
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2468 Session of
2012

INTRODUCED BY CHRISTIANA, QUIGLEY, S. H. SMITH, TURZAI, SAYLOR,
REED, ADOLPH, AUMENT, B. BOYLE, V. BROWN, EMRICK, GABLER,
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KILLION, PAYTON, ROCK, SCAVELLO, SIMMONS, SONNEY, TALLMAN,
K. BOYLE AND VEREB, JUNE 13, 2012

REFERRED TO COMMITTEE ON EDUCATION, JUNE 13, 2012

AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An
2 act relating to the public school system, including certain
3 provisions applicable as well to private and parochial
4 schools; amending, revising, consolidating and changing the
5 laws relating thereto," providing for educational improvement
6 tax credit and for the Educational Opportunity Scholarship
7 Program; and repealing provisions of the Tax Reform Code of
8 1971 relating to educational improvement tax credit.

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

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

14 ARTICLE XIII-B

15 EDUCATIONAL IMPROVEMENT TAX CREDIT

16 Section 1301-B. Scope of article.

17 This article establishes the Educational Improvement Tax
18 Credit.

19 Section 1302-B. Definitions.

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

4 "Business firm." An entity authorized to do business in this
5 Commonwealth and subject to taxes imposed under Article XVI of
6 the act of May 17, 1921 (P.L.682, No.284), known as The
7 Insurance Company Law of 1921, or Article III, IV, VI, VII,
8 VIII, IX or XV of the act of March 4, 1971 (P.L.6, No.2), known
9 as the Tax Reform Code of 1971. The term includes a pass-through
10 entity.

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

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

17 "Educational improvement organization." A nonprofit entity
18 which:

19 (1) is exempt from Federal taxation under section 501(c)
20 (3) of the Internal Revenue Code of 1986 (Public Law 99-514,
21 26 U.S.C. § 1 et seq.); and

22 (2) contributes at least 80% of its annual receipts as
23 grants to a public school, a chartered school as defined in
24 section 1376.1 or a private school approved under section
25 1376 for innovative educational programs.

26 For purposes of this definition, a nonprofit entity contributes
27 its annual cash receipts when it expends or otherwise
28 irrevocably encumbers those funds for expenditure during the
29 then current fiscal year of the nonprofit entity or during the
30 next succeeding fiscal year of the nonprofit entity. A nonprofit

1 entity includes a school district foundation, public school
2 foundation, charter school foundation or cyber charter school
3 foundation.

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

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

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

15 (1) Is enrolled in a special education school or has
16 otherwise been identified, in accordance with 22 Pa. Code Ch.
17 14 (relating to special education services and programs), as
18 a "child with a disability," as defined in 34 CFR § 300.8
19 (relating to child with a disability).

20 (2) Needs special education and related services.

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

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

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

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

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

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

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

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

17 (5) Payments to reimburse actual expenses.

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

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

24 "Income allowance."

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

26 (i) Before July 1, 2012, \$10,000 for each eligible
27 student, eligible prekindergarten student and dependent
28 member of a household.

29 (ii) After June 30, 2012, through June 30, 2013,
30 \$12,000 for each eligible student, eligible

1 prekindergarten student and dependent member of a
2 household.

3 (iii) After June 30, 2013, through June 30, 2014,
4 \$15,000 for each eligible student, eligible
5 prekindergarten student and dependent member of a
6 household.

7 (2) Beginning July 1, 2014, the Department of Community
8 and Economic Development shall annually adjust the income
9 allowance amounts under paragraph (1) to reflect any upward
10 changes in the Consumer Price Index for All Urban Consumers
11 for the Pennsylvania, New Jersey, Delaware and Maryland area
12 in the preceding 12 months and shall immediately submit the
13 adjusted amounts to the Legislative Reference Bureau for
14 publication as a notice in the Pennsylvania Bulletin.

15 "Innovative educational program." An advanced academic or
16 similar program that is not part of the regular academic program
17 of a public school but that enhances the curriculum or academic
18 program of a public school, chartered school as defined in
19 section 1376.1(a) or private school approved in accordance with
20 section 1376, or provides prekindergarten programs to public
21 school students, students of a chartered school as defined in
22 section 1376.1(a) or students of a private school approved in
23 accordance with section 1376.

24 "Maximum annual household income."

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

27 (i) Before July 1, 2012, not more than \$50,000.

28 (ii) After June 30, 2012, through June 30, 2013, not
29 more than \$60,000.

30 (iii) After June 30, 2013, not more than \$75,000.

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

3 (i) the sum of:

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

5 and

6 (B) the applicable income allowance; by

7 (ii) the applicable support level factor according
8 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>

12 (3) Beginning July 1, 2014, the Department of Community
13 and Economic Development shall annually adjust the income
14 amounts under paragraphs (1) and (2) to reflect any upward
15 changes in the Consumer Price Index for All Urban Consumers
16 for the Pennsylvania, New Jersey, Delaware and Maryland area
17 in the preceding 12 months and shall immediately submit the
18 adjusted amounts to the Legislative Reference Bureau for
19 publication as a notice in the Pennsylvania Bulletin.

20 "Opportunity scholarship organization." A nonprofit entity
21 that:

22 (1) is exempt from Federal taxation under section 501(c)
23 (3) of the Internal Revenue Code of 1986 (Public Law 99-514,
24 26 U.S.C. § 1 et seq.); and

25 (2) contributes at least 95% of its annual cash receipts
26 to an opportunity scholarship program.

27 For purposes of this definition, a nonprofit entity contributes
28 its annual cash receipts to an opportunity scholarship program
29 when it expends or otherwise irrevocably encumbers those funds
30 for distribution to eligible students during the then current

1 fiscal year of the nonprofit entity or during the next
2 succeeding fiscal year of the nonprofit entity. An opportunity
3 scholarship organization may be operated as a separate,
4 segregated fund of a scholarship organization.

5 "Opportunity scholarship program." The program operated
6 under the provisions of Article XXII-C to provide tuition and
7 school-related fees to eligible students to attend a school
8 located in this Commonwealth. A scholarship program shall
9 include an application and review process for the purpose of
10 making awards to eligible students. The award of scholarships to
11 students shall be made without limiting availability to only
12 students of one school.

13 "Pass-through entity." A partnership as defined in section
14 301(n.0) of the act of March 4, 1971 (P.L.6, No.2), known as the
15 Tax Reform Code of 1971, a single-member limited liability
16 company treated as a disregarded entity for Federal income tax
17 purposes or a Pennsylvania S corporation as defined in section
18 301(n.1) of the Tax Reform Code of 1971.

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

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

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

29 "Prekindergarten scholarship organization." A nonprofit
30 entity that:

1 (1) Is exempt from Federal taxation under section 501(c)
2 (3) of the Internal Revenue Code of 1986 (Public Law 99-514,
3 26 U.S.C. § 1 et seq.) or is operated as a separate
4 segregated fund by a scholarship organization that has been
5 qualified under section 1303-B.

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

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

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

26 "Scholarship." An award under a scholarship program.

27 "Scholarship organization." A nonprofit entity that:

28 (1) is exempt from Federal taxation under section 501(c)
29 (3) of the Internal Revenue Code of 1986 (Public Law 99-514,
30 26 U.S.C. § 1 et seq.); and

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

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

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

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

21 "School age." From the earliest admission age to a school's
22 prekindergarten or kindergarten program or, when no
23 prekindergarten or kindergarten program is provided, the
24 school's earliest admission age for beginners, until the end of
25 the school year the student attains 21 years of age or
26 graduation from high school, whichever occurs first.

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

1 following:

2 (1) is licensed under the act of January 28, 1988
3 (P.L.24, No.11), known as the Private Academic Schools Act;

4 (2) is accredited by an accrediting association approved
5 by the State Board of Education;

6 (3) is a school for students who are visually or hearing
7 impaired receiving Commonwealth appropriations; or

8 (4) is operated by or under the authority of a bona fide
9 religious institution or by the Commonwealth or a political
10 subdivision.

11 "Support level." The level of support needed by an eligible
12 student with a disability, as follows:

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

15 (2) Support level 2. The student is enrolled in a
16 special education school.

17 "Tax credit." The educational improvement tax credit
18 established under this article.

19 Section 1303-B. Qualification and application.

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

25 (b) Information.--In order to qualify under this article, a
26 scholarship organization, a prekindergarten scholarship
27 organization, an opportunity scholarship organization or an
28 educational improvement organization must submit information to
29 the department that enables the department to confirm that the
30 organization is exempt from taxation under section 501(c)(3) of

1 the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C.
2 § 1 et seq.).

3 (c) Scholarship organizations, prekindergarten scholarship
4 organizations and opportunity scholarship organizations.--A
5 scholarship organization, prekindergarten scholarship
6 organization or opportunity scholarship organization must
7 certify to the department that the organization is eligible to
8 participate in the program established under this article and
9 must agree to annually report the following information to the
10 department by September 1 of each year:

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

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

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

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

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

26 (vi) The total and average amounts of scholarships
27 awarded during the immediately preceding school year to
28 eligible students in grades nine through 12.

29 (vii) Where the scholarship organization,
30 prekindergarten scholarship organization or opportunity

1 scholarship organization collects information on a
2 county-by-county basis, the total number and the total
3 dollar amount of scholarships awarded during the
4 immediately preceding school year to residents of each
5 county in which the scholarship organization,
6 prekindergarten scholarship organization or opportunity
7 scholarship organization awarded scholarships.

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

15 (3) The department may not require any other information
16 to be provided by scholarship organizations, prekindergarten
17 scholarship organizations or opportunity scholarship
18 organizations, except as expressly authorized in this
19 article.

20 (d) Educational improvement organization.--

21 (1) An application submitted by an educational
22 improvement organization must describe its proposed
23 innovative educational program or programs in a form
24 prescribed by the department. In prescribing the form, the
25 department shall consult with the Department of Education as
26 necessary. The department shall review and approve or
27 disapprove the application. In order to be eligible to
28 participate in the program established under this article, an
29 educational improvement organization must agree to annually
30 report the following information to the department by

1 September 1 of each year:

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

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

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

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

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

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

29 (e) Notification.--The department shall notify the
30 scholarship organization, prekindergarten scholarship

1 organization, opportunity scholarship organization or
2 educational improvement organization that the organization meets
3 the requirements of this article for that fiscal year no later
4 than 60 days after the organization has submitted the
5 information required under this section.

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

13 Section 1304-B. Application.

14 (a) Scholarship organization, prekindergarten scholarship
15 organization or opportunity scholarship organization.--A
16 business firm shall apply to the department for a tax credit. A
17 business firm shall receive a tax credit if the scholarship
18 organization, prekindergarten scholarship organization or
19 opportunity scholarship organization that receives the
20 contribution appears on the list established under section 1303-
21 B(f).

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

27 (c) Availability of tax credits.--Tax credits shall be made
28 available by the department on a first-come-first-served basis
29 within the limitations established under section 1306-B(a).

30 (d) Contributions.--A contribution by a business firm to a

1 scholarship organization, prekindergarten scholarship
2 organization, opportunity scholarship organization or
3 educational improvement organization shall be made no later than
4 60 days following the approval of an application under
5 subsection (a) or (b).

6 Section 1305-B. Tax credit.

7 (a) Scholarship organizations, educational improvement
8 organizations or opportunity scholarship organizations.--In
9 accordance with section 1306-B(a), the Department of Revenue
10 shall grant a tax credit against any tax due under Article XVI
11 of the act of May 17, 1921 (P.L.682, No.284), known as The
12 Insurance Company Law of 1921, or Article III, IV, VI, VII,
13 VIII, IX or XV of the act of March 4, 1971 (P.L.6, No.2), known
14 as the Tax Reform Code of 1971, to a business firm providing
15 proof of a contribution to a scholarship organization,
16 opportunity scholarship organization or educational improvement
17 organization in the taxable year in which the contribution is
18 made which shall not exceed 75% of the total amount contributed
19 during the taxable year by the business firm. For the fiscal
20 year 2012-2013, the tax credit shall not exceed \$400,000
21 annually per business firm for contributions made to scholarship
22 organizations, educational improvement organizations or
23 opportunity scholarship organizations. For the fiscal year
24 2013-2014 and each fiscal year thereafter, the tax credit shall
25 not exceed \$750,000 annually per business firm for contributions
26 made to scholarship organizations, educational improvement
27 organizations or opportunity scholarship organization.

28 (b) Additional amount.--The Department of Revenue shall
29 grant a tax credit of up to 90% of the total amount contributed
30 during the taxable year if the business firm provides a written

1 commitment to provide the scholarship organization, opportunity
2 scholarship organization or educational improvement organization
3 with the same amount of contribution for two consecutive tax
4 years. The business firm must provide the written commitment
5 under this subsection to the department at the time of
6 application.

7 (c) Prekindergarten scholarship organizations.--In
8 accordance with section 1306-B(a), the Department of Revenue
9 shall grant a tax credit against any tax due under Article XVI
10 of the act of May 17, 1921 (P.L.682, No.284), known as The
11 Insurance Company Law of 1921, or Article III, IV, VI, VII,
12 VIII, IX or XV of the Tax Reform Code of 1971 to a business firm
13 providing proof of a contribution to a prekindergarten
14 scholarship organization in the taxable year in which the
15 contribution is made which shall be equal to 100% of the first
16 \$10,000 contributed during the taxable year by the business
17 firm, and which shall not exceed 90% of the remaining amount
18 contributed during the taxable year by the business firm. For
19 the fiscal year such tax credit shall not exceed \$150,000
20 annually per business firm for contributions made to
21 prekindergarten scholarship organizations.

22 (d) Combination of tax credits.--A business firm may receive
23 tax credits from the Department of Revenue in any tax year for
24 any combination of contributions under subsection (a), (b) or
25 (c). In no case may a business firm receive tax credits in any
26 tax year in excess of \$400,000 for contributions under
27 subsections (a) and (b) made during fiscal year 2012-2013, or in
28 excess of \$750,000 for contributions under subsections (a) and
29 (b) made during any fiscal year thereafter. In no case shall a
30 business firm receive tax credits in any tax year in excess of

1 \$150,000 for contributions under subsection (c).

2 (e) Pass-through entity.--

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

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

18 (3) The shareholder, member or partner may not carry
19 forward, carry back, obtain a refund of or sell or assign the
20 tax credit.

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

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

27 (g) Time of application for credits.--

28 (1) Except as provided in paragraph (2), the department
29 may accept applications for tax credits available during a
30 fiscal year no earlier than July 1 of each fiscal year.

1 (2) The application of any business firm for tax credits
2 available during a fiscal year as part of the second year of
3 a two-year commitment or as a renewal of a two-year
4 commitment that was fulfilled in the previous fiscal year may
5 be accepted no earlier than May 15 preceding the fiscal year.

6 Section 1306-B. Limitations.

7 (a) Amount.--

8 (1) (i) For the fiscal year 2012-2013, the total
9 aggregate amount of all tax credits approved shall not
10 exceed \$200,000,000.

11 (ii) Not more than \$62,000,000 of the total
12 aggregate amount of all tax credits approved shall be
13 used to provide tax credits for contributions from
14 business firms to scholarship organizations.

15 (iii) Not more than \$30,000,000 of the total
16 aggregate amount of all tax credits approved shall be
17 used to provide tax credits for contributions from
18 business firms to educational improvement organizations.

19 (iv) Not more than \$8,000,000 of the total aggregate
20 amount of all tax credits approved shall be used to
21 provide tax credits for contributions from business firms
22 to prekindergarten scholarship organizations.

23 (v) Not more than \$100,000,000 of the total amount
24 of all tax credits approved shall be used to provide tax
25 credits for contributions from business firms to
26 opportunity scholarship organizations.

27 (2) (i) For the fiscal year 2013-2014, the total
28 aggregate amount of all tax credits approved shall not
29 exceed \$250,000,000.

30 (ii) Not more than \$62,000,000 of the total

1 aggregate amount of all tax credits approved shall be
2 used to provide tax credits for contributions from
3 business firms to scholarship organizations.

4 (iii) Not more than \$30,000,000 of the total
5 aggregate amount of all tax credits approved shall be
6 used to provide tax credits for contributions from
7 business firms to educational improvement organizations.

8 (iv) Not more than \$8,000,000 of the total aggregate
9 amount of all tax credits approved shall be used to
10 provide tax credits for contributions from business firms
11 to prekindergarten scholarship organizations.

12 (v) Not more than \$150,000,000 of the total amount
13 of all tax credits approved shall be used to provide tax
14 credits for contributions from business firms to
15 opportunity scholarship organizations.

16 (3) (i) Subject to the annual adjustment provided for
17 in paragraph (4), in the fiscal year 2014-2015 and each
18 fiscal year thereafter, the total aggregate amount of all
19 tax credits approved shall not exceed \$300,000,000.

20 (ii) Not more than \$62,000,000 of the total
21 aggregate amount of all tax credits approved shall be
22 used to provide tax credits for contributions from
23 business firms to scholarship organizations.

24 (iii) Not more than \$30,000,000 of the total
25 aggregate amount of all tax credits approved shall be
26 used to provide tax credits for contributions from
27 business firms to educational improvement organizations.

28 (iv) Not more than \$8,000,000 of the total aggregate
29 amount of all tax credits approved shall be used to
30 provide tax credits for contributions from business firms

1 to prekindergarten scholarship organizations.

2 (v) Not more than \$200,000,000 of the total amount
3 of all tax credits approved shall be used to provide tax
4 credits for contributions from business firms to
5 opportunity scholarship organizations.

6 (4) Beginning in the fiscal year 2015-2016, in any
7 fiscal year in which the total aggregate amount of all tax
8 credits approved for the prior fiscal year is equal to or
9 greater than 90% of the total aggregate amount of all tax
10 credits available for the prior fiscal year, the total
11 aggregate amount of all tax credits available and the amounts
12 specified in subparagraphs (3) (ii), (iii), (iv) and (v) shall
13 each increase by 5%. The department shall publish on its
14 Internet website the total aggregate amount of all tax
15 credits available when the amount is increased under this
16 paragraph.

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

20 (c) Tax liability.--

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

24 (2) In the case of a credit granted to a pass-through
25 entity which elects to transfer the credit according to
26 section 1305-B(e), a tax credit granted for any one taxable
27 year and transferred to a shareholder, member or partner may
28 not exceed the tax liability of the shareholder, member or
29 partner.

30 (d) Use.--A tax credit not used by the applicant in the

1 taxable year the contribution was made or in the year designated
2 by the shareholder, member or partner to whom the credit was
3 transferred under section 1305-B(e) may not be carried forward
4 or carried back and is not refundable or transferable.

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

10 Section 1307-B. Lists.

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

17 Section 1308-B. Guidelines.

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

21 ARTICLE XIII-C

22 EDUCATIONAL OPPORTUNITY SCHOLARSHIP PROGRAM

23 Section 1301-C. Scope of article.

24 This article relates to the Educational Opportunity
25 Scholarship Program.

26 Section 1302-C. Legislative findings.

27 The General Assembly finds that:

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

30 (2) Providing diverse educational opportunities for the

1 children of this Commonwealth is a civic imperative and a
2 matter of serious concern.

3 (3) The importance of quality education and the need to
4 maintain and operate an effective system of education make it
5 imperative to provide for the increased availability of
6 diverse opportunities, including both public and nonpublic
7 programs of education, to benefit all citizens of this
8 Commonwealth.

9 (4) Public schools are the foundation of the system of
10 education in this Commonwealth. Further, Pennsylvania's
11 longstanding tradition of local control of public education
12 allows communities to adapt their public school programs to
13 meet local needs. For these reasons, providing the
14 opportunity for interdistrict school choice is a critical
15 means of providing families with increased educational
16 options within the traditional public school system.

17 (5) It is the long-term goal of the General Assembly to
18 offer assistance to all families in this Commonwealth, to
19 provide every child in this Commonwealth with diverse
20 educational opportunities and options.

21 (6) As an initial step toward the long-term goal of
22 offering assistance to all Pennsylvania families, this
23 article provides assistance to disadvantaged school-age
24 children in this Commonwealth who would otherwise attend
25 persistently low-achieving schools.

26 (7) Many disadvantaged school-age residents of this
27 Commonwealth enjoy comparatively fewer educational
28 opportunities or options than school-age residents who
29 possess greater economic means.

30 (8) The accessibility to families of nonpublic

1 educational alternatives decreases the burdens on the
2 Commonwealth and local school districts and increases the
3 range of educational choices available to Pennsylvania
4 families, thus providing a benefit to all citizens of this
5 Commonwealth.

6 (9) The General Assembly intends the program of
7 educational choice provided in this article to be but one
8 element of its overall program of providing funds to assure
9 the availability of educational opportunities for students
10 enrolled in the schools of this Commonwealth. A comparatively
11 far greater proportion of public funds are and, upon
12 implementation of an educational choice program, will
13 continue to be devoted to the benefit of students enrolled in
14 the public schools of this Commonwealth. Therefore, the
15 General Assembly intends that an educational choice program
16 be viewed as an integral part of its overall program of
17 educational funding, and not as an isolated individual
18 program.

19 (10) A program of financial assistance to enhance
20 educational choice in this Commonwealth, as one element of
21 the Commonwealth's plan for funding diverse educational
22 opportunities, will greatly aid efforts to equalize
23 educational opportunities for the citizens of this
24 Commonwealth, will better prepare Commonwealth citizens to
25 compete for employment opportunities, will foster development
26 of a more capable and better-educated work force and will
27 better enable the Commonwealth to fulfill its obligation of
28 providing children the opportunity of receiving a quality
29 education.

30 Section 1303-C. Definitions.

1 The following words and phrases, when used in this article,
2 shall have the meanings given to them in this section unless the
3 context clearly indicates otherwise:

4 "Attendance boundary." A geographic area of residence used
5 by a school district to assign a student to a public school.

6 "Average daily membership." As defined in section 2501(3).

7 "Business firm." An entity authorized to do business in this
8 Commonwealth and subject to taxes imposed under Article XVI of
9 the act of May 17, 1921 (P.L.682, No.284), known as The
10 Insurance Company Law of 1921, or Article III, IV, VI, VII,
11 VIII, IX or XV of the act of March 4, 1971 (P.L.6, No.2), known
12 as the Tax Reform Code of 1971. The term includes a pass-through
13 entity.

14 "Department." The Department of Education of the
15 Commonwealth.

16 "Eligible student." A student who meets the eligibility
17 requirements established in section 1304-C.

18 "Household income." As defined in section 1302-B.

19 "Kindergarten." A one-year formal kindergarten program that
20 occurs during the school year immediately prior to first grade.

21 "Low-achieving school." A public elementary or secondary
22 school within this Commonwealth that ranked in the lowest 15% of
23 its designation as elementary or secondary for the previous
24 school year based on combined mathematics and reading scores
25 from the annual assessment administered in the previous school
26 year. The term shall not include a charter school, cyber charter
27 school or area vocational-technical school.

28 "Nonpublic school." A nonprofit school, other than a public
29 school:

30 (1) which is located in this Commonwealth;

1 (2) in which a Commonwealth resident may legally fulfill
2 the compulsory school attendance requirements of this act;
3 and

4 (3) which meets the applicable requirements of Title VI
5 of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat.
6 241).

7 The term includes a full-time or part-time kindergarten program
8 operated by a nonpublic school.

9 "Opportunity scholarship organization." An organization that
10 has been qualified to distribute opportunity scholarships under
11 section 1303-B.

12 "Parent." A Commonwealth resident who is a parent having
13 legal custody or guardianship of a school-age child. The term
14 shall also include any Commonwealth resident who keeps in his
15 home a child of school age and supports the child gratis as if
16 the child were his own.

17 "Participating nonpublic school." A nonpublic school which
18 notifies the department under section 1306-C that it wishes to
19 participate in the program established in this article.

20 "Participating nonresident school district." A school
21 district which notifies the department under section 1306-C that
22 it wishes to participate in the program established in this
23 article.

24 "Program." The Educational Opportunity Scholarship Program
25 established under this article.

26 "Recipient." An Educational Opportunity Scholarship
27 recipient.

28 "Scholarship." An Educational Opportunity Scholarship
29 awarded to a scholarship recipient under this article to pay
30 tuition and school-related fees for the recipient to attend a

1 participating nonresident school district school or
2 participating nonpublic school.

3 "School-age student." A child enrolling in kindergarten or
4 in grades one through 12.

5 "School district of residence." The school district in which
6 a school-age student resides.

7 "School-related fees." Fees charged by a school to all
8 students for books, instructional materials, technology
9 equipment and services, transportation, uniforms and activities.

10 "Student." A school-age resident who attends or is about to
11 attend a full-time kindergarten, a part-time kindergarten, an
12 elementary school or a secondary school within this
13 Commonwealth.

14 "Student with a disability." As defined in 22 Pa. Code §
15 14.101 (relating to definitions).

16 Section 1304-C. Educational Opportunity Scholarship Program.

17 (a) Establishment.--Beginning with the 2012-2013 school
18 year, the Educational Opportunity Scholarship Program is
19 established to provide scholarships to eligible students who
20 reside within the attendance areas of low-achieving schools to
21 pay tuition and school-related fees to attend a school within a
22 participating nonresident school district or participating
23 nonpublic school selected by the student's parents.

24 (b) Eligibility.--The Educational Opportunity Scholarship
25 Program shall be available to all students who reside within the
26 attendance boundary of a low-achieving school as of the first
27 day of classes of the school year for which the educational
28 opportunity scholarship is to be awarded, and whose household
29 income does not exceed \$75,000. Notwithstanding the fact that a
30 school may be removed from the list of low-achieving schools,

1 any child enrolled in a nonresident public school or a
2 participating nonpublic school who received an educational
3 opportunity scholarship under this article in the prior school
4 year shall receive an educational opportunity scholarship in
5 each school year of enrollment under the educational opportunity
6 scholarship program, provided that the child remain eligible.
7 For purposes of this subsection, the residence of a child shall
8 be determined under section 1302.

9 (c) List of low-achieving schools to be published.--By July
10 15, 2012, and by February 1 of each year thereafter, the
11 department shall publish on the department's publicly accessible
12 Internet website and in the Pennsylvania Bulletin a list of low-
13 achieving schools that will be in effect for purposes of this
14 article for the following school year. The department shall
15 publish the list based upon results from the annual assessment
16 administered in the previous school year.

17 (d) Notice.--

18 (1) For each school year, by a date established by the
19 department, each school district that receives a notification
20 from the department under section 1307-C that it has at least
21 one low-achieving school shall post on its publicly
22 accessible Internet website notice of all of the following:

23 (i) A description of the Educational Opportunity
24 Scholarship Program.

25 (ii) Instructions for applying for an Educational
26 Opportunity Scholarship.

27 (iii) A list of schools in the school district that
28 have been designated by the department as low-achieving
29 schools.

30 (iv) Notice that a parent must contact directly the

1 participating nonresident school district or
2 participating nonpublic school in which the parent's
3 child seeks to enroll for application instructions.

4 (2) The notice shall be in a form provided by the
5 department.

6 Section 1305-C. Educational Opportunity Scholarships.

7 (a) Funding.--The total amount of Educational Opportunity
8 Scholarships provided for shall be limited to the funds
9 accumulated as a result of contributions made by business firms
10 to opportunity scholarship organizations.

11 (b) Amount.--The maximum amount of a scholarship awarded to
12 a student without a disability shall be \$8,500. The maximum
13 amount of a scholarship awarded to a student with a disability
14 shall be \$15,000. In no case shall the combined amount of the
15 scholarship awarded to a scholarship recipient and any
16 additional financial assistance provided to a recipient exceed
17 the tuition rate and school-related fees for the participating
18 nonpublic school or nonresident public school district.

19 (c) Tuition rates.--No participating nonresident school
20 district or participating nonpublic school may charge an
21 eligible recipient a higher tuition rate or school-related fee
22 than the participating nonresident school district or
23 participating nonpublic school would have charged to a similarly
24 situated student who had not received an opportunity
25 scholarship. Notwithstanding the provisions of section 2561, a
26 participating nonresident school district may charge scholarship
27 recipients a tuition rate that is lower than that charged to
28 students who are not recipients of scholarships.

29 (d) Home schooling.--A scholarship shall not be awarded for
30 enrollment in a home education program under section 1327.1.

1 (e) Taxation.--A scholarship shall not be considered taxable
2 income for purposes of Article III of the act of March 4, 1971
3 (P.L.6, No.2), known as the Tax Reform Code of 1971, or a local
4 taxing ordinance.

5 (f) Financial assistance.--A scholarship shall not
6 constitute financial assistance or an appropriation to the
7 participating nonpublic school attended by a scholarship
8 recipient.

9 Section 1306-C. Participation in the program.

10 (a) Voluntary.--The determination by a participating
11 nonresident school district or participating nonpublic school to
12 enroll students as part of the program is voluntary.

13 (b) Notice.--

14 (1) By August 1, 2012, and by February 1 of each year
15 thereafter, a school district or nonpublic school that wishes
16 to enroll scholarship recipients as part of the program must
17 notify the department of its intent to participate.

18 (2) For a school district, the notice under paragraph
19 (1) must be submitted on a form developed by the department
20 immediately upon the effective date of this article and shall
21 specify all of the following:

22 (i) The schools within the school district which
23 eligible scholarship recipients may attend.

24 (ii) The amount of tuition attributable to each
25 available seat. The amount under this subparagraph shall
26 not exceed the amount calculated under section 2561.

27 (3) For a nonpublic school, the notice under paragraph
28 (1) must be submitted on a form developed by the department
29 immediately upon the effective date of this article and shall
30 specify the amount of tuition attributable to an available

1 seat.

2 (c) School district criteria.--For a school district which
3 intends to enroll students as part of the program, the following
4 criteria apply:

5 (1) Except as hereinafter provided, the school district
6 shall enroll students in participating schools on a lottery
7 basis from a pool of applicants who meet the application
8 deadline set by the department until the school fills its
9 available seats. The pool may not include a student who:

10 (i) has been expelled or is in the process of being
11 expelled under section 1317.2 or 1318 and applicable
12 regulations of the State Board of Education; or

13 (ii) has been recruited by the school district or
14 its representatives for athletic purposes.

15 (2) The enrollment of scholarship recipients may not
16 place the participating nonresident school district in
17 violation of a valid and binding desegregation order.

18 (3) Priority shall be given to:

19 (i) Existing scholarship recipients.

20 (ii) A scholarship applicant who is a sibling of a
21 student currently enrolled in the school district.

22 (d) Nonpublic school criteria.--For a nonpublic school which
23 intends to participate in the program, the following criteria
24 shall apply:

25 (1) The nonpublic school may not discriminate on a basis
26 which is illegal under Federal or State laws applicable to
27 nonpublic schools prior to the effective date of this
28 article.

29 (2) The nonpublic school shall comply with section 1521.

30 (3) The nonpublic school may not recruit a public school

1 student who receives an scholarship to enroll for athletic
2 purposes.

3 (e) Construction.--Nothing in this article shall be
4 construed to:

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

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

20 Section 1307-C. Procedures.

21 (a) Notification to school district and to opportunity
22 scholarship organizations.--By July 15, 2012, and by February 1
23 of each year, the department shall notify every school district
24 identified as having at least one low-achieving school of its
25 designation and shall furnish the school district and all
26 qualified opportunity scholarship organizations with a list of
27 all low-achieving schools located within the school district.

28 (b) Notification to parents.--

29 (1) Within 15 days of receipt of the notification under
30 subsection (a), the school district shall notify the parents

1 of each student currently attending a low-achieving school or
2 who would be a kindergarten student assigned to a low-
3 achieving school during the school year of the school's
4 designation and shall provide information regarding the
5 program established under this article, including:

6 (i) A description of the program.

7 (ii) Instructions for obtaining information about
8 applying for a scholarship under the program.

9 (iii) Notice of the parent's responsibilities with
10 regard to applying to a participating nonresident school
11 district or participating nonpublic school for
12 enrollment. Notification to the parents shall be in a
13 form provided by the department.

14 (2) The notification required under this subsection
15 shall also be posted on the school district's publicly
16 accessible Internet website.

17 (3) The notification required under this subsection
18 shall also be provided to students who reside within the
19 attendance area of a low-achieving school.

20 (c) Rules, policies and procedures.--Prior to enrollment,
21 the parent of a recipient shall be informed of any and all
22 rules, policies and procedures of the school within a
23 participating nonresident school district or participating
24 nonpublic school which the recipient will be attending,
25 including academic policies, disciplinary rules and
26 administrative procedures of the school. Enrollment of a
27 recipient in a school in a participating nonresident school
28 district or participating nonpublic school shall constitute
29 acceptance of any rules, policies and procedures of the school.

30 Section 1308-C. Transportation.

1 (a) Provision.--Transportation shall be provided under
2 section 1361.

3 (b) Reimbursement.--Reimbursement shall be as follows:

4 (1) Transportation of a scholarship recipient attending
5 a participating nonresident school district shall be subject
6 to reimbursement under section 2541.

7 (2) Transportation of a scholarship recipient attending
8 a participating nonpublic school shall be subject to
9 reimbursement under sections 2509.3 and 2541.

10 Section 1309-C. Subsidy continuation.

11 Notwithstanding any other provision of law to the contrary,
12 an educational opportunity scholarship recipient who was
13 enrolled in the recipient's resident school district or in a
14 charter school or cyber charter school when the recipient first
15 received an Educational Opportunity Scholarship under this
16 article shall continue to be counted in the average daily
17 membership of the resident school district for a period of one
18 year after enrolling in a participating nonresident public
19 school or a participating nonpublic school. During that same
20 period, a nonresident school district in which the recipient is
21 enrolled shall not include the recipient in the nonresident
22 school district's average daily membership.

23 Section 1310-C. Tuition grants by school districts.

24 (a) General rule.--The board of school directors of any
25 school district may use funds received from the Commonwealth for
26 educational purposes to establish a program of tuition grants to
27 provide for the education of school-age children who reside in
28 that district and who attend or will attend a public or
29 nonpublic school on a tuition-paying basis.

30 (b) Nonpublic school grant amount.--For students who attend

1 or will attend a nonpublic school, the grant amount for each
2 student shall not exceed the amount of the per pupil State
3 subsidy for basic education funding that would be paid to the
4 district if the student would be enrolled in the public schools
5 of that district.

6 (c) Average daily membership.--A student who receives a
7 tuition grant shall be included in the average daily membership
8 for purposes of determining the district's basic education
9 funding. A student who receives a grant to attend a public
10 school outside the district shall not be included in the average
11 daily membership of the receiving school district.

12 (d) Guidelines.--The board of school directors of a school
13 district shall prepare guidelines establishing an application
14 form and approval process, standards for verification as to the
15 accuracy of application information, confirmation of attendance
16 by grant recipients, restrictive endorsement of grant checks by
17 parents to the school chosen by the parents, pro rata refunds of
18 grants for students who withdraw during the school year,
19 repayment of refunded grants to the school district and
20 reasonable deadline dates for submission of grant applications.
21 The board of school directors of a school shall announce the
22 award of grants no later than August 1 of the school year in
23 which the grants will be utilized. Upon receipt of written
24 confirmation of enrollment from the recipient's school of
25 choice, grants shall be paid to the parents of an eligible grant
26 recipient by a check that may only be endorsed to the selected
27 school. In the event a grant recipient is no longer enrolled
28 prior to the completion of the school term, the school shall
29 send written notice thereof to the school district.

30 (f) Nontaxable.--Grants awarded to eligible recipients under

1 this section shall not be considered taxable income for purposes
2 of any local taxing ordinance or for purposes of Article III of
3 the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform
4 Code of 1971, nor shall such grants constitute financial
5 assistance or appropriations to the school attended by the grant
6 recipient.

7 (g) Construction.--Nothing in this section shall be
8 construed to empower the Commonwealth or any school district or
9 any of their agencies or officers to prescribe the course
10 content or admissions criteria for any religiously affiliated
11 school, to compel any private school to accept or enroll the
12 children of eligible grant recipients, to impose any additional
13 requirements on any private school that are not otherwise
14 authorized under this act or to require any school to accept or
15 retain the children of any eligible grant recipient if the
16 school does not offer programs or is not structured or equipped
17 with the necessary facilities to meet the special needs of the
18 student or does not offer a particular program requested.

19 (h) Definition.--For purposes of this section, the term
20 "school" shall mean a public or nonpublic kindergarten,
21 elementary school or secondary school at which the compulsory
22 attendance requirements of the Commonwealth may be met and which
23 meets the applicable requirements of Title VI of the Civil
24 Rights Act of 1964 (Public Law 88-352, 78 Stat. 241).
25 Section 1311-C. Exclusive jurisdiction.

26 The Pennsylvania Supreme Court shall have exclusive
27 jurisdiction to hear any challenge or to render a declaratory
28 judgment concerning the constitutionality of this article. The
29 Supreme Court may take such action as it deems appropriate,
30 consistent with the Supreme Court's retaining jurisdiction over

1 such a matter, to find facts or to expedite a final judgment in
2 connection with such a challenge or request for declaratory
3 relief.

4 Section 2. Repeals are as follows:

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

8 (2) Article XVII-F and section 2902-E(b) of the act of
9 March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
10 1971, are repealed.

11 Section 3. The provisions of Articles XIII-B and XIII-C of
12 the act are severable. If any provision of those articles or
13 their application to any person or circumstance is held invalid,
14 the invalidity shall not affect other provisions or applications
15 of those articles which can be given effect without the invalid
16 provision or application.

17 Section 4. This act shall take effect as follows:

18 (1) The following provisions shall take effect July 1,
19 2012, or immediately, whichever is later:

20 (i) The addition of Article XIII-B of the act.

21 (ii) Section 2 of this act.

22 (2) The remainder of this act shall take effect
23 immediately.