

**SENATE, No. 1779**

**STATE OF NEW JERSEY**  
**215th LEGISLATURE**

INTRODUCED MARCH 8, 2012

**Sponsored by:**

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

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

**Co-Sponsored by:**

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

**SYNOPSIS**

“Opportunity Scholarship Act”; establishes pilot program in Department of Treasury providing tax credits to taxpayers contributing to scholarships for low-income children.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/14/2013)**

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

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

8  
9 1. This act shall be known and may be cited as the  
10 “Opportunity Scholarship Act.”

11  
12 2. The Legislature finds and declares that:

13 a. Parents of limited financial resources are often less able to  
14 provide access to quality educational options for their children and  
15 are therefore unable to select the learning environment that might  
16 best meet the needs of their children, even in those instances in  
17 which the public schools are failing to educate their children;

18 b. Consequently, it is critical to provide a mechanism that will  
19 provide children of families that have limited financial resources  
20 enrolled in chronically failing schools the opportunity to enroll in  
21 different schools chosen by their parents so as to expand the  
22 educational opportunities available to these children;

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

28 d. Accordingly, it is appropriate that the State initiate a tax  
29 credit scholarship program on a pilot basis to encourage taxpayers  
30 to make voluntary contributions to a nonprofit scholarship  
31 organization, as well as to assess the impact of such a program on  
32 the educational opportunity and achievement of children whose  
33 current education options are limited to a chronically failing school.

34  
35 3. As used in sections 1 through 11 of P.L. , c. (C. )  
36 (pending before the Legislature as this bill):

37 “Chronically failing school” means any public school, other than  
38 a charter school, that is located in a targeted district and meets the  
39 criteria of paragraph (1) or paragraph (2):

40 (1) among all students in that school to whom a State  
41 assessment was administered, the percent of students scoring in the  
42 partially proficient range in both the language arts and mathematics  
43 subject areas of the State assessments was equal to or greater than  
44 40% in each of the prior two school years; or

45 (2) among all students in that school to whom a State  
46 assessment was administered, the percent of students scoring in the  
47 partially proficient range in either the language arts or mathematics

1 subject area of the State assessment was equal to or greater than  
2 60% in each of the prior two school years.

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

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

13 (1) is open to enroll students who are eligible to participate in  
14 the pilot program established pursuant to section 4 of  
15 P.L. , c. (C. ) (pending before the Legislature as this bill) on a  
16 space-available basis as determined by the eligible school and does  
17 not discriminate in its admission policies or practices for  
18 scholarship students enrolled in a public school on the date of the  
19 scholarship application on the basis of intellectual or athletic  
20 ability, measures of achievement or aptitude, status as a person with  
21 disabilities, proficiency in the English language, or any other basis  
22 that would be illegal if used by a school district; however, nothing  
23 shall prohibit a school from qualifying as an eligible school solely  
24 because the school limits admission to a particular grade level,  
25 single gender, or to areas of concentration at the school, such as  
26 mathematics, science, or the arts. Nothing in this paragraph shall be  
27 construed to require a school to implement new academic or other  
28 programs that the school does not offer at the time that, in the case  
29 of a public school, the board of education designates it as a school  
30 that will accept scholarship students, or, in the case of a nonpublic  
31 school, the school obtains approval from the commissioner to be  
32 deemed an eligible school;

33 (2) provides instruction in all subjects and grade levels that is  
34 consistent with the core curriculum content standards or comparable  
35 standards, as determined by the commissioner;

36 (3) in the case of a public school, has been designated by the  
37 board of education as a school that will accept students who  
38 participate in the pilot program established pursuant to section 4 of  
39 P.L. , c. (C. ) (pending before the Legislature as this bill);

40 (4) in the case of a nonpublic school:

41 (a) provides first priority for enrollment in any space made  
42 available by the school for scholarship students at that school to  
43 students who participate in the pilot program established pursuant  
44 to section 4 of P.L. , c. (C. ) (pending before the Legislature as  
45 this bill);

46 (b) has obtained approval from the Commissioner of Education  
47 pursuant to section 16 of P.L. , c. (C. ) (pending before the

1 Legislature as this bill) to enroll students who participate in the  
2 pilot program established pursuant to that act; and

3 (c) obtains written acknowledgment from the parent or guardian  
4 that notification has been received that a nonpublic school may not  
5 provide the same level of special education instructional programs  
6 and support services that may be available in a public school; and

7 (5) is in full compliance with all federal, State, and local laws.

8 "Low-income child" means a child from a household with an  
9 income that does not exceed 2.50 times the official federal poverty  
10 threshold for the calendar year preceding the school year for which  
11 an educational scholarship is to be distributed.

12 "Per pupil expenditure" means the sum of the budget year  
13 equalization aid per pupil, budget year adjustment aid per pupil, and  
14 the prebudget year general fund tax levy per pupil inflated by the  
15 CPI rate most recent to the calculation.

16 "Scholarship organization" means an organization that has been  
17 determined by the federal Internal Revenue Service to be qualified  
18 as a tax-exempt organization pursuant to paragraph (3) of  
19 subsection (c) of section 501 of the federal Internal Revenue Code  
20 of 1986 (26 U.S.C. s.501) and that:

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

25 (2) distributes individual scholarships to the parents or  
26 guardians of scholarship students that:

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

29 (i) the actual cost per pupil of the eligible school enrolling a  
30 scholarship student, as determined by the Commissioner of  
31 Education, or

32 (ii) the greater of \$6,000 or 40% of the average per pupil  
33 expenditure among all targeted districts, and

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

36 (i) the actual cost per pupil of the eligible school enrolling a  
37 scholarship student, as determined by the Commissioner of  
38 Education, or

39 (ii) the greater of \$9,000 or 59% of the average per pupil  
40 expenditure among all targeted districts;

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

44 (4) has complied with such other requirements as the Director of  
45 the Division of Taxation in the Department of the Treasury may  
46 require.

47 "Targeted district" means Asbury Park City School District,  
48 Camden City School District, Elizabeth City School District,

1 Lakewood City School District, Newark City School District, City  
2 of Orange School District, Passaic City School District, and City of  
3 Perth Amboy School District.

4  
5 4. Beginning in the first State fiscal year following the  
6 effective date of P.L. , c. (C. ) (pending before the Legislature  
7 as this bill), the Director of the Division of Taxation in the  
8 Department of the Treasury shall establish a five-year pilot  
9 program, including an evaluation year in the last year of the pilot  
10 program, to provide tax credits to taxpayers that contribute funding  
11 to the scholarship organization selected pursuant to subsection b. of  
12 section 7 of P.L. , c. (C. ) (pending before the Legislature as  
13 this bill) to provide educational scholarships to provide a parent or  
14 guardian of a low-income child the ability to pay the costs at an  
15 eligible school that has been selected by the parent or guardian of  
16 the scholarship student. Under the pilot program, a low-income  
17 child shall be eligible to receive a scholarship if:

- 18 a. the child is enrolled in a chronically failing school;  
19 b. the child received a scholarship pursuant to P.L. , c. (C. )  
20 (pending before the Legislature as this bill) in the prior school year  
21 and continues to reside in a targeted district;  
22 c. in the subsequent school year, the child would be eligible to  
23 enroll in a chronically failing school in the lowest grade level, other  
24 than preschool, operated by the chronically failing school. A low-  
25 income child currently enrolled in a nonpublic school shall be  
26 eligible to receive a scholarship pursuant to this paragraph; or  
27 d. the child attends a public school, other than a chronically  
28 failing school, located in a targeted district.

29  
30 5. a. Subject to the restrictions established pursuant to  
31 subsection c. of this section, a taxpayer, upon application to the  
32 scholarship organization selected pursuant to subsection b. of  
33 section 7 of P.L. , c. (C. ) (pending before the Legislature as this  
34 bill), and approval of the Director of the Division of Taxation in the  
35 Department of the Treasury, shall be allowed a credit against the tax  
36 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for  
37 a privilege period, in an amount equal to 100% of the contribution  
38 made by the taxpayer to the scholarship organization selected  
39 pursuant to subsection b. of section 7 of P.L. , c. (C. ) (pending  
40 before the Legislature as this bill) during the privilege period;  
41 provided that the taxpayer shall designate at the time the  
42 contribution is made that the contribution is made pursuant to  
43 P.L. , c. (C. ) (pending before the Legislature as this bill).

44 b. The order of priority of the credit allowed under this section  
45 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
46 and any other credits allowed by law shall be as prescribed by the  
47 director. The amount of the credit applied under P.L. , c. (C. )  
48 (pending before the Legislature as this bill) against the tax imposed

1 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for a  
2 privilege period shall not reduce the tax liability to an amount less  
3 than the statutory minimum provided in subsection (e) of section 5  
4 of P.L.1945, c.162 (C.54:10A-5). The amount of the credit  
5 otherwise allowable under this section which cannot be applied for  
6 the privilege period due to limitations of this subsection or under  
7 other provisions of P.L.1945, c.162 may be carried over, if  
8 necessary, to the seven privilege periods following the privilege  
9 period for which the credit was allowed.

10 c. The value of credits approved by the director pursuant to this  
11 section and section 6 of P.L. , c. (C. ) (pending before the  
12 Legislature as this bill) to apply to the tax imposed pursuant to  
13 section 5 of P.L.1945, c.162 (C.54:10A-5), and the tax imposed  
14 pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
15 et seq., shall not exceed 120% of the total value of scholarships  
16 awarded and administrative fees collected in any State fiscal year,  
17 less any funds that were carried forward from the prior fiscal year.  
18 If the sum of the amount of tax credits authorized pursuant to this  
19 section and section 6 of P.L. , c. (C. ) (pending before the  
20 Legislature as this bill) in a State fiscal year exceeds the aggregate  
21 annual limits established pursuant to this subsection, tax credits  
22 shall be allowed in the order in which contributions are made until  
23 the limit is reached.

24

25 6. a. Subject to the restrictions established pursuant to  
26 subsection c. of section 5 of P.L. , c. (C. ) (pending before the  
27 Legislature as this bill), a taxpayer, upon application to the  
28 scholarship organization selected pursuant to subsection b. of  
29 section 7 of P.L. , c. (C. ) (pending before the Legislature as this  
30 bill), and the approval of the Director of the Division of Taxation in  
31 the Department of the Treasury, shall be allowed a credit against the  
32 tax otherwise due for the taxable year under the "New Jersey Gross  
33 Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to  
34 100% of the contribution made by the taxpayer to the scholarship  
35 organization selected pursuant to subsection b. of section 7 of  
36 P.L. , c. (C. ) (pending before the Legislature as this bill) during  
37 the taxable year; provided that the taxpayer shall designate at the  
38 time the contribution is made that the contribution is made pursuant  
39 to P.L. , c. (C. ) (pending before the Legislature as this bill) and  
40 provided that the contribution is equal to or greater than \$100.

41 b. The order of priority of the credit allowed under this section  
42 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
43 and any other credits allowed by law shall be as prescribed by the  
44 director. The amount of the credit allowed pursuant to this section  
45 shall be applied against the tax otherwise due under N.J.S.54A:1-1  
46 et seq. If the credit exceeds the amount of tax otherwise due, that  
47 amount of excess shall be an overpayment for the purposes of  
48 N.J.S.54A:9-7.

1       7. a. There is hereby established the Opportunity Scholarship  
2 Board. The board shall consist of five public members appointed in  
3 the following manner:

4       (1) three members shall be appointed by the Governor,  
5 including one member who shall be a representative of an entity  
6 subject to the tax imposed pursuant to section 5 of P.L.1945, c.162  
7 (C.54:10A-5) or an employee of such an entity, one member who  
8 shall have experience in the education of low-income children, and  
9 one member who shall have experience in the oversight or  
10 management of nonprofit entities; and

11       (2) one member shall be appointed by the President of the  
12 Senate, and one member shall be appointed by the Speaker of the  
13 General Assembly. Each member shall have demonstrated  
14 experience in matters related to the responsibilities of the board.

15       The members of the board shall serve without compensation for  
16 a term equal in length to the duration of the pilot program  
17 established pursuant to section 4 of P.L. , c. (C. ) (pending  
18 before the Legislature as this bill).

19       b. The board shall select one scholarship organization to  
20 administer the pilot program established pursuant to section 4 of  
21 P.L. , c. (C. ) (pending before the Legislature as this bill).

22       c. The board shall establish a procedure for reallocating any  
23 scholarships that have not been awarded in a targeted district by  
24 July 1 to another targeted district.

25       d. The board may evaluate and approve a request from the  
26 scholarship organization selected pursuant to subsection b. of this  
27 section to amend programmatic procedures as necessary to ensure  
28 the effective and efficient administration of the pilot program.  
29 Amendments that may be considered may include, but need not be  
30 limited to, the administration of the tax credits, the necessity to  
31 conduct a lottery, and the requirements for reporting information to  
32 the entity selected pursuant to subsection j. of section 10 of P.L. ,  
33 c. (C. ) (pending before the Legislature as this bill) to conduct the  
34 independent evaluation of the pilot program. The board shall not  
35 approve any amendments that would materially alter the goals and  
36 objectives of the pilot program.

37       e. On or before January 1 of the fifth school year of the pilot  
38 program, the board shall submit a report to the Governor, and to the  
39 Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1),  
40 on the implementation and results of the pilot program. The report  
41 shall be based on the annual reports submitted by the scholarship  
42 organization pursuant to subsection h. of section 10 of  
43 P.L. , c. (C. ) (pending before the Legislature as this bill), the  
44 annual audits conducted pursuant to subsection i. of that section,  
45 and the independent study conducted pursuant to subsection j. of  
46 that section. The report shall include a recommendation on whether  
47 the program should be reauthorized on a permanent basis and  
48 whether it should be expanded to include other school districts.

1       8. a. The scholarship organization selected pursuant to  
2 subsection b. of section 7 of P.L. , c. (C. ) (pending before the  
3 Legislature as this bill) shall award no more than 2,500 scholarships  
4 in the first year, 5,000 scholarships in the second year, 7,500  
5 scholarships in the third year, 10,000 scholarships in the fourth  
6 year, and 10,000 scholarships in the fifth year.

7       b. The total number of scholarships available in each school  
8 year shall be allocated to each targeted district by multiplying the  
9 number of scholarships available in the school year by the percent  
10 obtained when dividing the total enrollment, excluding preschool  
11 students, in the chronically failing schools in the targeted district by  
12 the total enrollment, excluding preschool students, in chronically  
13 failing schools located in the targeted districts. For the purposes of  
14 this subsection, the total number of scholarships available in each  
15 school year shall not include any scholarships that will be awarded  
16 to a student who received a scholarship in the prior school year.

17       c. The scholarship organization shall award scholarships, other  
18 than a scholarship awarded to a student who received a scholarship  
19 in the prior school year, using the following order of priority:

20       (1) low-income children who are either enrolled in a chronically  
21 failing school or, in the subsequent school year, would be eligible to  
22 enroll in a chronically failing school in the lowest grade level, other  
23 than preschool, operated by the chronically failing school; and

24       (2) low-income children who are enrolled in a public school in a  
25 targeted district that is not a chronically failing school.

26       d. If by July 1 of any school year, scholarships available in a  
27 targeted district have not been awarded, then the remaining  
28 scholarships shall be used to provide scholarships to low-income  
29 children residing in another targeted district in accordance with  
30 standards established by the Opportunity Scholarship Board. Any  
31 scholarship awarded after July 1 shall be awarded using the same  
32 order of priority established pursuant to subsection c. of this  
33 section.

34

35       9. The scholarship organization selected by the Opportunity  
36 Scholarship Board pursuant to subsection b. of section 7 of P.L. ,  
37 c. (C. ) (pending before the Legislature as this bill) shall require  
38 that an eligible school which admits a child receiving an  
39 educational scholarship under the pilot program:

40       a. shall not require any payment in addition to the scholarship  
41 from the parent or guardian of the scholarship student for  
42 attendance at the school;

43       b. ensures that a child enrolled in an eligible school who  
44 received a scholarship under the program in the prior school year  
45 receives a scholarship in each school year of enrollment under the  
46 program provided that the child remains a resident of the targeted  
47 district. Any child who received a scholarship under the program in  
48 the prior school year who is no longer considered a low-income



1 child shall continue to remain eligible to receive a scholarship under  
2 the program. A scholarship student shall continue to remain  
3 eligible to receive a scholarship in subsequent school years if, as a  
4 result of grade progression, the public school in which the child is  
5 eligible to enroll is not a chronically failing school.

6 c. in the event that more children apply for admission under the  
7 pilot program than there are openings at the eligible school,  
8 determines through a lottery which children are selected for  
9 admission, except that preference for enrollment may be given to  
10 siblings of students who are enrolled in the eligible school;

11 d. if the eligible school is a nonpublic school:

12 (1) upon admitting a scholarship student, agrees to continue  
13 enrolling that student for at least two full school years unless the  
14 student commits an act that threatens the health or safety of other  
15 students, faculty, or staff at the school. Thereafter, the scholarship  
16 student shall be subject to the disciplinary and expulsion policy that  
17 is applicable to all students; and

18 (2) if the nonpublic school is a sectarian school, allows a  
19 scholarship student to opt out of any classes that provide religious  
20 instruction or any religious activities; and

21 e. shall not use revenue received through the enrollment of  
22 scholarship students for construction or capital improvement  
23 projects.

24

25 10. The scholarship organization selected by the Opportunity  
26 Scholarship Board pursuant to subsection b. of section 7 of P.L. ,  
27 c. (C. ) (pending before the Legislature as this bill) shall:

28 a. publicize the pilot program to the parents and guardians of  
29 children who are eligible to receive a scholarship pursuant to the  
30 provisions of section 4 of P.L. , c. (C. ) (pending before the  
31 Legislature as this bill);

32 b. manage the scholarship application process for each targeted  
33 district;

34 c. review and verify the income and residence of a scholarship  
35 applicant;

36 d. compile an inventory of vacancies in eligible schools  
37 available for potential scholarship recipients based on information  
38 provided by the eligible schools;

39 e. in the event that the number of eligible students in a targeted  
40 district applying for a scholarship exceeds the number of available  
41 scholarships in the targeted district, conduct a lottery in the targeted  
42 district to determine which students will receive a scholarship;

43 f. monitor the enrollment of scholarship students in eligible  
44 schools;

45 g. manage the acceptance of contributions made to the  
46 scholarship program, including:

47 (1) advising a potential contributor of the inability to receive a  
48 tax credit due to the limits established pursuant to subsection c. of

1 section 5 of P.L. , c. (C.) (pending before the Legislature as this  
2 bill); and  
3 (2) verifying contributions to the Director of the Division of  
4 Taxation;  
5 h. prepare a report to be submitted to the scholarship board, the  
6 State Treasurer and the Commissioner of Education by December 1  
7 of each year that includes, but is not limited to, the following  
8 information for the prior school year: the amount of scholarship  
9 funds received by the scholarship organization; the total number of  
10 scholarships awarded, by grade level; the total number of  
11 scholarship recipients, by school district; the amount of scholarship  
12 funds used by scholarship recipients to attend eligible schools that  
13 are public schools, and a listing of those eligible schools; the  
14 amount of scholarship funds used by scholarship recipients to attend  
15 eligible schools that are nonpublic schools, and a listing of those  
16 eligible schools; and the number of scholarship applications for  
17 which no scholarships were available;  
18 i. annually enter into a contract with an independent entity to  
19 audit the implementation of the pilot program. The scholarship  
20 organization shall transmit a copy of the audit to the scholarship  
21 board, the State Treasurer, and the Commissioner of Education no  
22 later than December 1 of each year; and  
23 j. commission an independent study of the pilot program. The  
24 study shall be conducted by an individual or entity primarily  
25 identified with expertise in the field of urban education. The  
26 individual or entity shall design a comprehensive study of the pilot  
27 program which shall include, but not be limited to, consideration of  
28 the following:  
29 (1) the academic achievement of scholarship recipients based on  
30 test results on the State assessments, other assessments, and other  
31 educational indicators comparing scholarship students to students in  
32 the eligible school who are not scholarship students, students in the  
33 public school previously attended by the scholarship student,  
34 students enrolled in other schools in the district in which the  
35 scholarship student is a resident, and disaggregated by the  
36 subgroups used in reporting the results of the State assessments  
37 pursuant to the “No Child Left Behind Act of 2001;”  
38 (2) the financial impact of the pilot program on revenues and  
39 expenditures for the State, targeted districts, and the eligible schools  
40 in which the scholarship students enroll;  
41 (3) the impact of the program on student enrollment patterns;  
42 and  
43 (4) parental satisfaction with the pilot program.  
44 The scholarship organization may carry forward funds in an  
45 amount not to exceed 20% of the total value of scholarships  
46 awarded and administrative fees collected in the school year. Any  
47 contributions not used to award scholarships, administer the

1 program, or carried forward to the subsequent fiscal year shall be  
2 returned to the Department of the Treasury.

3

4 11. The Director of the Division of Taxation shall adopt rules  
5 and regulations in accordance with the "Administrative Procedure  
6 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the  
7 provisions of sections 1 through 10 of P.L. , c. (C. ) (pending  
8 before the Legislature as this bill).

9

10 12. As used in sections 13 through 18 of P.L. , c. (C. )  
11 (pending before the Legislature as this bill):

12 "Chronically failing school" means any public school, other than  
13 a charter school, that is located in a targeted district and meets the  
14 criteria of paragraph (1) or paragraph (2):

15 (1) among all students in that school to whom a State  
16 assessment was administered, the percent of students scoring in the  
17 partially proficient range in both the language arts and mathematics  
18 subject areas of the State assessments was equal to or greater than  
19 40% in each of the prior two school years; or

20 (2) among all students in that school to whom a State  
21 assessment was administered, the percent of students scoring in the  
22 partially proficient range in either the language arts or mathematics  
23 subject area of the State assessment was equal to or greater than  
24 60% in each of the prior two school years.

25 (3) A school shall continue to be designated a chronically failing  
26 school until such time that 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 is less than or equal to the  
29 Statewide percent of students scoring in the partially proficient  
30 range on the corresponding Statewide assessments.

31 "Targeted district" means Asbury Park City School District,  
32 Camden City School District, Elizabeth City School District,  
33 Lakewood City School District, Newark City School District, City  
34 of Orange School District, Passaic City School District, and City of  
35 Perth Amboy School District.

36

37 13. The Department of Education shall annually provide a list of  
38 all chronically failing schools to the scholarship organization  
39 selected pursuant to subsection b. of section 7 of P.L. , c. (C. )  
40 (pending before the Legislature as this bill). The department shall  
41 coordinate with the scholarship organization to determine the  
42 earliest feasible time that the list can be developed after the  
43 administration of the State assessments.

44

45 14. Notwithstanding any provision of section 5 or subsection a.  
46 of section 16 of P.L.2007, c.260 (C.18A:7F-47 and C:18A:7F-58)  
47 or any other section of law to the contrary, for each scholarship  
48 student who resides in the targeted district, the amount of State

1 school aid paid to the district pursuant to the provisions of  
2 P.L.2007, c.260 (C.18A:7F-43 et al.) shall be reduced by an amount  
3 equal to sum of the amount of the scholarship awarded to the  
4 scholarship student and the scholarship organization administrative  
5 fee.

6 The scholarship organization administrative fee shall equal: in  
7 the first State fiscal year \$750 per scholarship, in the second State  
8 fiscal year, \$400 per scholarship, in the third State fiscal year, \$250  
9 per scholarship, in the fourth State fiscal year, \$200 per scholarship,  
10 and in the fifth State fiscal year, \$210 per scholarship.

11

12 15. A targeted district shall provide transportation services to a  
13 student who receives a scholarship pursuant to P.L. , c. (C. )  
14 (pending before the Legislature as this bill) and attends a nonpublic  
15 school or a public school outside the school district of residence  
16 pursuant to the provisions of N.J.S.18A:39-1 applicable to  
17 nonpublic school pupil transportation.

18

19 16. a. The Commissioner of Education shall develop a process  
20 for approving a nonpublic school that wants to be classified as an  
21 eligible school to enroll a scholarship student pursuant to the  
22 provisions of P.L. , c. (C. ) (pending before the Legislature as  
23 this bill). The commissioner shall grant approval to a nonpublic  
24 school that meets any one of the following criteria:

25 (1) the school has been in operation for at least five years, has  
26 an end-of-year financial statement for each of the previous five  
27 years, and, in the two years prior to the school year for which  
28 approval is sought, has undergone an independent financial audit  
29 conducted by a certified public accountant that concluded that the  
30 school is financially viable;

31 (2) the school was founded within the prior 12 months by an  
32 operator of an existing school that meets the criteria of paragraph  
33 (1) of this subsection; or

34 (3) the school is a current member of the New Jersey  
35 Association of Independent Schools.

36 b. The commissioner may grant approval to a school that does  
37 not meet the requirements of subsection a. of this section if the  
38 nonpublic school submits an application containing the following  
39 information:

40 (1) a statement of the school's objectives and a written strategy  
41 for meeting those objectives;

42 (2) information that demonstrates the school's financial  
43 viability;

44 (3) a list of the school's faculty, including information regarding  
45 each individual's educational attainment and relevant work  
46 experience;

47 (4) a statement regarding the adequacy of the school's  
48 equipment and facilities;

1 (5) documentation that the school has been determined by the  
2 federal Internal Revenue Service to be qualified as a tax-exempt  
3 organization pursuant to paragraph (3) of subsection (c) of section  
4 501 of the federal Internal Revenue Code of 1986 (26 U.S.C.  
5 s.501); and

6 (6) a list of current board members, their affiliations, and terms  
7 of service.

8 c. As a condition of receiving approval to enroll a scholarship  
9 student, a nonpublic school shall:

10 (1) require a criminal history record check of final candidates  
11 for employment in accordance with the procedures established  
12 pursuant to P.L.1989, c.229 (C.18A:6-4.13 et seq.)

13 (2) demonstrate that the school administers an annual  
14 assessment to students enrolled in the school; and

15 (3) provide evidence that the school has received accreditation  
16 from a recognized accrediting agency.

17  
18 17. a. A nonpublic school that enrolls a scholarship student  
19 pursuant to the provisions of P.L. , c. (C. ) (pending before the  
20 Legislature as this bill) shall administer an appropriate grade level  
21 assessment to all scholarship students enrolled in the school. If a  
22 nonpublic school administers a State assessment, the Department of  
23 Education shall provide the necessary testing materials to the  
24 nonpublic school at no cost.

25 b. In addition to any assessment administered pursuant to  
26 subsection a. of this section, an eligible school that enrolls a  
27 scholarship student shall administer a grade-level appropriate  
28 assessment to all students receiving a scholarship pursuant to the  
29 provisions of P.L. , c. (C. ) (pending before the Legislature as  
30 this bill) within the first 30 days of the scholarship student's  
31 enrollment in the first school year in which a scholarship is  
32 received, and once in each subsequent school year in which a  
33 scholarship is received.

34 c. Any assessment administered pursuant to subsections a. and  
35 b. of this section shall be capable of providing technically accurate  
36 measures of a student's academic growth over time. An eligible  
37 school that administers an assessment pursuant to subsections a. and  
38 b. of this section shall make the results available to the entity  
39 selected pursuant to subsection j. of section 10 of P.L. , c. (C. )  
40 (pending before the Legislature as this bill) to conduct the  
41 independent evaluation of the program, and to the commissioner.  
42 The commissioner shall make the results of the assessments  
43 publicly available provided that results are available for at least 10  
44 students in any given grade level and that such a release does not  
45 risk disclosing the results of an individual student.

46  
47 18. The State Board of Education shall adopt regulations  
48 pursuant to the "Administrative Procedures Act," P.L.1968, c.410

1 (C.52:14B-1 et seq.), to effectuate the provisions of sections 12  
2 through 18 of P.L. , c. (C. ) (pending before the Legislature as  
3 this bill).

4

5 19. This act shall take effect immediately.

6

7

8

STATEMENT

9

10 This bill directs the Director of the Division of Taxation to  
11 establish a five-year pilot program to provide tax credits to  
12 taxpayers that make contributions to a selected scholarship  
13 organization that provides scholarships to certain low-income  
14 children to attend a nonpublic school or an out-of-district public  
15 school. The program would allow a taxpayer to claim a tax credit  
16 against the corporate business tax or gross income tax equal to  
17 100% of any contribution made to the scholarship organization; in  
18 the case of the gross income tax credit, a taxpayer must contribute a  
19 minimum of \$100 to the scholarship organization in order to be  
20 eligible to receive the tax credit. The maximum amount of tax  
21 credits allowable in each State fiscal year would equal 120% of the  
22 total value of scholarships awarded and administrative fees  
23 collected from school districts. Tax credits would be allowed in the  
24 order in which the contributions are received.

25 The bill creates the Opportunity Scholarship Board and directs it  
26 to select one scholarship organization to administer the program.  
27 The scholarship organization would receive contributions made to  
28 the program and award scholarships to the parents or guardians of  
29 eligible students. The maximum number of scholarships that may  
30 be awarded each year is: 2,500 in the first year, 5,000 in the second  
31 year, 7,500 in the third year, and 10,000 in the fourth and fifth  
32 years. The number of available scholarships would be allocated to  
33 each targeted district based on the number of students enrolled in  
34 the district's chronically failing school relative to the enrollment in  
35 chronically failing schools located in targeted districts. If the  
36 number of eligible students applying for a scholarship exceeds the  
37 number of available scholarships in a targeted district, then the  
38 scholarship organization would be responsible for conducting a  
39 lottery to determine scholarship awards in that district.

40 To be eligible to receive a scholarship, a low-income child must  
41 either: 1) attend a chronically failing school, 2) received a  
42 scholarship in the previous school year and continue to reside in the  
43 targeted district, 3) reside in a targeted district and attend one of the  
44 district's public schools that is not a chronically failing school, or 4)  
45 in the subsequent school year, would be eligible to enroll in a  
46 chronically failing school in the lowest grade, other than preschool,  
47 operated by the school. The last category of students would include  
48 those currently enrolled in a nonpublic school.

1       The bill defines a chronically failing school as one in which, for  
2 the past two school years: at least 40% of the school's students did  
3 not pass both the language arts and mathematics subject areas of the  
4 State assessments, or at least 60% of the students did not pass either  
5 the language arts or mathematics subject areas. Additionally, the  
6 school must be located in one of eight targeted districts: Asbury  
7 Park, Camden, Elizabeth, Lakewood, Newark, Orange, Passaic, or  
8 Perth Amboy. A child is considered low-income if the child lives in  
9 a household in which the income does not exceed 250% of the  
10 federal poverty threshold. Scholarships would be awarded to  
11 eligible students in the following order or priority: 1) low-children  
12 either attending a chronically failing school or eligible to enroll in a  
13 chronically failing school in the next school year, and 2) children  
14 who attend a public school, other than a chronically failing school,  
15 in a targeted district.

16       The scholarship organization selected under the bill must require  
17 that an eligible school which admits a child receiving a scholarship  
18 under the pilot program:

19       (1) does not require a parent or guardian to make a payment in  
20 addition to the scholarship for a child's attendance at the school;

21       (2) ensures that a child enrolled in an eligible school who  
22 received a scholarship under the program in the prior school year  
23 receives a scholarship in each school year of enrollment under the  
24 program provided that the child continues to reside in the targeted  
25 district;

26       (3) in the event that more children apply for admission to that  
27 school under the pilot program than there are openings, selects  
28 scholarship students through a lottery; and

29       (4) within the first 30 days of a scholarship's student's  
30 enrollment in the school, and once each year thereafter, administer a  
31 grade-level appropriate assessment to all scholarship students.

32       Further, if the eligible school is a nonpublic school, the  
33 scholarship organization must also require that the school:

34       (1) administer the appropriate grade level State assessment to  
35 scholarship students, and make the results publicly available;

36       (2) agree to continue enrolling a scholarship student for two  
37 school years, unless the student commits an act that threatens the  
38 health or safety of other students, faculty, or staff; and

39       (3) obtains written acknowledgment from the parent or guardian  
40 that notification has been received that a nonpublic school may not  
41 provide the same level of special education instructional programs  
42 and support services that may be available in a public school.

43       Additionally, if the nonpublic school is a sectarian school, it must  
44 provide a scholarship student the opportunity to opt out of any  
45 religious instruction or activity.

46       In the case of public schools, eligible schools will be those  
47 schools designated by the board of education to accept students who  
48 participate in the program. In the case of nonpublic schools,

1 eligible schools will include those approved by the Commissioner  
2 of Education to accept students who participate in the program.  
3 The commissioner will develop a process for providing such  
4 approval. The commissioner is required to grant approval to a  
5 nonpublic school if it: 1) has been in operation for at least five years  
6 and has an end of year financial statement for each of the previous  
7 five years; 2) was founded within the prior 12 months by an  
8 operator of an existing school that meets the first criteria; or 3) is a  
9 current member of the New Jersey Association of Independent  
10 Schools. The commissioner may approve a school that does not  
11 meet the previous requirements if the school submits an application  
12 that includes information regarding: 1) the school's objectives and  
13 strategy for meeting those objectives, 2) a demonstration of the  
14 school's financial viability, 3) a list of faculty, including the  
15 individual's educational attainment and relevant work experience,  
16 4) a statement regarding the adequacy of the school's facilities and  
17 equipment, 5) documentation that the school is a qualified nonprofit  
18 entity; and 6) a list of board members.

19 The scholarship organization would have a number of program  
20 responsibilities, including: managing the application process in each  
21 district, verifying applicants' eligibility to receive a scholarship,  
22 maintaining an inventory of vacancies in eligible schools,  
23 conducting any necessary lotteries to determine scholarship awards,  
24 monitoring the enrollment of scholarship students, and managing  
25 the acceptance of contributions made to the program. Additionally,  
26 the scholarship organization must prepare an annual report, to be  
27 submitted to the State Treasurer, Commissioner of Education, and  
28 the scholarship board, enter into a contract with an independent  
29 entity to conduct an annual audit, and commission an independent  
30 study of the pilot program.

31 The scholarship organization may apply to the Opportunity  
32 Scholarship Board to amend programmatic procedures as necessary  
33 to ensure the effective and efficient administration of the programs.  
34 Amendments that may be considered may include, but need not be  
35 limited to, the administration of the tax credits, the need to conduct  
36 lotteries, and reporting requirements related to the independent  
37 evaluation of the pilot program. The board shall not approve any  
38 amendments that would materially alter the goals and objectives of  
39 the pilot program.

40 For each resident student who receives a scholarship, a targeted  
41 district's State aid will be reduced by an amount equal to the  
42 scholarship awarded to the student plus the scholarship  
43 organization's administrative fee. The administrative fee will equal  
44 \$750 per scholarship in the first year, \$400 per scholarship in the  
45 second year, \$250 per scholarship in the third year, \$200 per  
46 scholarship in the fourth year, and \$210 per scholarship in the final  
47 year. The targeted district would also be responsible for providing  
48 transportation services to a scholarship student who attends a school



- 1 outside of the district on the same basis that the district provides
- 2 transportation services to nonpublic school students pursuant to
- 3 N.J.S.18A:39-1.