

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1

Session of
2011

INTRODUCED BY PICCOLA, WILLIAMS, SCARNATI, PILEGGI, FOLMER,
BROWNE, SMUCKER, ALLOWAY, ERICKSON, RAFFERTY, EICHELBERGER,
PIPPY, D. WHITE, MENSCH, BRUBAKER, WASHINGTON AND STACK,
JANUARY 26, 2011

SENATOR PICCOLA, EDUCATION, AS AMENDED, MARCH 1, 2011

AN ACT

Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An act relating to the public school system, including certain provisions applicable as well to private and parochial schools; amending, revising, consolidating and changing the laws relating thereto," providing for opportunity scholarships; establishing the Excess Scholarship Fund; providing for educational improvement tax credit; and repealing provisions of the Tax Reform Code of 1971 relating to educational improvement tax credit.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, is amended by adding an article to read:

ARTICLE XXV-BOPPORTUNITY SCHOLARSHIPS ANDEDUCATIONAL IMPROVEMENT TAX CREDIT(a) Preliminary Provisions

Section 2501-B. Short title.

This article shall be known and may be cited as the

Opportunity Scholarship and Educational Improvement Tax Credit Act.

(b) Opportunity Scholarships

Section 2501.1-B. Legislative findings.

The General Assembly finds that:

(1) Pursuant to section 14 of Article III of the Constitution of Pennsylvania, the General Assembly has the responsibility to provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of this Commonwealth.

(2) Parents are best suited to choose the most appropriate means of education for their school-age children.

(3) Providing diverse educational opportunities for the children of this Commonwealth is a civic and civil rights imperative and a matter of serious concern.

(4) The importance of providing educational choices that will meet the needs of parents, and the need to maintain and support an effective system of education, make it imperative to provide for the increased availability of diverse opportunities, including both public and nonpublic programs of education, to benefit all citizens of this Commonwealth.

(5) Public schools are the foundation of the system of education in this Commonwealth. Further, Pennsylvania's longstanding tradition of local control of public education allows communities to adapt their public school programs to meet local needs. For these reasons, a robust program of interdistrict school choice is a critical means of providing families with increased educational options within the traditional public school system.

(6) The accessibility to families of nonpublic

educational alternatives decreases the burden on the Commonwealth and local school districts and increases the range of educational choices available to Pennsylvania families, thus providing a benefit to all citizens of this Commonwealth.

(7) It is the long-term goal of the General Assembly to offer assistance to all families in this Commonwealth, so as to provide every child in this Commonwealth with diverse educational opportunities and options.

(8) As an initial step toward the long-term goal of offering assistance to all Pennsylvania families, this subarticle provides assistance to disadvantaged school-age children in this Commonwealth who would otherwise attend persistently lowest achieving schools.

(9) Many disadvantaged school-age children in this Commonwealth enjoy comparatively fewer educational opportunities or options than school-age children who possess greater economic means.

(10) The programs of educational choice provided in this subarticle are elements of an overall program of providing funds to increase the availability of educational opportunities for school-age children in this Commonwealth.

(11) A comparatively far greater proportion of public funds are and, upon implementation of an educational choice program, will continue to be devoted to the benefit of children enrolled in the public schools of this Commonwealth. Therefore, an opportunity scholarship program that offers assistance to parents who choose to enroll their children in participating nonpublic schools should be viewed as an integral part of the Commonwealth's overall program of

educational funding and not as an isolated individual program.

(12) A program of financial assistance to enhance educational choice in this Commonwealth, as one element of the Commonwealth's plan for the funding of diverse educational opportunities for the citizens of this Commonwealth, will better prepare Commonwealth citizens to compete for employment opportunities, will foster development of a more capable and better-educated work force and will better enable the Commonwealth to fulfill its obligation of providing children with the opportunity to receive a quality education.

Section 2502-B. Definitions.

The following words and phrases when used in this subarticle shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Assessment." The Pennsylvania System of School Assessment test, the Keystone Exam, an equivalent local assessment or another test established by the State Board of Education to meet the requirements of section 2603-B(d)(10)(i) and required under the No Child Left Behind Act of 2001 (Public Law 107-110, 115 Stat. 1425) or its successor Federal statute or required to achieve other standards established by the department for the public school or school district under 22 Pa. Code § 403.3 (relating to single accountability system).

"Average daily membership." A school district's average daily membership as defined in section 2501(3).

"Board." The Education Opportunity Board established under this subarticle.

"Department." The Department of Education of the

Commonwealth.

"Excess Scholarship Fund" or "Fund." The Excess Scholarship Fund established in this subarticle.

"Federal poverty line." The official Federal poverty line as defined in section 673(2) of Subtitle B of the Community Services Block Grant Act (Public Law 97-35, 95 Stat. 511), as adjusted from time to time.

"FUND." THE EXCESS SCHOLARSHIP FUND ESTABLISHED IN THIS SUBARTICLE.

"Household income." Income as used for the purposes of determining eligibility for a free or reduced-price lunch under the Richard B. Russell National School Lunch Act (60 Stat. 230, 1751 et seq.).

"KINDERGARTEN." A ONE-YEAR FORMAL KINDERGARTEN PROGRAM THAT OCCURS DURING THE SCHOOL YEAR IMMEDIATELY PRIOR TO FIRST GRADE.

"Local scholarship." A scholarship that is both:

(1) Funded by the local revenues of a low-income child's resident school district in an amount equal to at least 35% of the school district's share of its total revenue per average daily membership.

(2) Applied toward the low-income child's tuition to attend a nonresident public school.

"Low-income child." A school-age child with a household income that does not exceed 1.3 times the Federal poverty line for the school year preceding the school year for which an opportunity scholarship is to be distributed.

"Nonpublic school." A school, other than a public school, located within this Commonwealth where a Commonwealth resident may legally fulfill the compulsory school attendance requirements of this act and that meets the applicable

requirements of Title VI of the Civil Rights Act of 1964 (Public law 88-352, 78 Stat. 241). The term also includes a full-time or part-time kindergarten program operated by a nonpublic school.

"Nonresident public school." A public school outside a child's resident school district.

"Nonresident school district." A school district other than the school district in which a school-age child resides.

"Nonresident student." A school-age child attending a public school outside the child's resident school district.

"Opportunity scholarship." An opportunity scholarship awarded to a low-income child under this subarticle to pay tuition for the child to attend a nonresident public school or a participating nonpublic school.

"Opportunity scholarship program" or "program." The opportunity scholarship program established under this subarticle.

"Opportunity scholarship recipient." A low-income child who is awarded an opportunity scholarship under this subarticle.

"Parent." A Commonwealth resident who is a parent or guardian of a school-age child.

"Participating nonpublic school." A nonpublic school located in this Commonwealth and offering a program of instruction for kindergarten through 12th grade, or a combination of grades, that certifies to the board under section 2505-B that it meets the following criteria:

(1) THE NONPUBLIC SCHOOL IS A NONPROFIT ENTITY THAT IS EXEMPT FROM FEDERAL TAXATION UNDER SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE OF 1986 (PUBLIC LAW 99-514, 26 U.S.C. § 1 ET SEQ.);

~~(1)~~ (2) the nonpublic school does not discriminate in

its admission policies or practices for opportunity
scholarship applicants on the basis of measures of
achievement or aptitude or status as a handicapped person,
provided, however, that an applicant may be required to meet
established eligibility criteria for participation in magnet
schools or in schools with specialized academic missions; and
(2) (3) the nonpublic school is in full compliance with
all Federal and State laws.

"Persistently lowest achieving school." A public elementary
or secondary school within this Commonwealth achieving within
the lowest measured group of 5% on the most recent assessment
for which data is posted on the Department of Education's
publicly accessible Internet website. The term does not include
a charter school, cyber charter school or, area vocational-
technical school, A SCHOOL THAT DOES NOT DRAW ITS STUDENT BODY
FROM A PARTICULAR ATTENDANCE BOUNDARY OR A SCHOOL WITH A
SPECIALIZED ACADEMIC PROGRAM THAT HAS SPECIFIC ADMISSIONS
CRITERIA.

"Resident school district." The school district in which a
school-age child resides.

"School-age child." A child enrolling in kindergarten or in
grades 1 through 12.

"Student with a disability." A school-age child who has been
identified, in accordance with 22 Pa. Code Ch. 14 (relating to
special education services and programs), as a "child with a
disability," as defined in 34 CFR § 300.8 (relating to a child
with a disability).

"Total revenue per average daily membership." A school
district's total revenue per average daily membership MINUS THE
AMOUNT OF REIMBURSEMENT TO THE SCHOOL DISTRICT FOR PUPIL

TRANSPORTATION UNDER SECTION 2541.

Section 2503-B. Opportunity scholarship program.

(a) Establishment.--Beginning with the 2011-2012 school year, the opportunity scholarship program shall be established to provide scholarships to help low-income children pay tuition to attend a nonresident public school or a participating nonpublic school.

(b) Phase-in.--The opportunity scholarship program shall be phased in as follows:

(1) During the 2011-2012 school year, the opportunity scholarship program shall be available to low-income children who satisfy both of the following:

(i) ~~Attended~~ EITHER ATTENDED a persistently lowest achieving school during the 2010-2011 school year OR WILL BE A KINDERGARTEN STUDENT DURING THE 2011-2012 SCHOOL YEAR.

(ii) Will reside within the attendance boundary of a persistently lowest achieving school during the 2011-2012 school year.

(2) During the 2012-2013 school year, the opportunity scholarship program shall be available to low-income children who qualified for the program for the 2011-2012 school year under paragraph (1) and to low-income children who ~~satisfy both of the following:~~

~~(i) Attended a nonpublic school during the 2010-2011 school year.~~

~~(ii) Will~~ WILL reside within the attendance boundary of a persistently lowest achieving school during the 2012-2013 school year.

(3) During the 2013-2014 school year and each school

year thereafter, the opportunity scholarship program shall be available to all low-income children residing in this Commonwealth.

(c) List of persistently lowest achieving schools to be published.--By April 1, 2011, and by February 1 of each year thereafter, the department shall publish on the department's publicly accessible Internet website and in the Pennsylvania Bulletin a list of persistently lowest achieving schools that will be in effect for purposes of this subarticle for the following school year. The department shall publish the list based upon the most recent school year for which data is available.

(d) Notice to residents with school-age children.--

(1) By May 1, 2011, and by March 1 of each year thereafter, each school district in this Commonwealth shall provide all residents of the school district with school-age children with notice of the following:

(i) A description of the opportunity scholarship program.

(ii) Instructions for applying for an opportunity scholarship.

(iii) Instructions for applying for a local scholarship where the school district has elected to provide a local scholarship under section 2504-B(b).

(iv) A statement as to whether any schools in the school district have been designated by the department as persistently lowest achieving schools.

(v) Notice that a parent must contact directly the nonresident public school or participating nonpublic school in which the parent's child seeks to enroll for

application instructions.

(2) The school district shall provide such notice by mail to all residents of the school district with school-age children and by notice posted on the school district's publicly accessible Internet website. The notice shall be in a form provided by the board.

Section 2504-B. Opportunity scholarship to attend a nonresident public school.

(a) Eligibility.--A low-income child who is eligible to participate in the opportunity scholarship program may receive an opportunity scholarship to pay tuition to attend a nonresident public school that accepts a child's enrollment application under subsection (d).

(b) Local scholarship.--A school district may elect to provide a local scholarship to low-income children residing within the school district to pay tuition to attend a nonresident public school that accepts a child's enrollment application under subsection (d). A school district that elects to provide a local scholarship shall:

(1) By May 1, 2011, and by March 1 of each year thereafter, notify all residents of the school district with school-age children of the availability and amount of the local scholarship for the following school year and the process by which a low-income child may apply to the board to receive the opportunity and local scholarships. The school district shall provide the notice by mail to all residents of the school district with school-age children and by notice posted on the school district's publicly accessible Internet website. The notice may be incorporated into the notice the school district is required to provide under section 2503-

B(d).

(2) By May 1, 2011, and by March 1 of each year thereafter, notify the board of the availability and amount of the local scholarship for the following school year.

(3) When directed to do so by the board, pay to the board the local scholarship for each low-income child residing in the district who the board determines to be eligible for the local scholarship and who the board confirms has enrolled in a nonresident public school.

(4) Comply with all guidelines developed by the board under section 2509-B.

(c) Application for opportunity and local scholarships.--

(1) By June 1, 2011, and by April 1 of each year thereafter, pursuant to guidelines developed by the board under section 2509-B, the parent of a low-income child may apply to the board:

(i) For an opportunity scholarship for the following school year.

(ii) For a local scholarship for the following school year, where the low-income child's resident school district has elected to provide a local scholarship under subsection (b).

(2) By July 1, 2011, and by May 1 of each year thereafter, the board shall notify parents whether the scholarships for which the student applied will be awarded for the following school year.

(d) Application for enrollment in a nonresident public school.--

(1) By July 15, 2011, and by June 1 of each year thereafter, the parent of a low-income child who has been

awarded a scholarship under subsection (c) may apply to one or more nonresident public schools for enrollment of the child for the following school year. The application shall be on a form provided by the nonresident school district.

(2) (i) The nonresident school district shall provide written notice to the parent and the board by August 1, 2011, and by July 1 of each year thereafter, as to whether the child will be offered enrollment in the requested nonresident public school for the following school year.

(ii) Within ten days of receipt of the notice, the parent must provide written notice to the board, the resident school district and the nonresident school district whether the offer of enrollment will be accepted.

(iii) If the child is not enrolled in a nonresident public school, the child's resident school district shall determine the public school within the resident school district to which the child will be assigned.

(3) Each school district shall develop guidelines setting forth the terms and conditions under which it will enroll nonresident students receiving opportunity and local scholarships and shall develop an enrollment application form and process. If a school district determines to enroll nonresident students receiving opportunity and local scholarships, the school district must enroll such nonresident students on a first-applied-first-accepted basis, provided that:

(i) the nonresident student's enrollment in the nonresident school district would not place either the

nonresident school district or the resident school district in violation of a valid and binding desegregation order;

(ii) the nonresident student has not been expelled nor is the nonresident student in the process of being expelled under section 1317.2 or 1318 and applicable regulations of the State Board of Education; or

(III) THE NONRESIDENT STUDENT HAS NOT BEEN RECRUITED BY THE SCHOOL DISTRICT OR ITS REPRESENTATIVES FOR ATHLETIC PURPOSES; OR

~~(iii)~~ (IV) the nonresident student meets the established eligibility criteria for participation in a magnet school or in a public school with a specialized academic mission.

(4) A nonresident school district may give priority in enrollment to a nonresident student who has been awarded a local scholarship.

(e) Commonwealth payments.--The Commonwealth shall make payment pursuant to the schedule contained in section 2517 to each school district or area vocational-technical school that accepts a nonresident student under the provisions of this subarticle subject to the following terms and conditions:

(1) The Commonwealth shall pay to each school district or area vocational-technical school that accepts a nonresident student, on a tuition basis, the amount determined under section 2506-B.

(2) (i) For a nonresident student who is an opportunity scholarship recipient and defined as a "student with a disability," services provided to the opportunity scholarship recipient shall be charged against the

Commonwealth's special education subsidy to the resident school district, provided that the resident school district shall not be charged more for services provided to the opportunity scholarship recipient by the nonresident school district than the difference between the current year cost of the services had the opportunity scholarship recipient remained in the resident school district and the sum of the opportunity scholarship, the local scholarship and the per pupil special education funding following the opportunity scholarship recipient.

(ii) The resident school district shall provide the board with documentation of the prior year's cost of services provided to the opportunity scholarship recipient and an estimate of the cost of providing those services in the current year had the opportunity scholarship recipient remained in the resident school district. Any cost not covered by this funding shall be borne by the nonresident school district enrolling the opportunity scholarship recipient.

(3) An opportunity scholarship recipient shall be included in the average daily membership of the opportunity scholarship recipient's resident school district.

(f) Limitation.--The tuition charged by a nonresident school district to an opportunity scholarship recipient under this subarticle shall not exceed the sum of the opportunity scholarship and the local scholarship awarded to the opportunity scholarship recipient.

(g) Transportation.--~~Notwithstanding any provisions of~~

(1) NOTWITHSTANDING ANY PROVISIONS OF section 1361 to the contrary, a school district that provides its resident

public school pupils with transportation to and from the
resident public schools or to and from any points within or
without this Commonwealth in order to provide field trips
under section 1361 shall provide a student who resides within
the school district but regularly attends a nonresident
public school, including a charter school, that is located
not more than ten miles from the student's resident school
district by the nearest public highway, with transportation
to and from such nonresident public school or to and from any
points within or without this Commonwealth in order to
provide field trips under section 1361.

(2) TRANSPORTATION OF A STUDENT UNDER THIS SUBSECTION
SHALL BE SUBJECT TO REIMBURSEMENT UNDER SECTION 2541.

Section 2505-B. Opportunity scholarships to attend a
participating nonpublic school.

(a) Eligibility.--The parent of a low-income child who is
eligible to receive an opportunity scholarship under section
2503-B and desires to apply for an opportunity scholarship to
attend a participating nonpublic school must:

(1) By June 1, 2011, and by April 1 of each year
thereafter, apply to the board for an opportunity scholarship
for the following school year pursuant to guidelines
developed by the board under section 2509-B. By July 1, 2011,
and by May 1 of each year thereafter, the board shall notify
parents whether the opportunity scholarship will be awarded
for the following school year.

(2) Apply for enrollment directly to the participating
nonpublic school pursuant to application procedures developed
by the participating nonpublic school. By August 1, 2011, and
by July 1 of each year thereafter, a participating nonpublic

school shall provide written confirmation to the board of each opportunity scholarship recipient whose application for enrollment has been accepted for the following school year.

(b) Payment of opportunity scholarship awards.--The Commonwealth shall provide payment of an opportunity scholarship to the parents of each opportunity scholarship recipient who is enrolled in a participating nonpublic school under the provisions of this subarticle subject to the following terms and conditions:

(1) Opportunity scholarships shall be awarded only for the payment of costs of tuition at a participating nonpublic school within this Commonwealth. Opportunity scholarships shall not be awarded for enrollment in a home education program provided under section 1327.1.

(2) Opportunity scholarships shall be paid to the parents of an opportunity scholarship recipient upon the board's receipt of written confirmation of enrollment from the participating nonpublic school selected by the recipient. The opportunity scholarship award shall be paid by check which may be endorsed by the parents only for payment of tuition at the participating nonpublic school at which the opportunity scholarship recipient's enrollment has been confirmed.

(3) In the event an opportunity scholarship recipient is no longer enrolled in a participating nonpublic school prior to the completion of the school year, the following shall apply:

(i) The participating nonpublic school shall, within 15 days of the opportunity scholarship recipient's withdrawal from the participating nonpublic school:

(A) Provide the board with written notice of the opportunity scholarship recipient's withdrawal from the participating nonpublic school.

(B) Return to the opportunity scholarship recipient's parent the full amount of the opportunity scholarship payment reduced on a pro rata basis by the tuition for the portion of the school year in which the opportunity scholarship recipient was enrolled. The amount returned to the parent under this paragraph shall be paid by check which may be endorsed by the parents only for repayment to the board of the refunded opportunity scholarship award.

(ii) If the parents of the opportunity scholarship recipient fail to submit to the board the full amount of the opportunity scholarship returned to the parents under subparagraph (i) within 15 days of receipt of notification from the board that such payment is due, the board shall impose interest on the unpaid amount, calculated from the due date at the rate determined by the Secretary of Revenue for interest payments on overdue taxes or the refund of taxes as provided in sections 806 and 806.1 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

(iii) If a parent who is required to submit a refund to the board under subparagraph (ii) fails to submit the full amount of the required refund to the board within 180 days of written demand thereof, the board shall also impose a civil penalty not to exceed the full amount of the annual opportunity scholarship award made to the parents and disqualification from future eligibility for

an opportunity scholarship.

(iv) If the opportunity scholarship recipient enrolls in another participating nonpublic school within the school year for which the opportunity scholarship was awarded, the board shall pay the parent of the opportunity scholarship recipient the opportunity scholarship award prorated for the remaining portion of the school year.

(c) Enrollment requirements.--The following shall apply to a participating nonpublic school which admits an opportunity scholarship recipient:

(1) The participating nonpublic school shall not discriminate on any basis that is illegal under Federal or State law.

(2) The participating nonpublic school shall comply with section 1521, which prohibits discrimination in enrollment on the basis of race or color.

(3) THE PARTICIPATING NONPUBLIC SCHOOL MAY NOT RECRUIT ANY PUBLIC SCHOOL STUDENT TO ENROLL FOR ATHLETIC PURPOSES.

~~(3)~~ (4) By June 1, 2011, and by April 1 of each year thereafter, a nonpublic school that desires to enroll opportunity scholarship recipients under this subarticle shall certify to the board that it satisfies the definition of "participating nonpublic school" in section 2502-B. Such certification shall be on a form developed by the board.

(D) POLICIES.--UPON REQUEST, A PARTICIPATING NONPUBLIC SCHOOL SHALL MAKE AVAILABLE FOR REVIEW BY THE PARENTS OF ANY OPPORTUNITY SCHOLARSHIP RECIPIENT SEEKING ENROLLMENT, ITS WRITTEN SCHOOL POLICIES AND PROCEDURES RELATED TO TUITION CHARGES, ADMISSIONS, ACADEMIC OFFERINGS AND REQUIREMENTS,

DISCIPLINE, RELIGIOUS INSTRUCTION, PARENT INVOLVEMENT AND
EXTRACURRICULAR ACTIVITIES.

~~(d)~~ (E) Construction.--Nothing in this subarticle shall be
construed to:

(1) Prohibit a participating nonpublic school from
limiting admission to a particular grade level, a single
gender or to areas of concentration of the participating
nonpublic school, including, but not limited to, mathematics,
science and the arts.

(2) Empower the Commonwealth or any of its agencies or
officers or political subdivisions to impose any additional
requirements on any participating nonpublic school which are
not otherwise authorized under the laws of this Commonwealth
or to require any participating nonpublic school to enroll
any opportunity scholarship recipient if the participating
nonpublic school does not offer appropriate programs or is
not structured or equipped with the necessary facilities to
meet the special needs of the opportunity scholarship
recipient or does not offer a particular program requested.

Section 2506-B. Amount of opportunity scholarship.

(a) Calculation.--

(1) The amount of the opportunity scholarship shall
equal 100% of the Commonwealth's share of the resident school
district's total revenue per average daily membership of the
prior school year.

~~(2) (i) For a student enrolling in a participating
nonpublic school in kindergarten or grades one through
eight, the board shall give priority in awarding
opportunity scholarships to students enrolling in
participating nonpublic schools that provide the student~~

~~with additional financial assistance that is either equal to the amount of the opportunity scholarship award or is in an amount that, when combined with the opportunity scholarship award, is equal to the full tuition rate for the participating nonpublic school.~~

~~(ii) In no case shall the combined amount of the~~

(2) IN NO CASE SHALL THE COMBINED AMOUNT OF THE opportunity scholarship award and the ANY additional financial assistance provided by the participating nonpublic school exceed the tuition rate for the participating nonpublic school.

(b) Limitation.--No nonresident public school or participating nonpublic school may charge an opportunity scholarship recipient a higher tuition rate than the rate the nonresident public school or participating nonpublic school would have charged to a student who had not received an opportunity scholarship.

(c) Excess Scholarship Fund.--

(1) The Excess Scholarship Fund is established in the State Treasury and shall be funded by the amount of the opportunity scholarship awarded to an opportunity scholarship recipient under this subarticle in excess of the amount of tuition charged to the opportunity scholarship recipient.

(2) The fund shall be administered by the board and applied toward costs of the opportunity scholarship program beginning in the 2012-2013 school year AND EACH SCHOOL YEAR THEREAFTER.

(d) Annual appropriations.--

(1) Opportunity scholarships authorized under this subarticle shall be made from annual appropriations made by

the General Assembly to the department AND MONEYS AVAILABLE IN THE FUND for that purpose.

(2) In the event that insufficient moneys are appropriated AVAILABLE in any fiscal year to provide opportunity scholarships to all eligible opportunity scholarship recipients in the amount authorized, the board shall make pro rata reductions in the amount of the opportunity scholarship provided to each opportunity scholarship recipient.

(3) The total amount of opportunity scholarships provided in any fiscal year shall be limited to the amount of money appropriated for that fiscal year AND MONEYS IN THE FUND.

(e) Nontaxable.--Opportunity scholarship funds received by a parent pursuant to this subarticle shall not be considered taxable income for purposes of any local taxing ordinance or for purposes of Article III of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, nor shall such opportunity scholarships constitute financial assistance or appropriations to the participating nonpublic school attended by the opportunity scholarship recipient.

(f) Continued eligibility.--

(1) Subject to subsection (d), a child enrolled in a nonresident public school or a participating nonpublic school who received an opportunity scholarship under this subarticle in the prior school year shall receive an opportunity scholarship in each school year of enrollment under the opportunity scholarship program, provided that the child remains eligible.

(2) (i) If a child who received an opportunity

scholarship under this subarticle in the prior school year ceases to qualify as a low-income child, the child shall continue to receive a partial scholarship until completing the eighth grade, provided that the child continues to meet all other eligibility requirements.

(ii) In calculating the amount of the partial scholarship, the board shall make a pro rata reduction in the child's opportunity scholarship award based upon the child's household income.

(g) Penalties.--Any person who fraudulently submits an opportunity or local scholarship application or who knowingly falsifies material information on an opportunity or local scholarship application shall be subject to the following penalties:

(1) Imposition by the board of a civil penalty of up to \$1,000.

(2) Prosecution for violation of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(3) Disqualification from future participation in the opportunity scholarship program.

Section 2507-B. Guidelines.

(a) Requirements.--Within 30 days of the effective date of this section, the board shall establish guidelines that provide the following:

(1) Forms to apply for opportunity and local scholarships, including application and approval processes and deadlines for application and notification.

(2) Procedures to verify the accuracy of the information provided in an opportunity or local scholarship application.

(3) Procedures for school district, school and parent

notification of opportunity or local scholarship awards.

(4) Procedures for administration of the opportunity and local scholarship programs.

(5) Confirmation of school enrollment by opportunity scholarship recipients.

(6) For an opportunity scholarship recipient enrolled in a participating nonpublic school, restrictive endorsement of opportunity scholarship award checks to the participating nonpublic school in which the opportunity scholarship recipient is enrolled.

(7) Procedures for participating nonpublic schools to pay pro rata refunds of opportunity scholarships to the parents of opportunity scholarship recipients who withdraw from a participating nonpublic school during the school year for which the opportunity scholarship was paid.

(8) Development and distribution of public information concerning the opportunity and local scholarship and interdistrict enrollment programs.

(9) Such other procedures as are necessary to fully implement the opportunity and local scholarship and interdistrict enrollment programs.

(b) Publication.--The guidelines shall be published as a statement of policy in the Pennsylvania Bulletin. The board shall mail a copy of the guidelines to each school district and nonpublic school in this Commonwealth and shall post the guidelines on the department's publicly accessible Internet website.

(c) State Board of Education.--Notwithstanding any other provision of law to the contrary, the programs, procedures and guidelines authorized by this subarticle shall not be subject to

review, regulation or approval by the State Board of Education.

(d) Exemption of guidelines from certain laws.--The initial guidelines established by the board, and any amendments thereto, shall be exempt from the requirements of the following:

(1) The act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

(2) The act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

(3) The act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act.

Section 2508-B. Reduction in amount of school aid.

Notwithstanding any other provision of law to the contrary, beginning in the second consecutive school year of enrollment in a nonresident public school or a participating nonpublic school by an opportunity scholarship recipient who was enrolled in the recipient's resident school district OR IN A CHARTER SCHOOL OR CYBER CHARTER SCHOOL when the recipient first received an opportunity scholarship under this subarticle, the amount of Commonwealth basic education funding paid by the department to the resident school district shall be reduced by an amount equal to the Commonwealth's share of the school district's total revenue per average daily membership.

Section 2509-B. Education Opportunity Board.

(a) Establishment.--An independent board to be known as the Education Opportunity Board is established within the department. The board shall consist of three members appointed by the Governor with the advice and consent of a majority of the members elected to the Senate. The Governor may appoint no more than two members to the board who are members of the same political party as the Governor.

(b) Terms of members.--Members of the board shall serve a term of four years. Vacancies shall be filled for an unexpired term in the same manner as original appointments. Members shall continue to serve after the expiration of their term until the Governor appoints a replacement who is confirmed by a majority of the members elected to the Senate. All members of the board must be residents of this Commonwealth.

(c) Chairperson.--The Governor shall annually select a chairperson from among the membership of the board.

(d) Meetings.--Meetings shall be held at the call of the chairperson or upon request in writing of a majority of the board. A majority shall constitute a quorum and a majority of such quorum shall have the authority to act upon any matter properly before the board unless otherwise specified in this subarticle.

(e) Compensation prohibited.--Members of the board shall receive no compensation for their services but shall be reimbursed for their actual and necessary expenses incurred in the performance of their official board duties.

(f) Executive director and staff.--

(1) There shall be an executive director of the board who shall serve as the executive officer and secretary of the board. The board shall employ and fix the reasonable compensation of the executive director.

(2) The executive director, with approval of the board, may employ additional professional and clerical personnel as may be necessary to carry out the duties and responsibilities of the board.

(3) The department shall provide adequate funding, space and equipment to facilitate the activities of the board.

(g) Legal advice and assistance.--The Governor, through his General Counsel, shall provide such legal advice and assistance as the board may require.

(h) Powers and duties.--The board shall have the following powers and duties:

(1) Establish guidelines for the administration of the opportunity and local scholarship programs as required under section 2507-B.

(2) Administer the opportunity and local scholarship application and approval processes.

(3) Develop the opportunity and local scholarship application form and any other forms necessary to administer the opportunity and local scholarship programs, including the notice required to be provided by school districts under section 2503-B(d).

(4) Review and verify the income and residence of opportunity and local scholarship applicants.

(5) Announce the award of opportunity and local scholarships for the following school year under sections 2504-B(c) and 2505-B(a).

(6) Confirm the enrollment of opportunity scholarship recipients in nonresident public schools and participating nonpublic schools and allocate opportunity scholarship funds to opportunity scholarship recipients.

(7) Beginning after the first school year of implementation of the opportunity scholarship program, prepare a report to be submitted to the Governor and the General Assembly by December 1 of each year, made available to the parents of opportunity scholarship recipients and placed on the department's publicly accessible Internet

website that includes at least the following information for the prior school year:

(i) The total number of opportunity scholarships requested.

(ii) The total number and total dollar amount of opportunity scholarships awarded, in total and disaggregated by:

(A) Whether the opportunity scholarship recipient attends a nonresident public school or a participating nonpublic school.

(B) Grade level of the opportunity scholarship recipient.

(C) Whether the opportunity scholarship recipient resides in a school district with at least one persistently lowest achieving school.

(iii) The administrative costs of the opportunity scholarship program.

(iv) A listing of nonresident public schools to which opportunity scholarship funds were disbursed on behalf of opportunity scholarship recipients and the amount disbursed to each nonresident public school.

(v) A listing of participating nonpublic schools in which opportunity scholarship recipients enrolled and the number of opportunity scholarship recipients who enrolled in each participating nonpublic school.

(vi) The total number and total dollar amount of local scholarships awarded, disaggregated by the resident school districts that made the local scholarship awards.

Section 2510-B. Study.

Following the 2014-2015 school year, the board shall conduct

a study of the effectiveness of the opportunity scholarship program and shall deliver a written report of its findings, including any recommendations for changes to the program, to the Governor, the chairman and minority chairman of the Education Committee of the Senate and the chairman and minority chairman of the Education Committee of the House of Representatives by December 31, 2015.

Section 2511-B. Exclusive jurisdiction of Supreme Court.

The Pennsylvania Supreme Court shall have exclusive jurisdiction to hear any challenge or to render a declaratory judgment concerning the constitutionality of this subarticle. The Supreme Court may take such action as it deems appropriate, consistent with the Supreme Court's retaining jurisdiction over such a matter, to find facts or to expedite a final judgment in connection with such a challenge or request for declaratory relief.

Section 2512-B. Optional local tuition grant program.

A school district may, out of funds received from the Commonwealth for educational purposes, establish a program of tuition grants to provide for the education of resident students who wish to attend a nonresident public school or a participating nonpublic school on a tuition basis. A student who receives a tuition grant under this section shall be included in the average daily membership of the student's resident school district for the purpose of providing basic education funding and special education funding under Article XXV.

(c) Educational Improvement Tax Credit

Section 2521-B. Definitions.

The following words and phrases when used in this subarticle shall have the meanings given to them in this section unless the

context clearly indicates otherwise:

"Business firm." An entity authorized to do business in this Commonwealth and subject to taxes imposed under Article III, IV, VI, VII, VIII, IX or XV of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971. The term includes a pass-through entity. For purposes of this subarticle, a business firm shall be included in one of the following groups:

(1) Group 1 includes any business firm that is either entering the second year of a two-year commitment or applying for tax credits for a contribution to an educational improvement organization that is also a school district foundation, public school foundation, charter school foundation or cyber charter school foundation.

(2) Group 2 includes any business firm that is renewing a two-year commitment that was fulfilled in the most recent fiscal year or is applying for tax credits for a contribution to a prekindergarten scholarship organization in the same amount that it had contributed in the most recent fiscal year.

(3) Group 3 includes any business firm other than a business firm in Group 1 or Group 2.

"Contribution." A donation of cash, personal property or services, the value of which is the net cost of the donation to the donor or the pro rata hourly wage, including benefits, of the individual performing the services.

"Department." The Department of Community and Economic Development of the Commonwealth.

"Educational improvement organization." A nonprofit entity which:

(1) is exempt from Federal taxation under section

501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.); and

(2) contributes at least 80% of its annual receipts as grants to a public school for innovative educational programs.

For purposes of this definition, a nonprofit entity "contributes" its annual cash receipts when it expends or otherwise irrevocably encumbers those funds for expenditure during the then current fiscal year of the nonprofit entity or during the next succeeding fiscal year of the nonprofit entity. A "nonprofit entity" includes a school district foundation, public school foundation, charter school foundation or cyber charter school foundation.

"Eligible prekindergarten student." A student, including an eligible student with a disability, who is enrolled in a prekindergarten program and is a member of a household with a maximum annual household income as increased by the applicable income allowance.

"Eligible student." A school-age student, including an eligible student with a disability, who is enrolled in a school and is a member of a household with a maximum annual household income as increased by the applicable income allowance.

"Eligible student with a disability." A prekindergarten student or a school-age student who meets all of the following:

(1) Is either enrolled in a special education school or has otherwise been identified, in accordance with 22 Pa. Code Ch. 14 (relating to special education services and programs), as a "child with a disability," as defined in 34 CFR § 300.8 (relating to child with a disability).

(2) Needs special education and related services.

(3) Is enrolled in a prekindergarten program or in a school.

(4) Is a member of a household with a household income of not more than the maximum annual household income.

"Household." An individual living alone or with the following: a spouse, parent and their unemancipated minor children, other unemancipated minor children who are related by blood or marriage or other adults or unemancipated minor children living in the household who are dependent upon the individual.

"Household income." All moneys or property received of whatever nature and from whatever source derived. The term does not include the following:

(1) Periodic payments for sickness and disability other than regular wages received during a period of sickness or disability.

(2) Disability, retirement or other payments arising under workers' compensation acts, occupational disease acts and similar legislation by any government.

(3) Payments commonly recognized as old-age or retirement benefits paid to persons retired from service after reaching a specific age or after a stated period of employment.

(4) Payments commonly known as public assistance or unemployment compensation payments by a governmental agency.

(5) Payments to reimburse actual expenses.

(6) Payments made by employers or labor unions for programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits, strike benefits, Social Security and retirement.

(7) Compensation received by United States servicemen serving in a combat zone.

"Income allowance."

(1) Subject to paragraph (2), the amount of:

(i) Before July 1, 2011, \$10,000 for each eligible student, eligible prekindergarten student and dependent member of a household.

(ii) After June 30, 2011, \$12,000 for each eligible student, eligible prekindergarten student and dependent member of a household.

(2) Beginning July 1, 2012, the Department of Community and Economic Development shall annually adjust the income allowance amounts under paragraph (1) to reflect any upward changes in the Consumer Price Index for All Urban Consumers for the Pennsylvania, New Jersey, Delaware and Maryland area in the preceding 12 months and shall immediately submit the adjusted amounts to the Legislative Reference Bureau for publication as a notice in the Pennsylvania Bulletin.

"Innovative educational program." An advanced academic or similar program that is not part of the regular academic program of a public school but that enhances the curriculum or academic program of the public school or provides prekindergarten programs to public school students.

"Maximum annual household income."

(1) Except as stated in paragraph (2) and subject to paragraph (3), the following:

(i) Before July 1, 2011, not more than \$50,000.

(ii) After June 30, 2011, not more than \$60,000.

(2) With respect to an eligible student with a disability, as calculated by multiplying:

(i) the sum of:

(A) the applicable amount under paragraph (1);

and

(B) the applicable income allowance; by

(ii) the applicable support level factor according
to the following table:

<u>Support Level</u>	<u>Support Level Factor</u>
<u>1</u>	<u>1.50</u>
<u>2</u>	<u>2.993</u>

(3) Beginning July 1, 2012, the Department of Community
and Economic Development shall annually adjust the income
amounts under paragraphs (1) and (2) to reflect any upward
changes in the Consumer Price Index for All Urban Consumers
for the Pennsylvania, New Jersey, Delaware and Maryland area
in the preceding 12 months and shall immediately submit the
adjusted amounts to the Legislative Reference Bureau for
publication as a notice in the Pennsylvania Bulletin.

"Pass-through entity." A partnership as defined in section
301(n.0) of the act of March 4, 1971 (P.L.6, No.2), known as the
Tax Reform Code of 1971, a single-member limited liability
company treated as a disregarded entity for Federal income tax
purposes or a Pennsylvania S corporation as defined in section
301(n.1) of the Tax Reform Code of 1971.

"Prekindergarten program." A program of instruction for
three-year-old or four-year-old students that utilizes a
curriculum aligned with the curriculum of the school with which
it is affiliated and that provides:

(1) a minimum of two hours of instructional and
developmental activities per day at least 60 days per school
year; or

(2) a minimum of two hours of instructional and developmental activities per day at least 20 days over the summer recess.

"Prekindergarten scholarship organization." A nonprofit entity that:

(1) Either is exempt from Federal taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) or is operated as a separate segregated fund by a scholarship organization that has been qualified under section 2522-B.

(2) Contributes at least 80% of its annual cash receipts to a prekindergarten scholarship program by expending or otherwise irrevocably encumbering those funds for distribution during the then current fiscal year of the organization or during the next succeeding fiscal year of the organization.

"Prekindergarten scholarship program." A program to provide tuition to eligible prekindergarten students to attend a prekindergarten program operated by or in conjunction with a school located in this Commonwealth and that includes an application and review process for the purpose of making awards to eligible prekindergarten students and awards scholarships to eligible prekindergarten students without limiting availability to only students of one school.

"Public school." A public prekindergarten where compulsory attendance requirements do not apply or a public kindergarten, elementary school or secondary school at which the compulsory attendance requirements of this Commonwealth may be met and that meets the applicable requirements of Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241).

"Scholarship." An award under a scholarship program.

"Scholarship organization." A nonprofit entity that:

(1) is exempt from Federal taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.); and

(2) contributes at least 80% of its annual cash receipts to a scholarship program.

For purposes of this definition, a nonprofit entity "contributes" its annual cash receipts to a scholarship program when it expends or otherwise irrevocably encumbers those funds for distribution during the then current fiscal year of the nonprofit entity or during the next succeeding fiscal year of the nonprofit entity.

"Scholarship program." A program to provide tuition to eligible students to attend a school located in this Commonwealth. A scholarship program must include an application and review process for the purpose of making awards to eligible students. The award of scholarships to eligible students shall be made without limiting availability to only students of one school.

"School." A kindergarten, elementary school or secondary school at which the compulsory attendance requirements of the Commonwealth may be met and that meets the applicable requirements of Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241), or a public or nonpublic prekindergarten.

"School age." From the earliest admission age to a school's prekindergarten or kindergarten program or, when no prekindergarten or kindergarten program is provided, the school's earliest admission age for beginners, until the end of

the school year the student attains 21 years of age or graduation from high school, whichever occurs first.

"Special education school." A school or program within a school that is designated specifically and exclusively for students with any of the disabilities listed in 34 CFR § 300.8 (relating to child with a disability) and meets one of the following:

- (1) is licensed under the act of January 28, 1988 (P.L.24, No.11), known as the Private Academic Schools Act;
- (2) is accredited by an accrediting association approved by the State Board of Education;
- (3) is a school for the blind or deaf receiving Commonwealth appropriations; or
- (4) is operated by or under the authority of a bona fide religious institution or by the Commonwealth or any political subdivision thereof.

"Support level." The level of support needed by an eligible student with a disability, as stated in the following matrix:

- (1) Support level 1. The student is not enrolled in a special education school.
- (2) Support level 2. The student is enrolled in a special education school.

"Tax credit." The educational improvement tax credit established under this subarticle.

Section 2522-B. Qualification and application.

(a) Establishment.--In accordance with section 14 of Article III of the Constitution of Pennsylvania, an educational improvement tax credit program is established to enhance the educational opportunities available to all students in this Commonwealth.

(b) Information.--In order to qualify under this subarticle, a scholarship organization, a prekindergarten scholarship organization or an educational improvement organization must submit information to the department that enables the department to confirm that the organization is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

(c) Scholarship organizations and prekindergarten scholarship organizations.--A scholarship organization or prekindergarten scholarship organization must certify to the department that the organization is eligible to participate in the program established under this subarticle and must agree to annually report the following information to the department by September 1 of each year:

(1) (i) The number of scholarships awarded during the immediately preceding school year to eligible prekindergarten students.

(ii) The total and average amounts of scholarships awarded during the immediately preceding school year to eligible prekindergarten students.

(iii) The number of scholarships awarded during the immediately preceding school year to eligible students in grades kindergarten through eight.

(iv) The total and average amounts of scholarships awarded during the immediately preceding school year to eligible students in grades kindergarten through eight.

(v) The number of scholarships awarded during the immediately preceding school year to eligible students in grades 9 through 12.

(vi) The total and average amounts of scholarships

awarded during the immediately preceding school year to eligible students in grades 9 through 12.

(vii) Where the scholarship organization or prekindergarten scholarship organization collects information on a county-by-county basis, the total number and the total dollar amount of scholarships awarded during the immediately preceding school year to residents of each county in which the scholarship organization or prekindergarten scholarship organization awarded scholarships.

(2) The information required under paragraph (1) shall be submitted on a form provided by the department. No later than May 1 of each year, the department shall annually distribute such sample forms, together with the forms on which the reports are required to be made, to each listed scholarship organization and prekindergarten scholarship organization.

(3) The department may not require any other information to be provided by scholarship organizations or prekindergarten scholarship organizations, except as expressly authorized in this subarticle.

(d) Educational improvement organization.--

(1) An application submitted by an educational improvement organization must describe its proposed innovative educational program or programs in a form prescribed by the department. In prescribing the form, the department shall consult with the Department of Education as necessary. The department shall review and approve or disapprove the application. In order to be eligible to participate in the program established under this subarticle,

an educational improvement organization must agree to
annually report the following information to the department
by September 1 of each year:

(i) The name of the innovative educational program
or programs and the total amount of the grant or grants
made to those programs during the immediately preceding
school year.

(ii) A description of how each grant was utilized
during the immediately preceding school year and a
description of any demonstrated or expected innovative
educational improvements.

(iii) The names of the public schools and school
districts where innovative educational programs that
received grants during the immediately preceding school
year were implemented.

(iv) Where the educational improvement organization
collects information on a county-by-county basis, the
total number and the total dollar amount of grants made
during the immediately preceding school year for programs
at public schools in each county in which the educational
improvement organization made grants.

(2) The information required under paragraph (1) shall
be submitted on a form provided by the department. No later
than May 1 of each year, the department shall annually
distribute such sample forms, together with the forms on
which the reports are required to be made, to each listed
educational improvement organization.

(3) The department may not require any other information
to be provided by educational improvement organizations,
except as expressly authorized in this subarticle.

(e) Notification.--The department shall notify the scholarship organization, prekindergarten scholarship organization or educational improvement organization that the organization meets the requirements of this subarticle for that fiscal year no later than 60 days after the organization has submitted the information required under this section.

(f) Publication.--The department shall annually publish a list of each scholarship organization, prekindergarten scholarship organization or educational improvement organization qualified under this section in the Pennsylvania Bulletin. The list shall also be posted and updated as necessary on the publicly accessible Internet website of the department.

Section 2523-B. Application.

(a) Scholarship organization or prekindergarten scholarship organization.--A business firm shall apply to the department for a tax credit. A business firm shall receive a tax credit if the scholarship organization or prekindergarten scholarship organization that receives the contribution appears on the list established under section 2522-B(f).

(b) Educational improvement organization.--A business firm must apply to the department for a tax credit. A business firm shall receive a tax credit if the department has approved the program provided by the educational improvement organization that receives the contribution.

(c) Contributions.--A contribution by a business firm to a scholarship organization, prekindergarten scholarship organization or educational improvement organization shall be made no later than 60 days following the approval of an application under subsection (a) or (b).

Section 2524-B. Tax credit.

(a) Scholarship or educational improvement organizations.--In accordance with section 2525-B(a), the Department of Revenue shall grant a tax credit against any tax due under Article III, IV, VI, VII, VIII, IX or XV of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, to a business firm providing proof of a contribution to a scholarship organization or educational improvement organization in the taxable year in which the contribution is made which shall not exceed 75% of the total amount contributed during the taxable year by the business firm. The tax credit shall not exceed \$300,000 annually per business firm for contributions made to scholarship organizations or educational improvement organizations.

(b) Additional amount.--The Department of Revenue shall grant a tax credit of up to 90% of the total amount contributed during the taxable year if the business firm provides a written commitment to provide the scholarship organization or educational improvement organization with the same amount of contribution for two consecutive tax years. The business firm must provide the written commitment under this subsection to the department at the time of application.

(c) Prekindergarten scholarship organizations.--In accordance with section 2525-B(a), the Department of Revenue shall grant a tax credit against any tax due under Article III, IV, VI, VII, VIII, IX or XV of the Tax Reform Code of 1971 to a business firm providing proof of a contribution to a prekindergarten scholarship organization in the taxable year in which the contribution is made which shall be equal to 100% of the first \$10,000 contributed during the taxable year by the business firm, and which shall not exceed 90% of the remaining

amount contributed during the taxable year by the business firm.
The tax credit shall not exceed \$150,000 annually per business
firm for contributions made to prekindergarten scholarship
organizations.

(d) Combination of tax credits.--A business firm may receive
tax credits from the Department of Revenue in any tax year for
any combination of contributions under subsection (a), (b) or
(c). In no case may a business firm receive tax credits in any
tax year in excess of \$300,000 for contributions under
subsections (a) and (b). In no case shall a business firm
receive tax credits in any tax year in excess of \$150,000 for
contributions under subsection (c).

(e) Pass-through entity.--

(1) If a pass-through entity does not intend to use all
approved tax credits under this section, it may elect in
writing to transfer all or a portion of the tax credit to
shareholders, members or partners in proportion to the share
of the entity's distributive income to which the shareholder,
member or partner is entitled for use in the taxable year in
which the contribution is made or in the taxable year
immediately following the year in which the contribution is
made. The election shall designate the year in which the
transferred tax credits are to be used and shall be made
according to procedures established by the Department of
Revenue.

(2) A pass-through entity and a shareholder, member or
partner of a pass-through entity shall not claim the tax
credit under this section for the same contribution.

(3) The shareholder, member or partner may not carry
forward, carry back, obtain a refund of or sell or assign the

tax credit.

(4) The shareholder, member or partner may claim the credit on a joint return, but the tax credit may not exceed the separate income of that shareholder, member or partner.

(f) Restriction on applicability of credits.--No tax credits shall be applied against any tax withheld by an employer from an employee under Article III of the Tax Reform Code of 1971.

(g) Time of application for credits.--

(1) The department may accept ~~advance~~ applications beginning on May 15 from business firms ~~in Group 1 and Group 2~~ for tax credits available during a fiscal year that is to begin on July 1.

(2) If, on July 1 of a fiscal year, applications for tax credits available during the fiscal year exceed the total aggregate amount of tax credits available for the fiscal year, the department shall approve applications for tax credits on the following basis, subject to the provisions of section 2523-B:

(i) Group 1 firms whose advance applications were received by July 1 shall be accorded first priority in the approval of tax credit applications. If tax credits applied for by Group 1 firms exceed the total aggregate amount of tax credits available for the program under section 2525-B, the department shall approve on a pro rata basis the applications of all Group 1 firms that applied by July 1, and the applications of Group 2 and Group 3 firms shall be denied. Approval of a reduced tax credit under this subparagraph shall not disqualify a Group 1 firm from receiving a 90% tax credit under subsection (b) even if the amount of tax credit approved

would require the Group 1 firm to make a lower scholarship contribution in the second year of a two-year commitment.

(ii) If tax credits remain available after credits have been awarded under subparagraph (i), Group 2 firms whose applications were received by July 1 shall be accorded priority in the approval of applications for the remaining tax credits. If the sum of the tax credits approved under subparagraph (i) and the credits applied for by Group 2 firms exceeds the total aggregate amount of tax credits available for the program under section 2525-B, the department shall approve on a pro rata basis the applications for the remaining tax credits submitted by all Group 2 firms that applied by July 1, and the applications of Group 3 firms shall be denied.

(iii) If tax credits remain available ON JULY 1 after credits have been awarded under subparagraphs (i) and (ii), applications of Group 3 firms shall be approved, ON A PRO RATA BASIS WITHIN THAT GROUP IF NECESSARY. THEREAFTER, THE DEPARTMENT SHALL APPROVE THE APPLICATIONS OF ALL BUSINESS FIRMS on a daily basis,—
~~beginning on July 1. If, on any day, the. IF, ON ANY DAY~~
AFTER JULY 1, THE CUMULATIVE sum of the tax credits approved ~~under subparagraphs (i) and (ii)~~ and the tax credits applied for on that day ~~by Group 3 firms~~ exceeds the total aggregate amount of tax credits available for the program under section 2525-B, the department shall approve on a pro rata basis the applications received on that day.

Section 2525-B. Limitations.

(a) Amount.--

(1) For the fiscal years 2011-2012, 2012-2013 and 2013-2014, the total aggregate amount of all tax credits approved shall not exceed \$100,000,000 FOR SCHOLARSHIP ORGANIZATIONS AND EDUCATIONAL IMPROVEMENT ORGANIZATIONS SHALL NOT EXCEED \$92,000,000 in a fiscal year. No less than 75% of the total aggregate amount of all tax credits approved shall be used to provide tax credits for contributions from business firms to scholarship organizations. No less than 25% of the total aggregate amount of all tax credits approved shall be used to provide tax credits for contributions from business firms to educational improvement organizations.

(2) (i) Subject to adjustment under subparagraph (ii), in the fiscal year 2014-2015 and each fiscal year thereafter, the total aggregate amount of all tax credits available shall equal the total aggregate amount of all tax credits available in the prior fiscal year.

(ii) Beginning in the fiscal year 2014-2015, in any fiscal year in which the total aggregate amount of all tax credits approved for the prior fiscal year is equal to or greater than 90% of the total aggregate amount of all tax credits available for the prior fiscal year, the total aggregate amount of all tax credits available shall increase by 5%. The department shall publish on its Internet website the total aggregate amount of all tax credits available when the amount is increased under this paragraph.

(3) For the fiscal years 2011-2012, 2012-2013 and 2013-2014, the total aggregate amount of all tax credits approved for contributions from business firms to prekindergarten

scholarship programs shall not exceed \$8,000,000 in a fiscal year.

(4) (i) Subject to adjustment in subparagraph (ii), in the fiscal year 2014-2015 and each fiscal year thereafter, the total aggregate amount of all tax credits available to prekindergarten scholarship programs shall equal the total aggregate amount of all tax credits available to prekindergarten scholarship programs in the prior fiscal year.

(ii) Beginning in the fiscal year 2014-2015, in any fiscal year in which the total aggregate amount of all tax credits available is increased under paragraph (2), the total aggregate amount of all tax credits available for prekindergarten scholarship programs shall increase by 5%. The department shall publish on its Internet website the total aggregate amount of all tax credits available for prekindergarten scholarship programs when the amount is increased under this paragraph.

(b) Activities.--No tax credit shall be approved for activities that are a part of a business firm's normal course of business.

(c) Tax liability.--

(1) Except as provided in paragraph (2), a tax credit granted for any one taxable year may not exceed the tax liability of a business firm.

(2) In the case of a credit granted to a pass-through entity which elects to transfer the credit according to section 2524-B(e), a tax credit granted for any one taxable year and transferred to a shareholder, member or partner may not exceed the tax liability of the shareholder, member or

partner.

(d) Use.--A tax credit not used by the applicant in the taxable year the contribution was made or in the year designated by the shareholder, member or partner to whom the credit was transferred under section 2524-B(e) may not be carried forward or carried back and is not refundable or transferable.

(e) Nontaxable income.--A scholarship received by an eligible student or eligible prekindergarten student shall not be considered to be taxable income for the purposes of Article III of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

Section 2526-B. Lists.

The Department of Revenue shall provide to the General Assembly, by June 30 of each year, a list of all scholarship organizations, prekindergarten scholarship organizations and educational improvement organizations that receive contributions from business firms granted a tax credit.

Section 2527-B. Guidelines.

The department, in consultation with the Department of Education, shall develop guidelines to determine the eligibility of an innovative educational program.

Section 2. Repeals are as follows:

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the addition of Article XXV-B of the act.

(2) Article XVII-F of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, is repealed.

Section 3. The provisions of Article XXV-B of the act are severable. If any provision of that article or its application to any person or circumstance is held invalid, the invalidity

shall not affect other provisions or applications of that article which can be given effect without the invalid provision or application.

Section 4. This act shall take effect in 60 days.