

SENATE, No. 1872

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED MAY 10, 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 and Singer

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/14/2010)

1 AN ACT concerning educational opportunities for students who
2 reside in a district in which a chronically failing school is located
3 and supplementing P.L.1945, c.162 (C.54:10A-1 et seq.) 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. Sections 1 through 9 of P.L. , c. (C.) (pending before the
10 Legislature as this bill) shall be known and may be cited as the
11 “Opportunity Scholarship Act.”

12
13 2. The Legislature finds and declares that:

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

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

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

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

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

40
41 3. As used in sections 1 through 9 of P.L. , c. (C.) (pending
42 before the Legislature as this bill):

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

45 (1) 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 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 assessment
4 was administered, the percent of students scoring in the partially
5 proficient range in either the language arts or mathematics subject
6 area of the State assessment exceeded 65% in each of the prior two
7 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 P.L. , c. (C.)
20 (pending before the Legislature as this bill) on a space-available
21 basis and does not discriminate in its admission policies or practices
22 for scholarship applicants enrolled in a public school on the date of
23 the scholarship application on the basis of intellectual or athletic
24 ability, measures of achievement or aptitude, status as a
25 handicapped person, proficiency in the English language, or any
26 other basis that would be illegal if used by a school district;
27 however nothing shall prohibit an eligible school from limiting
28 admission to a particular grade level or to areas of concentration of
29 the eligible school, such as mathematics, science, or the arts; and,

30 (2) is in full compliance with all federal, State, and local laws.

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

34 "Low-income child" means a child from a household with an
35 income that does not exceed 2.50 times the official federal poverty
36 level based on family size, established and adjusted under Section
37 673(2) of Subtitle B, the "Community Services Block Grant Act,"
38 Pub. L.97-35 (42 U.S.C.s.9902(2)), for the school year preceding
39 the school year for which an educational scholarship is to be
40 distributed.

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

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

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

5 (3) distributes individual scholarships that:

6 (a) in the case of a scholarship student enrolled in grades
7 kindergarten through 8, are equal to the greater of \$6,000 or 40% of
8 the prior school year's actual average comparative cost per pupil, as
9 reported in the Department of Education's Comparative Spending
10 Guide, among all school districts in which a chronically failing
11 school is located; and

12 (b) in the case of a scholarship student enrolled in grades 9
13 through 12, are equal to the greater of \$9,000 or 59% of the prior
14 school year's actual average comparative cost per pupil, as reported
15 in the Department of Education's Comparative Spending Guide,
16 among all school districts in which a chronically failing school is
17 located;

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

21 (5) has complied with such other requirements as the Director of
22 the Division of Taxation in the Department of the Treasury may
23 require.

24

25 4. a. Beginning in the first State fiscal year following the
26 effective date of P.L. , c. (C.) (pending before the Legislature as
27 this bill), the Director of the Division of Taxation in the Department
28 of the Treasury shall establish a five-year pilot program to provide
29 tax credits to corporations which contribute funding for scholarship
30 organizations which provide educational scholarships to help low-
31 income children who reside in a district where a chronically failing
32 school is located pay tuition at an eligible school.

33 b. Subject to the restrictions established pursuant to subsection
34 d. of this section, a taxpayer shall be allowed a credit against the tax
35 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for
36 a privilege period, in an amount equal to 100% of the contributions
37 made by the taxpayer for a scholarship organization during the
38 privilege period; provided that the taxpayer shall designate at the
39 time the contribution is made that the contribution is made pursuant
40 to P.L. , c. (C.) (pending before the Legislature as this bill).

41 c. The order of priority of the credit allowed under P.L. ,
42 c. (C.) (pending before the Legislature as this bill) and any other
43 credits allowed by law shall be as prescribed by the director. The
44 amount of the credit applied under P.L. , c. (C.) (pending before
45 the Legislature as this bill) against the tax imposed pursuant to
46 section 5 of P.L.1945, c.162 (C.54:10A-5) for a privilege period
47 shall not reduce the tax liability to an amount less than the statutory
48 minimum provided in subsection (e) of section 5 of P.L.1945, c.162
49 (C.54:10A-5). An unused amount of credit shall expire at the end

1 of the privilege period.

2 d. In aggregate, the total tax contribution of all participating
3 corporations shall not exceed \$24,000,000 the first State fiscal year,
4 \$48,000,000 the second State fiscal year, \$72,000,000 the third
5 State fiscal year, \$96,000,000 the fourth State fiscal year, and
6 \$120,000,000 the fifth State fiscal year. If the sum of the amount of
7 tax credits authorized pursuant to this section in a State fiscal year
8 exceeds the aggregate annual limits established pursuant to this
9 subsection, tax credits shall be allowed in the order that
10 contributions are made until the limit is reached.

11

12 5. There is hereby established in the Department of the
13 Treasury a separate fund entitled the "Opportunity Scholarship
14 Fund." The fund shall be maintained by the Treasurer separate and
15 apart from any other funds. The fund shall be credited with
16 contributions made by taxpayers for scholarship organizations
17 pursuant to section 4 of P.L. , c. (C.) (pending before the
18 Legislature as this bill). All interest or other income or earnings
19 derived from the investment or reinvestment of moneys in the fund
20 shall be credited to the fund. The moneys in the fund are
21 specifically dedicated to help low-income children who reside in a
22 district where a chronically failing school is located pay tuition at
23 an eligible school.

24

25 6. a. There is hereby established the Opportunity Scholarship
26 Fund Board. The board shall consist of three public members, one
27 appointed by the Governor, one appointed by the President of the
28 Senate, and one appointed by the Speaker of the General Assembly.
29 Each of the members shall be a representative of an entity subject to
30 the tax imposed pursuant to section 5 of P.L.1945, c.162
31 (C.54:10A-5) or an employee of such entity.

32 b. The board shall select one scholarship organization in each
33 of the counties where a chronically failing school is located to
34 administer the scholarship funds made available through
35 contributions received pursuant to section 4 of P.L. , c. (C.)
36 (pending before the Legislature as this bill) and on deposit in the
37 Opportunity Scholarship Fund. The board may select a scholarship
38 organization to administer scholarship funds in more than one
39 county.

40 c. (1) The board shall allocate funds on deposit in the
41 Opportunity Scholarship Fund to the selected scholarship
42 organizations. The total funds available for scholarships for each
43 school year shall be allocated to the scholarship organization
44 selected in the county in which a chronically failing school is
45 located as follows: the total enrollment, excluding preschool
46 students, of all chronically failing schools in the county divided by
47 the total enrollment, excluding preschool students, of all chronically
48 failing schools Statewide, and the result shall be multiplied by the
49 total funds available for that school year.

1 (2) No more than 25% of a scholarship organization's
2 scholarship allocation in any school year shall be used to provide
3 scholarships to low-income students enrolled in nonpublic schools
4 on the effective date of P.L. , c. (C.) (pending before the
5 Legislature as this bill) who reside in a district where a chronically
6 failing school is located; except that if by August 1 of any school
7 year, scholarship funds available for the scholarship organization
8 remain unallocated, then the funds may be used to provide
9 additional scholarships for that school year to low-income students
10 enrolled in nonpublic schools on the effective date of P.L. ,
11 c. (C.) (pending before the Legislature as this bill) who reside in
12 a district where a chronically failing school is located.

13 (3) If by August 15 of any school year, scholarship funds
14 available for the scholarship organization remain unallocated, then
15 the unallocated funds shall be used to provide scholarships for that
16 school year to low-income children residing in other counties.
17 Priority shall be given to low-income children who reside in a
18 district where a chronically failing school is located. The board
19 shall determine the apportionment of unallocated funds to the other
20 counties.

21 d. The board shall publicize the pilot program to the parents of
22 children who reside in a district where a chronically failing school
23 is located.

24 e. The board shall commission an independent study of the
25 pilot program. The study shall be conducted by an individual or
26 entity primarily identified with expertise in the field of urban
27 education. The individual or entity shall design a comprehensive
28 study of the pilot program which shall include, but not be limited to,
29 consideration of the following:

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

32 (2) the impact of the pilot program on achieving savings for State
33 taxpayers;

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

35 (4) parental satisfaction with the pilot program.

36 The board shall not use any funds on deposit in the Opportunity
37 Scholarship Fund to pay for any cost associated with the study. The
38 board may raise funds privately for this purpose.

39 f. On or before January 1 of the fifth school year of the pilot
40 program, the board shall submit a report to the Governor, and to the
41 Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1),
42 on the implementation and results of the pilot program. The report
43 shall be based on the annual reports submitted by the scholarship
44 organizations pursuant to subsection b. of section 7 of P.L. , c.
45 (C.) (pending before the Legislature as this bill) and the
46 independent study conducted pursuant to subsection e. of this
47 section. The report shall include a recommendation on whether the
48 program should be reauthorized on a permanent basis.

1 7. a. A scholarship organization selected by the board pursuant
2 to subsection b. of section 6 of P.L. , c. (C.) (pending before the
3 Legislature as this bill) shall require that an eligible school which
4 admits a child receiving an educational scholarship under the pilot
5 program:

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

8 (2) ensure that a child enrolled in an eligible school who
9 received a scholarship under the program in the prior school year
10 receives a scholarship in each school year of enrollment under the
11 program provided that the child remains eligible; except that any
12 child who received a scholarship under the program in the prior
13 school year who is no longer considered a low-income child shall
14 continue to remain eligible to receive a scholarship under the
15 program until the child completes the eighth grade or the twelfth
16 grade, whichever occurs first, provided that the child continues to
17 meet all other eligibility requirements;

18 (3) in the event that more children apply for admission under the
19 pilot program than there are openings at the eligible school,
20 determine through a lottery which children are selected for
21 admission, except that preference for enrollment may be given to
22 siblings of students who are enrolled in the eligible school; and,

23 (4) if the eligible school is a nonpublic school, administer an
24 annual test to scholarship recipients that is aligned with the core
25 curriculum content standards.

26 b. A selected scholarship organization shall:

27 (1) manage the scholarship application process for the school
28 district in which students who are eligible to participate in the
29 scholarship program reside;

30 (2) review and verify the income and residence of a scholarship
31 applicant;

32 (3) compile an inventory of vacancies in eligible schools
33 available for potential scholarship recipients;

34 (4) conduct necessary student selection lotteries in accordance
35 with the requirements of paragraph (3) of subsection a. of this
36 section;

37 (5) monitor the enrollment of scholarship students in eligible
38 schools and allocate scholarship funds to those schools; and,

39 (6) prepare a report to be submitted to the State Treasurer by
40 December 1 of each year that includes, but is not limited to, the
41 following information for the prior school year: the amount of
42 scholarship funds received by the scholarship organization from the
43 Opportunity Scholarship Fund; the administrative costs of the
44 scholarship organization; the amount of scholarship funds dispersed
45 on behalf of scholarship recipients to eligible schools that are public
46 schools, and a listing of those eligible schools; the amount of
47 scholarship funds dispersed on behalf of scholarship recipients to
48 eligible schools that are nonpublic schools, and a listing of those

1 eligible schools; and the number of scholarship applications which
2 exceeded available scholarship funds.

3 The board shall make the annual report available to the parents
4 or guardians of scholarship recipients and to members of the public.

5
6 8. The Department of Education shall annually provide a list of
7 districts where a chronically failing school is located to the
8 Opportunity Scholarship Fund Board established pursuant to section
9 6 of P.L. , c. (C.) (pending before the Legislature as this bill).
10 The department shall coordinate with the board to determine the
11 earliest feasible time that the list can be developed after the
12 administration of the State assessments.

13
14 9. The Director of the Division of Taxation shall adopt rules
15 and regulations in accordance with the "Administrative Procedure
16 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the
17 provisions of sections 1 through 8 of P.L. , c. (C.) (pending
18 before the Legislature as this bill).

19
20 10. Notwithstanding any provision of subsection a. of section 16
21 of P.L.2007, c.260 (C.18A:7F-58) or any other section of law to the
22 contrary, for each scholarship recipient who was enrolled in a
23 public school of the district at the time that the student first received
24 a scholarship pursuant to section 6 of P.L. , c. (C.) (pending
25 before the Legislature as this bill), the amount of State school aid
26 paid to the district pursuant to the provisions of P.L.2007, c.260
27 (C.18A:7F-43 et al.) shall be reduced by an amount equal to the
28 district's equalization aid, security categorical aid, special education
29 categorical aid, transportation aid, and adjustment aid divided by
30 the district's resident enrollment.

31
32 11. There is hereby established in the Department of Education a
33 fund entitled the "Educational Innovation Fund." The fund shall be
34 credited with the amount of any per pupil State school aid reduction
35 made pursuant to section 10 of P.L. , c. (C.) (pending before the
36 Legislature as this bill) that is in excess of the applicable
37 scholarship awarded pursuant to section 6 of P.L. , c. (C.)
38 (pending before the Legislature as this bill) to a scholarship
39 recipient who was enrolled in a public school of the district at the
40 time that the student first received a scholarship. All interest or
41 other income or earnings derived from the investment or
42 reinvestment of moneys in the fund shall be credited to the fund.
43 The moneys in the fund are specifically dedicated to fund the
44 Educational Innovation Pilot Program established pursuant to
45 section 12 of P.L. , c. (C.) (pending before the Legislature as
46 this bill).

1 12. a. As used in this section, “chronically failing school”
2 means any school that meets the criteria of paragraph (1) or
3 paragraph (2) of this subsection:

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

9 (2) among all students in that school to whom a State assessment
10 was administered, the percent of students scoring in the partially
11 proficient range in either the language arts or mathematics subject
12 area of the State assessment exceeded 65% in each of the prior two
13 school years.

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

20 b. The Commissioner of Education shall establish a five-year
21 Educational Innovation Pilot Program. The program shall award
22 competitive grants to chronically failing schools to finance the
23 adoption of innovative educational practices with the objective of
24 improving student performance. The grants shall be funded by
25 moneys on deposit in the Educational Innovation Fund established
26 pursuant to section 11 of P.L. , c. (C.) (pending before the
27 Legislature as this bill).

28 c. The commissioner shall develop an application process to
29 select the chronically failing schools which will receive an
30 innovation grant. The application shall be prepared and submitted
31 by the superintendent of the district in which the chronically failing
32 school is located. The application shall include, but not be limited
33 to, the following information:

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

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

37 (3) a list of program objectives and a description of how the
38 district will assess the program’s implementation and outcomes.

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

41
42 13. The State Board of Education shall adopt regulations
43 pursuant to the "Administrative Procedures Act," P.L.1968, c.410
44 (C.52:14B-1 et seq.), to effectuate the provisions of sections 10
45 through 12 of P.L. , c. (C.) (pending before the Legislature as
46 this bill).

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48 14. This act shall take effect immediately.

STATEMENT

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This bill directs the Director of the Division of Taxation to establish a five-year pilot program to provide tax credits to corporations which contribute funding to nonprofit organizations which provide scholarships to low-income children who reside in a district where a chronically failing school is located to pay tuition at in-district or out-of-district public schools or in-district or out-of-district nonpublic schools located in the State. The bill defines a chronically failing school as one in which, for the past two school years: more than 40% of the school's students did not pass the language arts and mathematics subject areas of the State assessments; or more than 65% of the students did not pass either the language arts or mathematics subject areas. A child is considered low-income if the child lives in a household in which the income does not exceed 250% of the federal poverty level.

Under the pilot program, a tax credit will be equal to 100% of the contribution a corporation makes to a qualified scholarship organization. While there is no limit on the amount that can be contributed for credit, a corporation may not apply the credits to reduce its tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162; and the total tax credit of all participating corporations is capped at \$24,000,000 the first State fiscal year, \$48,000,000 the second State fiscal year, \$72,000,000 the third State fiscal year, \$96,000,000 the fourth State fiscal year, and \$120,000,000 the fifth State fiscal year. If the sum of the amount of tax credits authorized in a State fiscal year exceeds the aggregate annual limits, tax credits will be allowed in the order that contributions are made until the limit is reached.

The bill establishes the Opportunity Scholarship Fund to be credited with contributions made by taxpayers to nonprofit scholarship organizations. The bill directs the Opportunity Scholarship Fund Board to select one scholarship organization in each of the counties in which a chronically failing school is located to administer the scholarship funds, or the board may select a scholarship organization to administer the funds in more than one county. The board, in consultation with the State Treasurer, is to distribute the funds to the selected scholarship organizations.

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

- (1) accept the scholarship as payment in full for the child's tuition and other costs of attendance;
- (2) in the event that more children apply for admission to that school under the pilot program than there are openings, that students will be selected through a lottery;
- (3) ensure that a child enrolled in an eligible school who received a scholarship under the program in the prior school year receives a scholarship in each school year of enrollment under the

1 program provided that the child remains eligible; and
2 (4) in the case of an eligible school that is a nonpublic school,
3 that the school administer an annual test to scholarship students that
4 is aligned to the core curriculum content standards.

5 The scholarship organization selected in each county will
6 manage the scholarship application process; review and verify the
7 residence of scholarship applicants; compile an inventory of
8 vacancies in eligible schools; conduct necessary student selection
9 lotteries; monitor the enrollment of scholarship students in eligible
10 schools; and prepare an annual report to be submitted to the State
11 Treasurer that provides information on the program for the prior
12 school year.

13 The bill directs the board to commission an independent study on
14 the implementation of the pilot program by an individual or entity
15 with expertise in the field of urban education. The study will
16 consider issues such as the academic achievement of scholarship
17 recipients, the impact of the pilot program on achieving savings for
18 State taxpayers, the impact of the pilot program on student
19 enrollment patterns, and parental satisfaction with the program.

20 On or before January 1 of the fifth school year of the pilot
21 program, the board is directed to submit a report to the Governor
22 and the Legislature on the implementation and results of the pilot
23 program. The report will include a recommendation on whether the
24 program should be reauthorized on a permanent basis.

25 Finally, the bill establishes a five-year Educational Innovation
26 Pilot Program in the Department of Education. Under the program,
27 the Commissioner of Education will develop a program to award
28 competitive grants to chronically failing schools, with the objective
29 of providing the schools with resources to implement innovative
30 educational programs to improve student performance.

31 For each of a district's students who obtains a scholarship, the
32 district's State school aid would be reduced by the per pupil amount
33 awarded to the district pursuant to the "School Funding Reform Act
34 of 2008." The portion of that reduction that exceeds the scholarship
35 amount will be deposited into the Educational Innovation Fund and
36 used to support the grant program.