

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 1872**

**STATE OF NEW JERSEY**  
**214th LEGISLATURE**

ADOPTED MAY 13, 2010

**Sponsored by:**

**Senator RAYMOND J. LESNIAK**

**District 20 (Union)**

**Senator THOMAS H. KEAN, JR.**

**District 21 (Essex, Morris, Somerset and Union)**

**Co-Sponsored by:**

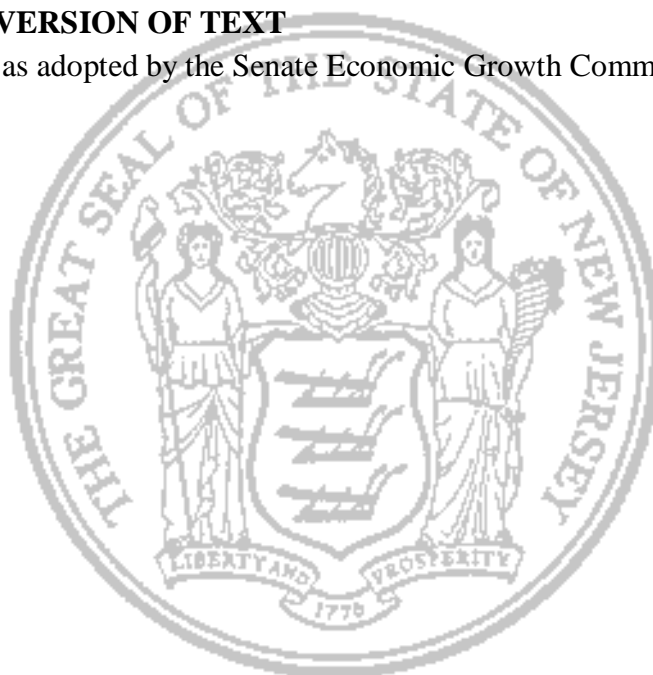
**Senators Kyrillos, Oroho, Singer and A.R.Bucco**

**SYNOPSIS**

“Opportunity Scholarship Act”; establishes pilot program in Department of Treasury providing tax credits to entities contributing to scholarships for low-income children; establishes Educational Innovation Pilot Program in DOE.

**CURRENT VERSION OF TEXT**

Substitute as adopted by the Senate Economic Growth Committee.



**(Sponsorship Updated As Of: 1/7/2011)**

1 AN ACT concerning educational opportunity scholarships for certain  
2 students and supplementing P.L.1945, c.162 (C.54:10A-1 et seq.)  
3 and Title 18A of the New Jersey Statutes.  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

8 1. Sections 1 through 8 of P.L. , c. (C. ) (pending  
9 before the Legislature as this bill) shall be known and may be cited  
10 as the “Opportunity Scholarship Act.”  
11

12 2. The Legislature finds and declares that:

13 a. It is an undeniable fact that parents of limited means are less  
14 able to provide educational options for their children, even in those  
15 instances in which the public schools are failing their children, and  
16 to select the learning environment that might best meet the needs of  
17 their children;

18 b. The Appellate Division of the Superior Court of New Jersey  
19 in a 2009 decision, Crawford v. Davy, ruled that children enrolled  
20 in schools in which the majority of students failed at least one  
21 subject area of the State assessments in multiple consecutive years  
22 currently have no entitlement to better educational opportunities in  
23 another school district or nonpublic school;

24 c. Consequently, it is critical to provide a mechanism that will  
25 provide students enrolled in these failing schools the opportunity to  
26 receive a quality education;

27 d. The United States Supreme Court in its 2002 decision,  
28 Zelman v. Simmons-Harris, found that a program providing tuition  
29 aid in the form of scholarships for some students to attend public or  
30 nonpublic schools of a parent’s choosing did not violate the  
31 Establishment Clause of the United States Constitution; and

32 e. In light of New Jersey’s constitutional commitment to  
33 ensuring educational justice for every child, regardless of the  
34 relative wealth or poverty of a child’s parents, it is appropriate that  
35 the State initiate a tax credit scholarship program on a pilot basis to  
36 assess its impact on the educational opportunity and achievement of  
37 children whose current education options are limited to a  
38 chronically failing school.  
39

40 3. As used in sections 1 through 8 of P.L. , c. (C. )  
41 (pending before the Legislature as this bill):

42 “Chronically failing school” means any school that meets the  
43 criteria of paragraph (1) or paragraph (2):

44 (1) among all students in that school to whom a State  
45 assessment was administered, the percent of students scoring in the  
46 partially proficient range in both the language arts and mathematics

1 subject areas of the State assessments exceeded 40% in each of the  
2 prior two school years; or

3 (2) among all students in that school to whom a State  
4 assessment was administered, the percent of students scoring in the  
5 partially proficient range in either the language arts or mathematics  
6 subject area of the State assessment exceeded 65% in each of the  
7 prior two school years.

8 (3) A school shall continue to be designated a chronically failing  
9 school until such time that the percent of students scoring in the  
10 partially proficient range in both the language arts and mathematics  
11 subject areas of the State assessments is less than or equal to the  
12 Statewide percent of students scoring in the partially proficient  
13 range on the corresponding Statewide assessments.

14 "Eligible school" means an in-district or out-of-district public  
15 school or an in-district or out-of-district nonpublic school located in  
16 this State offering a program of instruction for kindergarten through  
17 12th grade, or any combination of those grades that:

18 (1) is open to all students who are eligible to participate in the  
19 pilot program established pursuant to section 4 of  
20 P.L. , c. (C. ) (pending before the Legislature as this bill) on  
21 a space-available basis and does not discriminate in its admission  
22 policies or practices for scholarship applicants enrolled in a public  
23 school on the date of the scholarship application on the basis of  
24 intellectual or athletic ability, measures of achievement or aptitude,  
25 status as a handicapped person, proficiency in the English language,  
26 or any other basis that would be illegal if used by a school district;  
27 however nothing shall prohibit a school from qualifying as an  
28 eligible school solely because the school limits admission to a  
29 particular grade level or to areas of concentration at the school,  
30 such as mathematics, science, or the arts;

31 (2) in the case of a nonpublic school, provides enrollment  
32 preference for new admissions to students who are enrolled in a  
33 chronically failing school and are eligible to participate in the pilot  
34 program established pursuant to P.L. , c. (C. ) (pending  
35 before the Legislature as this bill); and

36 (3) is in full compliance with all federal, State, and local laws.

37 "Household income" means income as defined for the purposes  
38 of determining eligibility for a free or reduced price lunch pursuant  
39 to the State School Lunch Program.

40 "Low-income child" means a child from a household with an  
41 income that does not exceed 2.50 times the official federal poverty  
42 level based on family size, established and adjusted under Section  
43 673(2) of Subtitle B, the "Community Services Block Grant Act,"  
44 Pub. L.97-35 (42 U.S.C. s.9902(2)), for the school year preceding  
45 the school year for which an educational scholarship is to be  
46 distributed.

47 "Scholarship organization" means an organization that has been  
48 determined by the federal Internal Revenue Service to be qualified

1 as a tax-exempt organization pursuant to paragraph (3) of  
2 subsection (c) of section 501 of the federal Internal Revenue Code  
3 of 1986 (26 U.S.C. s.501) and that:

4 (1) requires that any tax-creditable contributions accepted by it  
5 be designated by the contributor at the time of contribution as a  
6 contribution pursuant to P.L. , c. (C. ) (pending before the  
7 Legislature as this bill);

8 (2) distributes not less than 95% of the tax-creditable  
9 contributions that it accepts pursuant to P.L. , c. (C. )  
10 (pending before the Legislature as this bill) as educational  
11 scholarships to low-income students;

12 (3) distributes individual scholarships that:

13 (a) in the case of a scholarship student enrolled in grades  
14 kindergarten through 8, are equal to the lesser of:

15 (i) the actual cost per pupil of the eligible school enrolling a  
16 scholarship student, as determined by the Commissioner of  
17 Education; or

18 (ii) the greater of \$6,000 or 40% of the prior school year's  
19 actual average comparative cost per pupil, as reported in the  
20 Department of Education's Comparative Spending Guide, among all  
21 school districts in which a chronically failing school is located; and

22 (b) in the case of a scholarship student enrolled in grades 9  
23 through 12, are equal to the lesser of:

24 (i) the actual cost per pupil of the eligible school enrolling a  
25 scholarship student, as determined by the Commissioner of  
26 Education; or

27 (ii) the greater of \$9,000 or 59% of the prior school year's  
28 actual average comparative cost per pupil, as reported in the  
29 Department of Education's Comparative Spending Guide, among all  
30 school districts in which a chronically failing school is located;

31 (4) ensures that a child receives in any school year no more than  
32 one scholarship pursuant to the provisions of P.L. , c. (C. )  
33 (pending before the Legislature as this bill); and

34 (5) has complied with such other requirements as the Director of  
35 the Division of Taxation in the Department of the Treasury may  
36 require.

37

38 4. a. Beginning in the first State fiscal year following the  
39 effective date of P.L. , c. (C. ) (pending before the  
40 Legislature as this bill), the Director of the Division of Taxation in  
41 the Department of the Treasury shall establish a five-year pilot  
42 program to provide tax credits to corporations which contribute  
43 funding to the lead scholarship organization designated pursuant to  
44 subsection b. of section 5 of P.L. , c. (C. ) (pending before the  
45 Legislature as this bill) to provide educational scholarships to help  
46 low-income children who, except as otherwise provided pursuant to  
47 paragraph (2) or paragraph (3) of subsection a. of section 6 of  
48 P.L. , c. (C. ) (pending before the Legislature as this bill),

1 are enrolled in a chronically failing school, pay tuition at an eligible  
2 school.

3 b. Subject to the restrictions established pursuant to subsection  
4 d. of this section, a taxpayer, upon application to the Director of the  
5 Division of Taxation in the Department of the Treasury, shall be  
6 allowed a credit against the tax imposed pursuant to section 5 of  
7 P.L.1945, c.162 (C.54:10A-5) for a privilege period, in an amount  
8 equal to 100% of the contributions made by the taxpayer to the lead  
9 scholarship organization designated pursuant to subsection b. of  
10 section 5 of P.L. , c. (C. ) (pending before the Legislature as  
11 this bill) during the privilege period; provided that the taxpayer  
12 shall designate at the time the contribution is made that the  
13 contribution is made pursuant to P.L. , c. (C. ) (pending  
14 before the Legislature as this bill).

15 c. The order of priority of the credit allowed under  
16 P.L. , c. (C. ) (pending before the Legislature as this bill)  
17 and any other credits allowed by law shall be as prescribed by the  
18 director. The amount of the credit applied under  
19 P.L. , c. (C. ) (pending before the Legislature as this bill)  
20 against the tax imposed pursuant to section 5 of P.L.1945, c.162  
21 (C.54:10A-5) for a privilege period shall not reduce the tax liability  
22 to an amount less than the statutory minimum provided in  
23 subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5). An  
24 unused amount of credit shall expire at the end of the privilege  
25 period.

26 d. In aggregate, the total tax contribution of all participating  
27 corporations shall not exceed \$24,000,000 in the first State fiscal  
28 year, \$48,000,000 in the second State fiscal year, \$72,000,000 in  
29 the third State fiscal year, \$96,000,000 in the fourth State fiscal  
30 year, and \$120,000,000 in the fifth State fiscal year. If the sum of  
31 the amount of tax credits authorized pursuant to this section in a  
32 State fiscal year exceeds the aggregate annual limits established  
33 pursuant to this subsection, tax credits shall be allowed in the order  
34 in which contributions are made until the limit is reached.

35  
36 5. a. There is hereby established the Opportunity Scholarship  
37 Board. The board shall consist of three public members, one  
38 appointed by the Governor, one appointed by the President of the  
39 Senate, and one appointed by the Speaker of the General Assembly.  
40 Each of the members shall be a representative of an entity subject to  
41 the tax imposed pursuant to section 5 of P.L.1945, c.162  
42 (C.54:10A-5) or an employee of such entity.

43 b. The board shall select one scholarship organization in each  
44 of the north, central, and southern regions of the State to administer  
45 the scholarship funds made available through contributions received  
46 pursuant to section 4 of P.L. , c. (C. ) (pending before the  
47 Legislature as this bill). The board shall designate one of the  
48 scholarship organizations to be the lead scholarship organization.

1 c. The board shall publicize the pilot program to the parents of  
2 children who are enrolled in a chronically failing school.

3 d. The board shall commission an independent study of the  
4 pilot program. The study shall be conducted by an individual or  
5 entity primarily identified with expertise in the field of urban  
6 education. The individual or entity shall design a comprehensive  
7 study of the pilot program which shall include, but not be limited to,  
8 consideration of the following:

9 (1) the academic achievement of scholarship recipients based on  
10 test results and other educational indicators;

11 (2) the impact of the pilot program on achieving savings for  
12 State taxpayers;

13 (3) the impact of the program on student enrollment patterns;  
14 and

15 (4) parental satisfaction with the pilot program.

16 The board may raise funds privately for the purpose of  
17 commissioning the study and for the cost of publicizing the pilot  
18 program.

19 e. On or before January 1 of the fifth school year of the pilot  
20 program, the board shall submit a report to the Governor, and to the  
21 Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1),  
22 on the implementation and results of the pilot program. The report  
23 shall be based on the annual reports submitted by the scholarship  
24 organizations pursuant to subsection c. of section 6 of  
25 P.L. , c. (C. ) (pending before the Legislature as this bill)  
26 and the independent study conducted pursuant to subsection d. of  
27 this section. The report shall include a recommendation on whether  
28 the program should be reauthorized on a permanent basis.

29

30 6. a. (1) The lead scholarship organization shall allocate funds  
31 made available through contributions provided pursuant to section 4  
32 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
33 to the selected scholarship organizations. The total funds available  
34 for scholarships for each school year shall be allocated to the  
35 scholarship organization selected in each region as follows: the  
36 total enrollment, excluding preschool students, of all chronically  
37 failing schools in the region divided by the total enrollment,  
38 excluding preschool students, of all chronically failing schools  
39 Statewide, and the result shall be multiplied by the total funds  
40 available for that school year.

41 (2) No more than 25% of a scholarship organization's  
42 scholarship allocation in any school year shall be used to provide  
43 scholarships to low-income students who reside in the State and are  
44 enrolled in nonpublic schools on the effective date of P.L. , c.  
45 (C. ) (pending before the Legislature as this bill); except that if  
46 by August 1 of any school year, scholarship funds available for the  
47 scholarship organization remain unallocated, then the funds may be  
48 used to provide additional scholarships for that school year to low-

1 income students enrolled in nonpublic schools on the effective date  
2 of P.L. , c. (C. ) (pending before the Legislature as this bill).

3 (3) If by August 15 of any school year, scholarship funds  
4 available for the scholarship organization remain unallocated, then  
5 the unallocated funds shall be used to provide scholarships for that  
6 school year to low-income children residing in other regions.  
7 Priority shall be given to students in the following order:

8 (a) low-income children attending a chronically failing school;  
9 (b) low-income children residing in a district in which a  
10 chronically failing school is located; and

11 (c) notwithstanding the provisions of paragraph (2) of this  
12 subsection, low-income children enrolled in a nonpublic school on  
13 the effective date of P.L. , c. (C. ) (pending before the  
14 Legislature as this bill).

15 The Opportunity Scholarship Board established pursuant to  
16 subsection b. of section 5 of P.L. , c. (C. ) (pending before  
17 the Legislature as this bill) shall determine the apportionment of  
18 unallocated funds to the other regions.

19 b. A scholarship organization selected by the board pursuant to  
20 subsection b. of section 5 of P.L. , c. (C. ) (pending before  
21 the Legislature as this bill) shall require that an eligible school  
22 which admits a child receiving an educational scholarship under the  
23 pilot program:

24 (1) accepts the scholarship as payment in full for a child's  
25 tuition and any other costs of attendance payable to the school;

26 (2) ensures that a child enrolled in an eligible school who  
27 received a scholarship under the program in the prior school year  
28 receives a scholarship in each school year of enrollment under the  
29 program provided that the child remains eligible; except that any  
30 child who received a scholarship under the program in the prior  
31 school year who is no longer considered a low-income child shall  
32 continue to remain eligible to receive a scholarship under the  
33 program until the child completes the eighth grade or the twelfth  
34 grade, whichever occurs first, provided that the child continues to  
35 meet all other eligibility requirements;

36 (3) in the event that more children apply for admission under the  
37 pilot program than there are openings at the eligible school,  
38 determines through a lottery which children are selected for  
39 admission, except that preference for enrollment may be given to  
40 siblings of students who are enrolled in the eligible school; and

41 (4) if the eligible school is a nonpublic school, administers the  
42 appropriate grade level State assessment to scholarship students.  
43 The Department of Education shall provide the necessary material  
44 to the nonpublic school at no cost.

45 c. A selected scholarship organization shall:

46 (1) manage the scholarship application process for the school  
47 district in which students who are eligible to participate in the  
48 scholarship program reside;

- 1 (2) review and verify the income and residence of a scholarship  
2 applicant;
- 3 (3) compile an inventory of vacancies in eligible schools  
4 available for potential scholarship recipients;
- 5 (4) conduct necessary student selection lotteries in accordance  
6 with the requirements of paragraph (3) of subsection b. of this  
7 section;
- 8 (5) in the event that the number of eligible students applying for  
9 a scholarship exceeds the number of available scholarships, conduct  
10 lotteries to determine which students will receive a scholarship;
- 11 (6) monitor the enrollment of scholarship students in eligible  
12 schools and allocate scholarship funds to those schools; and,
- 13 (7) prepare a report to be submitted to the State Treasurer by  
14 December 1 of each year that includes, but is not limited to, the  
15 following information for the prior school year: the amount of  
16 scholarship funds received by the scholarship organization; the  
17 administrative costs of the scholarship organization; the amount of  
18 scholarship funds dispersed on behalf of scholarship recipients to  
19 eligible schools that are public schools, and a listing of those  
20 eligible schools; the amount of scholarship funds dispersed on  
21 behalf of scholarship recipients to eligible schools that are  
22 nonpublic schools, and a listing of those eligible schools; and the  
23 number of scholarship applications for which no scholarship funds  
24 were available.

25 The board shall make the annual report available to the parents  
26 or guardians of scholarship recipients and to members of the public.  
27

28 7. The Department of Education shall annually provide a list of  
29 all chronically failing schools to the Opportunity Scholarship Board  
30 established pursuant to subsection a. of section 5 of  
31 P.L. , c. (C. ) (pending before the Legislature as this bill).  
32 The department shall coordinate with the board to determine the  
33 earliest feasible time that the list can be developed after the  
34 administration of the State assessments.  
35

36 8. The Director of the Division of Taxation shall adopt rules  
37 and regulations in accordance with the "Administrative Procedure  
38 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the  
39 provisions of sections 1 through 7 of P.L. , c. (C. ) (pending  
40 before the Legislature as this bill).  
41

42 9. Notwithstanding any provision of subsection a. of section 16  
43 of P.L.2007, c.260 (C:18A:7F-58) or any other section of law to the  
44 contrary, for each scholarship student who was enrolled in a public  
45 school of the district at the time that the student first received an  
46 educational scholarship pursuant to P.L. , c. (C. ) (pending  
47 before the Legislature as this bill), the amount of State school aid



1 paid to the district pursuant to the provisions of P.L.2007, c.260  
2 (C.18A:7F-43 et al.) shall be reduced by an amount equal to the  
3 district's equalization aid, security categorical aid, special education  
4 categorical aid, transportation aid, and adjustment aid divided by  
5 the district's resident enrollment.

6  
7 10. There is hereby established in the Department of Education a  
8 fund entitled the "Educational Innovation Fund." The fund shall be  
9 credited with the amount of any per pupil State school aid reduction  
10 made pursuant to section 9 of P.L. , c. (C. ) (pending before  
11 the Legislature as this bill) that is in excess of the applicable  
12 educational scholarship awarded pursuant to P.L. , c. (C. )  
13 (pending before the Legislature as this bill) to a scholarship student  
14 who was enrolled in a public school of the district at the time that  
15 the student first received a scholarship. All interest or other income  
16 or earnings derived from the investment or reinvestment of moneys  
17 in the fund shall be credited to the fund. The moneys in the fund are  
18 specifically dedicated to fund the Educational Innovation Pilot  
19 Program established pursuant to section 11 of P.L. , c. (C. )  
20 (pending before the Legislature as this bill).

21  
22 11. a. As used in this section, "chronically failing school" means  
23 any school that meets the criteria of paragraph (1) or paragraph (2)  
24 of this subsection:

25 (1) among all students in that school to whom a State  
26 assessment was administered, the percent of students scoring in the  
27 partially proficient range in both the language arts and mathematics  
28 subject areas of the State assessments exceeded 40% in each of the  
29 prior two school years; or

30 (2) among all students in that school to whom a State  
31 assessment was administered, the percent of students scoring in the  
32 partially proficient range in either the language arts or mathematics  
33 subject area of the State assessment exceeded 65% in each of the  
34 prior two school years.

35 (3) A school shall continue to be designated a chronically failing  
36 school until such time that the percent of students scoring in the  
37 partially proficient range in both the language arts and mathematics  
38 subject areas of the State assessments is less than or equal to the  
39 Statewide percent of students scoring in the partially proficient  
40 range on the corresponding Statewide assessments.

41 b. The Commissioner of Education shall establish a five-year  
42 Educational Innovation Pilot Program. The program shall award  
43 competitive grants to chronically failing schools to finance the  
44 adoption of innovative educational practices with the objective of  
45 improving student performance. The grants shall be funded by  
46 moneys on deposit in the Educational Innovation Fund established

1 pursuant to section 10 of P.L. , c. (C. ) (pending before the  
2 Legislature as this bill).

3 c. The commissioner shall develop an application process to  
4 select the chronically failing schools which will receive an  
5 innovation grant. The application shall be prepared and submitted  
6 by the superintendent of the district in which the chronically failing  
7 school is located. The application shall include, but not be limited  
8 to, the following information:

9 (1) a description of the innovative programs or practices which  
10 would be implemented in the chronically failing schools;

11 (2) a budget proposal for the use of any grant award; and

12 (3) a list of program objectives and a description of how the  
13 district will assess the program's implementation and outcomes.

14 d. A superintendent may submit a grant application that does  
15 not include all chronically failing schools in the district.

16

17 12. The State Board of Education shall adopt regulations  
18 pursuant to the "Administrative Procedures Act," P.L.1968, c.410  
19 (C.52:14B-1 et seq.), to effectuate the provisions of sections 9  
20 through 11 of P.L. , c. (C. ) (pending before the Legislature  
21 as this bill).

22

23 13. This act shall take effect immediately.