH
26 ENTITY WHO WILL ULTIMATELY CLAIM A CREDIT, EVEN THROUGH OTHER
27 TIERS OF PASS-THROUGH ENTITIES. TO CLAIM THE CREDIT ALLOWED BY

1 SUBSECTION (3) OF THIS SECTION, A TAXPAYER SHALL SUBMIT A COPY OF
2 THE RECEIPT TO THE DEPARTMENT WITH THE TAXPAYER'S INCOME TAX
3 RETURN.

4 (d) THE DESIGNATED NONPROFIT ORGANIZATION SHALL PROMPTLY
5 FORWARD ANY QUALIFYING CONTRIBUTION RECEIVED TO THE CERTIFIED
6 NONPROFIT EDUCATIONAL ASSISTANCE ORGANIZATION DESIGNATED BY THE
7 CONTRIBUTOR. THE DESIGNATED NONPROFIT ORGANIZATION MAY DEDUCT
8 AN ADMINISTRATIVE FEE IN AN AMOUNT CALCULATED TO DEFRAY THE
9 REASONABLE AND NECESSARY EXPENSES INCURRED BY THE ORGANIZATION
10 IN ADMINISTERING THE CREDIT ALLOWED BY SUBSECTION (3) OF THIS
11 SECTION AND INCURRED BY THE DEPARTMENT OF REVENUE DURING THE
12 2003-04 FISCAL YEAR AS THE REASONABLE AND NECESSARY INITIAL
13 ADMINISTRATIVE COSTS OF IMPLEMENTING THE CREDIT, BEFORE
14 FORWARDING THE NET AMOUNT OF A QUALIFYING CONTRIBUTION IF THE
15 EXECUTIVE DIRECTOR AUTHORIZES THE ORGANIZATION TO COLLECT A FEE
16 AND SPECIFIES THE AMOUNT OF THE FEE TO BE COLLECTED. THE AMOUNT
17 OF THE FEE SHALL NOT EXCEED TWO PERCENT OF THE AMOUNT OF THE
18 QUALIFYING CONTRIBUTION FROM WHICH IT IS DEDUCTED; EXCEPT THAT,
19 FOR ANY QUALIFYING CONTRIBUTION MADE BEFORE JANUARY 1, 2004, THE
20 DESIGNATED NONPROFIT ORGANIZATION MAY DEDUCT AN ADMINISTRATIVE
21 FEE IN AN AMOUNT THAT SHALL NOT EXCEED TWO AND ONE-HALF PERCENT
22 OF THE AMOUNT OF THE QUALIFYING CONTRIBUTION. THE DESIGNATED
23 NONPROFIT ORGANIZATION SHALL PAY TO THE DEPARTMENT AN AMOUNT
24 SUFFICIENT TO DEFRAY THE ACTUAL REASONABLE AND NECESSARY INITIAL
25 ADMINISTRATIVE COSTS INCURRED BY THE DEPARTMENT DURING THE
26 2003-04 FISCAL YEAR IN IMPLEMENTING THE CREDIT.

27 (7) **Reporting requirements.** (a) (I) NOT LATER THAN FEBRUARY

1 1, 2004, AND EACH FEBRUARY 1 THEREAFTER, THE DESIGNATED
2 NONPROFIT ORGANIZATION SHALL SUBMIT TO THE STATE AUDITOR AND THE
3 LEGISLATIVE AUDIT COMMITTEE AN ANNUAL REPORT THAT EVALUATES THE
4 IMPLEMENTATION OF THE INCOME TAX CREDIT ALLOWED BY SUBSECTION
5 (3) OF THIS SECTION AND PROVIDES INFORMATION CONCERNING THE
6 AMOUNTS OF TAX CREDITS CLAIMED AND ALLOWED UNDER SUBSECTION (3)
7 OF THIS SECTION. EACH CERTIFIED NONPROFIT EDUCATIONAL ASSISTANCE
8 ORGANIZATION SHALL PROVIDE THE DESIGNATED NONPROFIT
9 ORGANIZATION ACCESS TO ANY RECORDS AND DOCUMENTS THAT THE
10 DESIGNATED NONPROFIT ORGANIZATION REASONABLY REQUIRES TO
11 PREPARE THE REPORT.

12 (II) THE STATE AUDITOR MAY AUDIT THE REPORT SUBMITTED BY
13 THE DESIGNATED NONPROFIT ORGANIZATION PURSUANT TO SUBPARAGRAPH
14 (I) OF THIS PARAGRAPH (a) TO VERIFY THE ACCURACY OF THE CREDITS
15 CLAIMED, AND BOTH THE DESIGNATED NONPROFIT ORGANIZATION AND
16 EACH CERTIFIED NONPROFIT EDUCATIONAL ASSISTANCE ORGANIZATION
17 SHALL PROVIDE THE STATE AUDITOR ACCESS TO ANY RECORDS OR
18 DOCUMENTS THAT THE STATE AUDITOR REASONABLY REQUIRES TO ENSURE
19 THE ACCURACY OF THE AUDIT.

20 (b) NOT LATER THAN FEBRUARY 1, 2012, THE STATE AUDITOR
21 SHALL SUBMIT A REPORT ON THE IMPLEMENTATION AND EFFECTS OF THE
22 CREDIT ALLOWED BY SUBSECTION (3) OF THIS SECTION TO THE HOUSE AND
23 SENATE EDUCATION COMMITTEES OF THE GENERAL ASSEMBLY. THE STATE
24 AUDITOR SHALL CONSULT WITH THE DEPARTMENT OF EDUCATION IN
25 PREPARING THE REPORT. THE REPORT MAY CONTAIN ANY
26 RECOMMENDATION OF THE STATE AUDITOR OR THE DEPARTMENT AS TO
27 WHETHER THE CREDIT SHOULD BE ALLOWED FOR INCOME TAX YEARS

1 COMMENCING ON OR AFTER JANUARY 1, 2013, AND SHALL INCLUDE
2 INFORMATION REGARDING:

3 (I) THE FISCAL IMPACT OF THE CREDIT, INCLUDING THE AMOUNT OF
4 CREDITS ALLOWED;

5 (II) THE AMOUNTS OF CONTRIBUTIONS MADE;

6 (III) THE ESTIMATED NUMBER AND AMOUNT OF SCHOLARSHIPS
7 AWARDED TO QUALIFYING STUDENTS AS A RESULT OF THE CREDIT
8 ALLOWED BY SUBSECTION (3) OF THIS SECTION;

9 (IV) THE IMPACT OF THE CREDIT ON COLORADO PUBLIC
10 ELEMENTARY AND SECONDARY SCHOOLS; AND

11 (V) ANY OTHER INFORMATION THAT THE STATE AUDITOR BELIEVES
12 WILL HELP THE HOUSE AND SENATE EDUCATION COMMITTEES EVALUATE
13 THE SUCCESS OF THE CREDIT.

14 (8) **Rule-making authority.** AFTER CONSULTATION WITH THE
15 DESIGNATED NONPROFIT ORGANIZATION, THE EXECUTIVE DIRECTOR SHALL
16 PROMULGATE RULES NECESSARY FOR THE ADMINISTRATION OF THE
17 INCOME TAX CREDIT ALLOWED BY SUBSECTION (3) OF THIS SECTION IN
18 ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S. THE EXECUTIVE
19 DIRECTOR MAY ALSO PROMULGATE RULES NECESSARY FOR THE
20 ADMINISTRATION OF THE INCOME TAX CREDIT ALLOWED BY PARAGRAPH
21 (a) OF SUBSECTION (3) OF THIS SECTION IN ACCORDANCE WITH ARTICLE 4
22 OF TITLE 24, C.R.S.

23 **SECTION 3. Appropriation - adjustments in long bill.** For the
24 implementation of this act, appropriations made in the annual general
25 appropriation act for the fiscal year beginning July 1, 2003, to the
26 department of education, assistance to public schools, public school
27 finance, for the state share of districts' total program funding, are

1 decreased by five million thirty-two thousand eight hundred dollars
2 (\$5,032,800). Said sum shall be from the general fund.

3 **SECTION 4. Appropriation.** In addition to any other
4 appropriation, there is hereby appropriated, out of any moneys in the
5 general fund not otherwise appropriated, to the department of revenue, for
6 the fiscal year beginning July 1, 2003, the sum of seven hundred
7 twenty-three dollars (\$723), or so much thereof as may be necessary, for
8 the implementation of this act.

9 **SECTION 5. Effective date.** This act shall take effect July 1,
10 2003.

11 **SECTION 6. Safety clause.** The general assembly hereby finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, and safety.