

ASSEMBLY, No. 613

STATE OF NEW JERSEY

220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

Assemblyman SEAN T. KEAN

District 30 (Monmouth and Ocean)

Assemblywoman NANCY F. MUNOZ

District 21 (Morris, Somerset and Union)

Co-Sponsored by:

Assemblymen Webber and Thomson

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 amount of excess shall be an overpayment for the purposes of
2 N.J.S.54A:9-7.

3

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

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

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

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

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

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

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

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

1 that section. The report shall include a recommendation on whether
2 the program should be reauthorized on a permanent basis and
3 whether it should be expanded to include other school districts.
4

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

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

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

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

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

30 d. If by July 1 of any school year, scholarships available in a
31 targeted district have not been awarded, then the remaining
32 scholarships shall be used to provide scholarships to low-income
33 children residing in another targeted district in accordance with
34 standards established by the Opportunity Scholarship Board. Any
35 scholarship awarded after July 1 shall be awarded using the same
36 order of priority established pursuant to subsection c. of this
37 section.
38

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

44 a. shall not require any payment in addition to the scholarship
45 from the parent or guardian of the scholarship student for
46 attendance at the school;

47 b. ensures that a child enrolled in an eligible school who
48 received a scholarship under the program in the prior school year

1 receives a scholarship in each school year of enrollment under the
2 program provided that the child remains a resident of the targeted
3 district. Any child who received a scholarship under the program in
4 the prior school year who is no longer considered a low-income
5 child shall continue to remain eligible to receive a scholarship under
6 the program. A scholarship student shall continue to remain
7 eligible to receive a scholarship in subsequent school years if, as a
8 result of grade progression, the public school in which the child is
9 eligible to enroll is not a chronically failing school.

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

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

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

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

25 e. shall not use revenue received through the enrollment of
26 scholarship students for construction or capital improvement
27 projects.

28

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

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

36 b. manage the scholarship application process for each targeted
37 district;

38 c. review and verify the income and residence of a scholarship
39 applicant;

40 d. compile an inventory of vacancies in eligible schools
41 available for potential scholarship recipients based on information
42 provided by the eligible schools;

43 e. in the event that the number of eligible students in a targeted
44 district applying for a scholarship exceeds the number of available
45 scholarships in the targeted district, conduct a lottery in the targeted
46 district to determine which students will receive a scholarship;

47 f. monitor the enrollment of scholarship students in eligible
48 schools;

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

1 The scholarship organization may carry forward funds in an
2 amount not to exceed 20% of the total value of scholarships
3 awarded and administrative fees collected in the school year. Any
4 contributions not used to award scholarships, administer the
5 program, or carried forward to the subsequent fiscal year shall be
6 returned to the Department of the Treasury.

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

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

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

19 (1) 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 both the language arts and mathematics
22 subject areas of the State assessments was equal to or greater than
23 40% in each of the prior two school years; or

24 (2) among all students in that school to whom a State
25 assessment was administered, the percent of students scoring in the
26 partially proficient range in either the language arts or mathematics
27 subject area of the State assessment was equal to or greater than
28 60% in each of the prior two school years.

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

35 "Targeted district" means Asbury Park City School District,
36 Camden City School District, Elizabeth City School District,
37 Lakewood City School District, Newark City School District, City
38 of Orange School District, Passaic City School District, and City of
39 Perth Amboy School District.

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

1 14. Notwithstanding any provision of section 5 or subsection a.
2 of section 16 of P.L.2007, c.260 (C.18A:7F-47 and C:18A:7F-58)
3 or any other section of law to the contrary, for each scholarship
4 student who resides in the targeted district, the amount of State
5 school aid paid to the district pursuant to the provisions of
6 P.L.2007, c.260 (C.18A:7F-43 et al.) shall be reduced by an amount
7 equal to sum of the amount of the scholarship awarded to the
8 scholarship student and the scholarship organization administrative
9 fee.

10 The scholarship organization administrative fee shall equal: in
11 the first State fiscal year \$750 per scholarship, in the second State
12 fiscal year, \$400 per scholarship, in the third State fiscal year, \$250
13 per scholarship, in the fourth State fiscal year, \$200 per scholarship,
14 and in the fifth State fiscal year, \$210 per scholarship.
15

16 15. A targeted district shall provide transportation services to a
17 student who receives a scholarship pursuant to P.L. , c. (C.)
18 (pending before the Legislature as this bill) and attends a nonpublic
19 school or a public school outside the school district of residence
20 pursuant to the provisions of N.J.S.18A:39-1 applicable to
21 nonpublic school pupil transportation.
22

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

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

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

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

40 b. The commissioner may grant approval to a school that does
41 not meet the requirements of subsection a. of this section if the
42 nonpublic school submits an application containing the following
43 information:

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

46 (2) information that demonstrates the school's financial
47 viability;

- 1 (3) a list of the school's faculty, including information regarding
2 each individual's educational attainment and relevant work
3 experience;
- 4 (4) a statement regarding the adequacy of the school's
5 equipment and facilities;
- 6 (5) documentation that the school has been determined by the
7 federal Internal Revenue Service to be qualified as a tax-exempt
8 organization pursuant to paragraph (3) of subsection (c) of section
9 501 of the federal Internal Revenue Code of 1986 (26 U.S.C.
10 s.501); and
- 11 (6) a list of current board members, their affiliations, and terms
12 of service.
- 13 c. As a condition of receiving approval to enroll a scholarship
14 student, a nonpublic school shall:
- 15 (1) require a criminal history record check of final candidates
16 for employment in accordance with the procedures established
17 pursuant to P.L.1989, c.229 (C.18A:6-4.13 et seq.)
- 18 (2) demonstrate that the school administers an annual
19 assessment to students enrolled in the school; and
- 20 (3) provide evidence that the school has received accreditation
21 from a recognized accrediting agency.
- 22
- 23 17. a. A nonpublic school that enrolls a scholarship student
24 pursuant to the provisions of P.L. , c. (C.) (pending before the
25 Legislature as this bill) shall administer an appropriate grade level
26 assessment to all scholarship students enrolled in the school. If a
27 nonpublic school administers a State assessment, the Department of
28 Education shall provide the necessary testing materials to the
29 nonpublic school at no cost.
- 30 b. In addition to any assessment administered pursuant to
31 subsection a. of this section, an eligible school that enrolls a
32 scholarship student shall administer a grade-level appropriate
33 assessment to all students receiving a scholarship pursuant to the
34 provisions of P.L. , c. (C.) (pending before the Legislature as
35 this bill) within the first 30 days of the scholarship student's
36 enrollment in the first school year in which a scholarship is
37 received, and once in each subsequent school year in which a
38 scholarship is received.
- 39 c. Any assessment administered pursuant to subsections a. and
40 b. of this section shall be capable of providing technically accurate
41 measures of a student's academic growth over time. An eligible
42 school that administers an assessment pursuant to subsections a. and
43 b. of this section shall make the results available to the entity
44 selected pursuant to subsection j. of section 10 of P.L. , c. (C.)
45 (pending before the Legislature as this bill) to conduct the
46 independent evaluation of the program, and to the commissioner.
47 The commissioner shall make the results of the assessments
48 publicly available provided that results are available for at least 10

1 students in any given grade level and that such a release does not
2 risk disclosing the results of an individual student.

3

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

9

10 19. This act shall take effect immediately.

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12

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STATEMENT

14

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

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

45 To be eligible to receive a scholarship, a low-income child must
46 either: 1) attend a chronically failing school, 2) received a
47 scholarship in the previous school year and continue to reside in the
48 targeted district, 3) reside in a targeted district and attend one of the

1 district's public schools that is not a chronically failing school, or 4)
2 in the subsequent school year, would be eligible to enroll in a
3 chronically failing school in the lowest grade, other than preschool,
4 operated by the school. The last category of students would include
5 those currently enrolled in a nonpublic school.

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

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

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

26 (2) ensures that a child enrolled in an eligible school who
27 received a scholarship under the program in the prior school year
28 receives a scholarship in each school year of enrollment under the
29 program provided that the child continues to reside in the targeted
30 district;

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

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

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

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

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

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

48 Additionally, if the nonpublic school is a sectarian school, it must

1 provide a scholarship student the opportunity to opt out of any
2 religious instruction or activity.

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

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

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

45 For each resident student who receives a scholarship, a targeted
46 district's State aid will be reduced by an amount equal to the
47 scholarship awarded to the student plus the scholarship
48 organization's administrative fee. The administrative fee will equal

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1 \$750 per scholarship in the first year, \$400 per scholarship in the
2 second year, \$250 per scholarship in the third year, \$200 per
3 scholarship in the fourth year, and \$210 per scholarship in the final
4 year. The targeted district would also be responsible for providing
5 transportation services to a scholarship student who attends a school
6 outside of the district on the same basis that the district provides
7 transportation services to nonpublic school students pursuant to
8 N.J.S.18A:39-1.