

SENATE, No. 505

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

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

Introduced Pending Technical Review by Legislative Counsel.



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 P.L. , c.
15 (C.) (pending before the Legislature as this bill) on a space-
16 available basis as determined by the eligible school and does not
17 discriminate in its admission policies or practices for scholarship
18 students enrolled in a public school on the date of the scholarship
19 application on the basis of intellectual or athletic ability, measures
20 of achievement or aptitude, status as a person with disabilities,
21 proficiency in the English language, or any other basis that would
22 be illegal if used by a school district; however, nothing shall
23 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
45 as 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
48 Legislature as this bill) to enroll students who participate in the
49 pilot program established pursuant to that act; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 "Targeted district" means Asbury Park City School District,
46 Camden City School District, Elizabeth City School District,
47 Lakewood City School District, Newark City School District, City

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

3
4 4. Beginning in the first State fiscal year following the
5 effective date of P.L. , c. (C.) (pending before the
6 Legislature as this bill), the Director of the Division of Taxation in
7 the Department of the Treasury shall establish a five-year pilot
8 program, including an evaluation year in the last year of the pilot
9 program, to provide tax credits to taxpayers that contribute funding
10 to the scholarship organization selected pursuant to subsection b. of
11 section 7 of P.L. , c. (C.) (pending before the Legislature
12 as this bill) to provide educational scholarships to provide a parent
13 or guardian of a low-income child the ability to pay the costs at an
14 eligible school that has been selected by the parent or guardian of
15 the scholarship student. Under the pilot program, a low-income
16 child shall be eligible to receive a scholarship if:

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

28
29 5. a. Subject to the restrictions established pursuant to
30 subsection c. of this section, a taxpayer, upon application to the
31 scholarship organization selected pursuant to subsection b. of
32 section 7 of P.L. , c. (C.) (pending before the Legislature as
33 this bill), and approval of the Director of the Division of Taxation
34 in the Department of the Treasury, shall be allowed a credit against
35 the tax imposed pursuant to section 5 of P.L.1945, c.162
36 (C.54:10A-5) for a privilege period, in an amount equal to 100% of
37 the contribution made by the taxpayer to the scholarship
38 organization selected pursuant to subsection b. of section 7 of
39 P.L. , c. (C.) (pending before the Legislature as this bill)
40 during the privilege period; provided that the taxpayer shall
41 designate at the time the contribution is made that the contribution
42 is made pursuant to P.L. , c. (C.) (pending before the
43 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. ,
48 c. (C.) (pending before the Legislature as this bill) against the
49 tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5)

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

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

23
24 6. a. Subject to the restrictions established pursuant to
25 subsection c. of section 5 of P.L. , c. (C.) (pending before
26 the Legislature as this bill), a taxpayer, upon application to the
27 scholarship organization selected pursuant to subsection b. of
28 section 7 of P.L. , c. (C.) (pending before the Legislature
29 as this bill), and the approval of the Director of the Division of
30 Taxation in the Department of the Treasury, shall be allowed a
31 credit against the tax otherwise due for the taxable year under the
32 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an
33 amount equal to 100% of the contribution made by the taxpayer to
34 the scholarship organization selected pursuant to subsection b. of
35 section 7 of P.L. , c. (C.) (pending before the Legislature
36 as this bill) during the taxable year; provided that the taxpayer shall
37 designate at the time the contribution is made that the contribution
38 is made pursuant to P.L. , c. (C.) (pending before the
39 Legislature as this bill) and provided that the contribution is equal
40 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
34 the independent evaluation of the pilot program. The board shall
35 not approve any amendments that would materially alter the goals
36 and 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 P.L. , c.
43 (C.) (pending before the Legislature as this bill), the annual
44 audits conducted pursuant to subsection i. of that section, and the
45 independent study conducted pursuant to subsection j. of that
46 section. The report shall include a recommendation on whether the
47 program should be reauthorized on a permanent basis and whether it
48 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
3 the Legislature as this bill) shall award no more than 2,500
4 scholarships in the first year, 5,000 scholarships in the second year,
5 7,500 scholarships in the third year, 10,000 scholarships in the
6 fourth 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
38 require 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
2 as this 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.)
8 (pending 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
23 as 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
20 the Legislature as this bill) shall administer an appropriate grade
21 level assessment to all scholarship students enrolled in the school. If
22 a nonpublic school administers a State assessment, the Department
23 of 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
30 as 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. ,
40 c. (C.) (pending before the Legislature as this bill) to conduct
41 the independent evaluation of the program, and to the
42 commissioner. The commissioner shall make the results of the
43 assessments publicly available provided that results are available
44 for at least 10 students in any given grade level and that such a
45 release does not 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
3 as 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.