

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
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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:

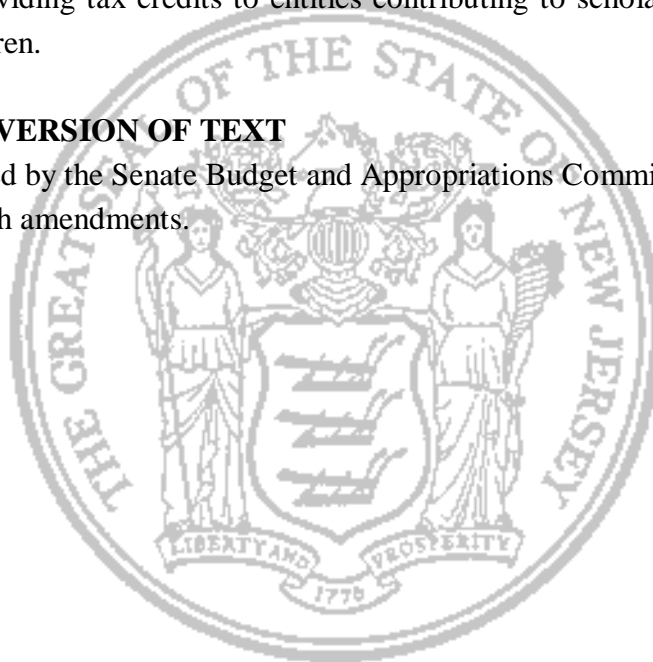
Senators Kyrillos, Oroho, Singer and A.R.Bucco

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on January 20, 2011, with amendments.



(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]** Parents¹ of limited
14 **[means]** financial resources¹ are often¹ less able to provide
15 access to quality¹ educational options for their children **[, even in**
16 **those instances in which the public schools are failing their**
17 **children,]**¹ and are therefore unable¹ to select the learning
18 environment that might best meet the needs of their children ¹, even
19 in those instances in which the public schools are failing to educate
20 their children¹ ;

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

27 **c.]**¹ Consequently, it is critical to provide a mechanism that will
28 provide **[students]** children of families that have limited financial
29 resources¹ enrolled in **[these]** chronically¹ failing schools the
30 opportunity to **[receive a quality education]** enroll in different
31 schools chosen by their parents so as to expand the educational
32 opportunities available to these children¹ ;

33 **[d.] c.**¹ The United States Supreme Court in its 2002 decision,
34 Zelman v. Simmons-Harris, found that a program providing tuition
35 aid in the form of scholarships for some students to attend public or
36 nonpublic schools of a parent’s choosing did not violate the
37 Establishment Clause of the United States Constitution; and

38 **[e. In light of New Jersey’s constitutional commitment to**
39 **ensuring educational justice for every child, regardless of the**
40 **relative wealth or poverty of a child’s parents,]** d. Accordingly,¹ it
41 is appropriate that the State initiate a tax credit scholarship program
42 on a pilot basis to encourage corporations to make voluntary
43 contributions to nonprofit scholarship organizations, as well as to¹

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SBA committee amendments adopted January 20, 2011.

1 assess **'[its] the'** impact **'of such a program'** on the educational
2 opportunity and achievement of children whose current education
3 options are limited to a chronically failing school.

4
5 3. As used in sections 1 through 8 of P.L. , c. (C.)
6 (pending before the Legislature as this bill):

7 "Chronically failing school" means any **'public'** school **' , other**
8 **than a charter school,** that **'is located in a targeted district and'**
9 meets the criteria of paragraph (1) or paragraph (2):

10 (1) among all students in that school to whom a State
11 assessment was administered, the percent of students scoring in the
12 partially proficient range in both the language arts and mathematics
13 subject areas of the State assessments **'[exceeded] was equal to or**
14 **greater than'** 40% in each of the prior two school years; or

15 (2) 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 either the language arts or mathematics
18 subject area of the State assessment **'[exceeded] was equal to or**
19 **greater than'** 65% in each of the prior two school years.

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

26 "Eligible school" means an **'[in-district or]'** out-of-district
27 public school or an in-district or out-of-district nonpublic school
28 located in this State offering a program of instruction for
29 kindergarten through 12th grade, or any combination of those
30 grades that:

31 (1) is open to **'[all] enroll'** students who are eligible to
32 participate in the pilot program established pursuant to section 4 of
33 P.L. , c. (C.) (pending before the Legislature as this bill) on
34 a space-available basis **'as determined by the eligible school'** and
35 does not discriminate in its admission policies or practices for
36 scholarship applicants enrolled in a public school on the date of the
37 scholarship application on the basis of intellectual or athletic
38 ability, measures of achievement or aptitude, status as a
39 **'[handicapped]'** person **'with disabilities'**, proficiency in the
40 English language, or any other basis that would be illegal if used by
41 a school district; however nothing shall prohibit a school from
42 qualifying as an eligible school solely because the school limits
43 admission to a particular grade level **' , single gender,'** or to areas of
44 concentration at the school, such as mathematics, science, or the
45 arts;

46 (2) in the case of a nonpublic school, provides **'[enrollment**

1 preference] first priority¹ for ['new admissions] enrollment in any
2 space made available by the school for scholarship students at that
3 school¹ to students who ['are enrolled in a chronically failing
4 school and are eligible to]¹ participate in the pilot program
5 established pursuant to P.L. , c. (C.) (pending before the
6 Legislature as this bill); ['and]¹

7 (3) 'in the case of a public school, has been designated by the
8 board of education as a school that will accept students who
9 participate in the pilot program established pursuant to P.L. , c.
10 (C.) (pending before the Legislature as this bill);

11 (4) in the case of a nonpublic school, has obtained approval from
12 the Commissioner of Education pursuant to section 12 of P.L. , c.
13 (C.) (pending before the Legislature as this bill) to enroll students
14 who participate in the pilot program established pursuant to that act;
15 and

16 (5)¹ is in full compliance with all federal, State, and local laws.

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

20 "Low-income child" means a child from a household with an
21 income that does not exceed 2.50 times the official federal poverty
22 level based on family size, established and adjusted under Section
23 673(2) of Subtitle B, the "Community Services Block Grant Act,"
24 Pub. L.97-35 (42 U.S.C. s.9902(2)), for the school year preceding
25 the school year for which an educational scholarship is to be
26 distributed.

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

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

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

40 (3) distributes individual scholarships 'to the parents or
41 guardians of scholarship students¹ that:

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

44 (i) the actual cost per pupil of the eligible school enrolling a
45 scholarship student, as determined by the Commissioner of
46 Education; or

47 (ii) the greater of ['\$6,000] \$8,000¹ or 40% of the prior

1 school year's actual average comparative cost per pupil, as reported
2 in the Department of Education's Comparative Spending Guide,
3 among all school districts in which a chronically failing school is
4 located; and

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

7 (i) the actual cost per pupil of the eligible school enrolling a
8 scholarship student, as determined by the Commissioner of
9 Education; or

10 (ii) the greater of '\$9,000' ~~'\$11,000'~~¹ or 59% of the prior
11 school year's actual average comparative cost per pupil, as reported
12 in the Department of Education's Comparative Spending Guide,
13 among all school districts in which a chronically failing school is
14 located;

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

18 (5) has complied with such other requirements as the Director of
19 the Division of Taxation in the Department of the Treasury may
20 require.

21 ¹ "Targeted district" means Asbury Park City School District,
22 Camden City School District, East Orange City School District,
23 Elizabeth City School District, Jersey City School District,
24 Lakewood City School District, Newark City School District, City
25 of Orange School District, Passaic City School District, Paterson
26 City School District, Perth Amboy City School District, Plainfield
27 City School District, and Trenton City School District.¹

28

29 4. a. ¹~~['Beginning in the first State fiscal year following the~~
30 ~~effective date of P.L. , c. (C.) (pending before the~~
31 ~~Legislature as this bill)'] By April 1, 2011¹ , the Director of the~~
32 ~~Division of Taxation in the Department of the Treasury shall~~
33 ~~establish a five-year pilot program to provide tax credits to~~
34 ~~corporations which contribute funding to the lead scholarship~~
35 ~~organization designated pursuant to subsection b. of section 5 of~~
36 ~~P.L. , c. (C.) (pending before the Legislature as this bill) to~~
37 ~~provide educational scholarships 'beginning in the 2011-2012~~
38 ~~school year¹ to help low-income children who, except as otherwise~~
39 ~~provided pursuant to paragraph ~~['(2)']~~ ~~(3)~~¹ or paragraph ~~['(3)']~~ ~~(4)~~¹~~
40 ~~of subsection a. of section 6 of P.L. , c. (C.) (pending~~
41 ~~before the Legislature as this bill), are enrolled in a chronically~~
42 ~~failing school, pay tuition at an eligible school 'that has been~~
43 ~~selected by the parent or guardian of the scholarship student¹.~~

44 b. Subject to the restrictions established pursuant to subsection
45 d. of this section, a taxpayer, upon application to the Director of the
46 Division of Taxation in the Department of the Treasury, shall be
47 allowed a credit against the tax imposed pursuant to section 5 of

1 P.L.1945, c.162 (C.54:10A-5) for a privilege period, in an amount
2 equal to 100% of the contributions made by the taxpayer to the lead
3 scholarship organization designated pursuant to subsection b. of
4 section 5 of P.L. , c. (C.) (pending before the Legislature as
5 this bill) during the privilege period; provided that the taxpayer
6 shall designate at the time the contribution is made that the
7 contribution is made pursuant to P.L. , c. (C.) (pending
8 before the Legislature as this bill). 'Any contribution made
9 pursuant to this section after April 1, 2011 and prior to June 30,
10 2011 shall be allowed as a credit against the tax imposed pursuant
11 to section 5 of P.L.1945, c.162 (C.54:10A-5) for the State fiscal
12 year that begins July 1, 2011.'¹

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

24 d. In aggregate, the total tax contribution of all participating
25 corporations shall not exceed ¹[\$24,000,000 in the first State fiscal
26 year, \$48,000,000 in the second State fiscal year, \$72,000,000 in
27 the third State fiscal year, \$96,000,000 in the fourth State fiscal
28 year, and \$120,000,000 in the fifth State fiscal year] an amount to
29 be determined by the Director of the Division of Taxation in the
30 Department of the Treasury to be sufficient to provide funding for
31 the maximum number of scholarships allowed pursuant to section 6
32 of P.L. , c. (C.) (pending before the Legislature as this bill) and
33 associated administrative costs'¹. If the sum of the amount of tax
34 credits authorized pursuant to this section in a State fiscal year
35 exceeds the aggregate annual limits established 'by the director'¹
36 pursuant to this subsection, tax credits shall be allowed in the order
37 in which contributions are made until the limit is reached.

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

46 b. The board shall select one scholarship organization in each
47 of the north, central, and southern regions of the State to administer

1 the scholarship funds made available through contributions received
2 pursuant to section 4 of P.L. , c. (C.) (pending before the
3 Legislature as this bill). The board shall designate one of the
4 scholarship organizations to be the lead scholarship organization.

5 c. The board shall publicize the pilot program to the parents
6 'and guardians' of children who are enrolled in a chronically failing
7 school.

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

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

16 (2) the impact of the pilot program on achieving savings for
17 State taxpayers;

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

20 (4) parental satisfaction with the pilot program.

21 The board may raise funds privately for the purpose of
22 commissioning the study and for the cost of publicizing the pilot
23 program.

24 e. On or before January 1 of the fifth school year of the pilot
25 program, the board shall submit a report to the Governor, and to the
26 Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1),
27 on the implementation and results of the pilot program. The report
28 shall be based on the annual reports submitted by the scholarship
29 organizations pursuant to subsection c. of section 6 of
30 P.L. , c. (C.) (pending before the Legislature as this bill)
31 and the independent study conducted pursuant to subsection d. of
32 this section. The report shall include a recommendation on whether
33 the program should be reauthorized on a permanent basis.
34

35 6. a. (1) 'The lead scholarship organization shall ensure that
36 the total number of scholarships awarded shall not exceed 3,900 in
37 the first school year, 7,800 in the second school year, 15,000 in the
38 third school year, 25,000 in the fourth school year, and 40,000 in
39 the fifth school year.

40 (2)¹ The lead scholarship organization shall allocate funds made
41 available through contributions provided pursuant to section 4 of
42 P.L. , c. (C.) (pending before the Legislature as this bill) to
43 the selected scholarship organizations 'in direct proportion to the
44 number of scholarships available to each scholarship organization
45 pursuant to this paragraph'. The total '[funds] number of
46 scholarships' available '[for scholarships]' for each school year

1 shall be allocated to the scholarship organization selected in each
2 region **'[as follows] in a number equal to the sum of'** :

3 **'(a)'** the total enrollment, excluding preschool students, of all
4 chronically failing schools in the region divided by the total
5 enrollment, excluding preschool students, of all chronically failing
6 schools Statewide, **'[and the result shall be]'** multiplied by **'75%**
7 **of'** the **'[total funds] maximum number of scholarships'** available
8 for that school year **';** and

9 **(b) the total enrollment, excluding preschool students, of all**
10 **nonpublic schools in the region located in a district in which a**
11 **chronically failing school is located divided by the total enrollment,**
12 **excluding preschool students, of all nonpublic schools Statewide**
13 **located in a district in which a chronically failing school is located,**
14 **multiplied by 25% of the maximum number of scholarships**
15 **available for that school year.**

16 For the purposes of this paragraph, a nonpublic school shall not
17 include an approved private school for students with disabilities' .

18 **'[(2)] (3)'** No more than 25% of a scholarship organization's
19 scholarship allocation in any school year shall be used to provide
20 scholarships to low-income students who reside in **'[the State] a**
21 **district in which a chronically failing school is located'** and are
22 enrolled in nonpublic schools on the effective date of P.L. , c.
23 (C.) (pending before the Legislature as this bill); except that if
24 by August 1 of any school year, scholarship funds available for the
25 scholarship organization remain unallocated, then the funds may be
26 used to provide additional scholarships for that school year to low-
27 income students enrolled in nonpublic schools on the effective date
28 of P.L. , c. (C.) (pending before the Legislature as this bill).

29 **'[(3)] (4)'** If by August 15 of any school year, scholarship funds
30 available for the scholarship organization remain unallocated, then
31 the unallocated funds shall be used to provide scholarships for that
32 school year to low-income children residing in other regions.
33 Priority shall be given to students in the following order:

34 (a) low-income children attending a chronically failing school;
35 (b) low-income children residing in a district in which a
36 chronically failing school is located; and

37 (c) notwithstanding the provisions of paragraph **'[(2)] (3)'** of
38 this subsection, low-income children enrolled in a nonpublic school
39 on the effective date of P.L. , c. (C.) (pending before the
40 Legislature as this bill).

41 The Opportunity Scholarship Board established pursuant to
42 subsection **'[b.] a.'** of section 5 of P.L. , c. (C.) (pending
43 before the Legislature as this bill) shall determine the
44 apportionment of unallocated funds to the other regions.

45 b. A scholarship organization selected by the board pursuant to
46 subsection b. of section 5 of P.L. , c. (C.) (pending before

1 the Legislature as this bill) shall require that an eligible school
2 which admits a child receiving an educational scholarship under the
3 pilot program:

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

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

16 (3) in the event that more children apply for admission under the
17 pilot program than there are openings at the eligible school,
18 determines through a lottery which children are selected for
19 admission, except that preference for enrollment may be given to
20 siblings of students who are enrolled in the eligible school; ¹[and]

21 (4) if the eligible school is a nonpublic school ¹[,];

22 (a) ¹administers the appropriate grade level State assessment to
23 scholarship students ¹and makes the results publicly available,
24 except that the school shall not make any results publicly available
25 that may lead to the disclosure of results for an individual student ¹.

26 The Department of Education shall provide the necessary material
27 to the nonpublic school at no cost ¹;

28 (b) obtains written acknowledgment from the parent or guardian
29 that a nonpublic school may not provide the same level of special
30 education services that are provided in a public school and
31 acceptance of the scholarship and enrollment in the nonpublic
32 school has the same effect as a parental refusal to consent to
33 services pursuant to section 614 of the "Individuals with
34 Disabilities Education Act," Pub.L. 108-446 (20 U.S.C. s.1414);

35 (c) upon admitting a scholarship student, agrees to continue
36 enrolling that student for at least two full school years unless the
37 student commits an act that threatens the health or safety of other
38 students, faculty, or staff at the school. Thereafter, the scholarship
39 student shall be subject to the disciplinary and expulsion policy that
40 is applicable to all students;

41 (d) if the nonpublic school is a sectarian school, allows a
42 scholarship student to opt out of any classes that provide religious
43 instruction or any religious activities; and

44 (5) shall not use revenue received through the enrollment of
45 scholarship students for construction or capital improvement
46 projects ¹.

47 c. A selected scholarship organization shall:

- 1 (1) manage the scholarship application process for the school
- 2 district in which students who are eligible to participate in the
- 3 scholarship program reside;
- 4 (2) review and verify the income and residence of a scholarship
- 5 applicant;
- 6 (3) compile an inventory of vacancies in eligible schools
- 7 available for potential scholarship recipients 'based on information
- 8 provided by the eligible schools';
- 9 (4) conduct necessary student selection lotteries in accordance
- 10 with the requirements of paragraph (3) of subsection b. of this
- 11 section;
- 12 (5) in the event that the number of eligible students 'in a region'
- 13 applying for a scholarship exceeds the number of available
- 14 scholarships 'in the region' , conduct '[lotteries] a lottery in the
- 15 region' to determine which students will receive a scholarship;
- 16 (6) monitor the enrollment of scholarship students in eligible
- 17 schools '[and allocate scholarship funds to those schools]' ;
- 18 '[and,]'
- 19 (7) 'distribute scholarship funds to the parents or guardians of
- 20 scholarship students; and
- 21 (8)¹ prepare a report to be submitted to the State Treasurer 'and
- 22 the Commissioner of Education' by December 1 of each year that
- 23 includes, but is not limited to, the following information for the
- 24 prior school year: the amount of scholarship funds received by the
- 25 scholarship organization; the administrative costs of the scholarship
- 26 organization; 'the total number of scholarships awarded, by grade
- 27 level; the total number of scholarship recipients who previously
- 28 attended a public school, by school district;' the amount of
- 29 scholarship funds '[dispersed] disbursed' on behalf of scholarship
- 30 recipients to eligible schools that are public schools, and a listing of
- 31 those eligible schools; the amount of scholarship funds
- 32 '[dispersed] disbursed' on behalf of scholarship recipients to
- 33 eligible schools that are nonpublic schools, and a listing of those
- 34 eligible schools; and the number of scholarship applications for
- 35 which no scholarship funds were available.
- 36 The board shall make the annual report available to the parents
- 37 or guardians of scholarship recipients and to members of the public.
- 38 'Upon review of the report, the commissioner shall have the
- 39 authority to disallow any excessive administrative expenditures
- 40 made by the scholarship organization and reduce the amount that
- 41 the scholarship organization may retain for administrative expenses
- 42 in the subsequent school year.'
- 43
- 44 7. The Department of Education shall annually provide a list of
- 45 all chronically failing schools to the Opportunity Scholarship Board
- 46 established pursuant to subsection a. of section 5 of

1 P.L. , c. (C.) (pending before the Legislature as this bill).
2 The department shall coordinate with the board to determine the
3 earliest feasible time that the list can be developed after the
4 administration of the State assessments.

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

11
12 9. 'a.' Notwithstanding any provision of 'section 5 or'
13 subsection a. of section 16 of P.L.2007, c.260 ('C.18A:7F-47 and'
14 C:18A:7F-58) or any other section of law to the contrary, for each
15 scholarship student who was enrolled in a public school of the
16 district at the time that the student first received an educational
17 scholarship pursuant to P.L. , c. (C.) (pending before the
18 Legislature as this bill), 'and for each year thereafter that the
19 student receives a scholarship,' the amount of State school aid paid
20 to the district pursuant to the provisions of P.L.2007, c.260
21 (C.18A:7F-43 et al.) shall be reduced by an amount equal to the
22 district's equalization aid, security categorical aid, special education
23 categorical aid, '[transportation aid,]' and adjustment aid divided
24 by the district's resident enrollment.

25 'b. Each school district for which a State school aid reduction
26 was made pursuant to subsection a. of this section shall receive an
27 amount of State school aid equal to the Statewide reduction in State
28 school aid made pursuant to that subsection minus the sum of the
29 total tax credit authorized for the State fiscal year pursuant to
30 section 4 of P.L. , c. (C.) (pending before the Legislature as this
31 bill) and any costs incurred due to the assessments required
32 pursuant to sections 6 and 13 of P.L. , c. (C.) (pending before
33 the Legislature as this bill), multiplied by the ratio obtained by
34 dividing the amount of State school aid withheld from the district
35 pursuant to subsection a. of this section by the total amount of State
36 school aid withheld from all districts pursuant to that subsection.'

37
38 '[10. There is hereby established in the Department of Education
39 a fund entitled the "Educational Innovation Fund." The fund shall
40 be credited with the amount of any per pupil State school aid
41 reduction made pursuant to section 9 of P.L. , c. (C.)
42 (pending before the Legislature as this bill) that is in excess of the
43 applicable educational scholarship awarded pursuant to P.L. , c.
44 (C.) (pending before the Legislature as this bill) to a
45 scholarship student who was enrolled in a public school of the
46 district at the time that the student first received a scholarship. All
47 interest or other income or earnings derived from the investment or

1 reinvestment of moneys in the fund shall be credited to the fund.
2 The moneys in the fund are specifically dedicated to fund the
3 Educational Innovation Pilot Program established pursuant to
4 section 11 of P.L. , c. (C.) (pending before the Legislature
5 as this bill).¹

6
7 ¹[11. a.] 10. As used in ¹[this section, “chronically” sections 9
8 through 11 of P.L. , c. (C.) (pending before the Legislature as
9 this bill):

10 Chronically¹ failing school” means any public¹ school , other
11 than a charter school,¹ that is located in a targeted district and¹
12 meets the criteria of paragraph (1) or paragraph (2) of this
13 subsection:

14 (1) among all students in that school to whom a State
15 assessment was administered, 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 ¹[**exceeded**] was equal to or
18 greater than¹ 40% in each of the prior two school years; or

19 (2) among all students in that school to whom a State
20 assessment was administered, the percent of students scoring in the
21 partially proficient range in either the language arts or mathematics
22 subject area of the State assessment ¹[**exceeded**] was equal to or
23 greater than¹ 65% in each of the prior two school years.

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

30 ¹[b. The Commissioner of Education shall establish a five-year
31 Educational Innovation Pilot Program. The program shall award
32 competitive grants to chronically failing schools to finance the
33 adoption of innovative educational practices with the objective of
34 improving student performance. The grants shall be funded by
35 moneys on deposit in the Educational Innovation Fund established
36 pursuant to section 10 of P.L. , c. (C.) (pending before the
37 Legislature as this bill).

38 c. The commissioner shall develop an application process to
39 select the chronically failing schools which will receive an
40 innovation grant. The application shall be prepared and submitted
41 by the superintendent of the district in which the chronically failing
42 school is located. The application shall include, but not be limited
43 to, the following information:

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

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

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

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

5 “Targeted district” means Asbury Park City School District,
6 Camden City School District, East Orange City School District,
7 Elizabeth City School District, Jersey City School District,
8 Lakewood City School District, Newark City School District, City
9 of Orange School District, Passaic City School District, Paterson
10 City School District, Perth Amboy City School District, Plainfield
11 City School District, and Trenton City School District.¹

12
13 ¹11. A school district in which a chronically failing school is
14 located shall provide transportation services to scholarship students
15 attending a nonpublic school or a public school outside the school
16 district of residence pursuant to the provisions of N.J.S.18A:39-1
17 applicable to nonpublic school pupil transportation.¹

18
19 ¹12. 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 an
26 end-of-year financial statement for each of the previous five years,
27 and, in the two years prior to the school year for which approval is
28 sought, has undergone an independent financial audit conducted by
29 a certified public accountant that concluded that the school is
30 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 viability;

43 (3) a list of faculty that includes information regarding each
44 individual's educational attainment and relevant work experience;

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

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

13 d. A nonpublic school shall submit the results of the most recent
14 assessment administered by the nonpublic school to its students to
15 the Commissioner of Education. The commissioner shall establish
16 performance criteria that must be met by the nonpublic school
17 students in order for the school to be approved to enroll a
18 scholarship student. The commissioner shall not approve a
19 nonpublic school to receive a scholarship student if the nonpublic
20 school does not administer an assessment to its students.¹

21
22 ¹13. The commissioner shall select grade-level appropriate
23 assessments to be administered to all students receiving a
24 scholarship pursuant to the provisions of P.L. , c. (C.) (pending
25 before the Legislature as this bill) in the first school year in which
26 the student receives a scholarship. The assessments that are
27 selected shall be capable of providing technically accurate measures
28 of a student's academic growth over time. The assessments shall be
29 administered to students twice during the school year. The first
30 administration shall occur within the first 30 school days of the
31 school year, and the second administration shall occur within the
32 last 30 school days of the school year. These requirements shall be
33 in addition to the requirement for the administration of the
34 appropriate grade level State assessment.¹

35
36 ¹[12.] 14.¹ The State Board of Education shall adopt regulations
37 pursuant to the "Administrative Procedures Act," P.L.1968, c.410
38 (C.52:14B-1 et seq.), to effectuate the provisions of sections 9
39 through ¹[11] 13¹ of P.L. , c. (C.) (pending before the
40 Legislature as this bill).

41
42 ¹[13.] 15.¹ This act shall take effect immediately.