

S.B. 1, P.N. 1031 - WITH AMENDMENT A01748
“OPPORTUNITY SCHOLARSHIP
AND EDUCATIONAL IMPROVEMENT TAX CREDIT ACT”

I. Overview

- **Implementation:** Year 1 begins in 2012-2013 (**Amendment:** *implementation delayed one year*, from 2011-2012 to 2012-2013)
 - Means no budgetary impact in the 2011-2012 fiscal year
- **For low-income students (130% of poverty):** Includes “opportunity scholarships” to provide both public-to-public and public-to-private school choice for low-income students
- **For middle-income students:** Includes an EITC funding increase bringing the program to \$100 million beginning on July 1, 2012 and moves the EITC provisions back into the School Code
 - An increase of \$25 million
- **For middle-income students (Amendment: *increased to 350% of poverty - up from 300%*):** Beginning in year 4, includes “middle-income scholarships” to provide both public-to-public and public-to-private school choice for middle-income students
- Beginning in year 4, includes grants to school districts to start local school choice programs
- Scholarship programs will be administered by PDE, with the Education Opportunity Board serving as an advisory board (**Amendment:** *Previously, the program was to be administered by the Education Opportunity Board*)
- Pennsylvania Supreme Court will have exclusive jurisdiction over challenges, with the ability to render a declaratory judgment on the law’s constitutionality
- Funding for the Opportunity Scholarship program is subject to annual appropriation, with funds distributed on a pro rata basis depending upon appropriations
 - In year 3 and beyond, opportunity scholarship awards for children who do not reside within the attendance boundary of a low achieving school and for children who did not qualify for the program in year 1 or 2 will be capped at 3% of the basic education funding appropriation for the prior school year (**Amendment:** Change from fixed cap of \$250 million to approximately \$163 million)
- Funding for the Middle-Income Scholarship program and Public School Choice Demonstration Grant program will come from the Excess Scholarship Account (**Amendment:** The entire account will be used to fund these programs; previously, only half the account was used for this purpose)

II. Scope of Low-Income Opportunity Scholarship Program

- **Eligibility:** All low-income children, phased in as follows:
 - Year 1 - low-income students *currently attending* low achieving schools and low-income students about to enter kindergarten in a low achieving school
 - Year 2 - *all* low-income students residing within the attendance boundary of a low achieving school as of the first day of classes of a school year
 - Year 3 - *all low-income students* regardless of school

- Definition of “low achieving school”: A public elementary or secondary school in Pennsylvania achieving within the lowest measured group of 5% of combined math and reading scores on the most recent PSSA (**Amendment:** term changed from “persistently lowest-achieving school”; elementary and secondary schools ranked separately; AYP is not considered)
 - Excludes schools that students and their families choose (*i.e.*, charter schools, cyber charter schools, area vo-tech schools, magnet schools, schools without specific attendance boundaries and schools with specialized academic programs and admissions criteria)
 - Includes 112 elementary schools and 30 secondary schools (***PDE list***)
- Definition of “low-income child”: 130% of federal poverty level (\$28,665 for a family of four)
- Amount of opportunity scholarship:
 - Base amount of 100% of the state’s per-pupil subsidy to the child’s resident school district
 - Not to exceed the student’s actual tuition at the school district or private school attended

III. Implementation of Low-Income Opportunity Scholarship Program

- For public-to-public enrollment:
 - In addition to the state-funded opportunity scholarship, a student’s resident school district may create a locally-funded scholarship equal to at least 35% of local per-pupil spending
 - An additional incentive for a district to receive nonresident students
 - School districts will not be required to accept scholarship students, but instead will develop their own admissions policies requiring that, if any students are accepted, they are accepted by lottery
 - School districts may give priority to (1) students who have been awarded a local scholarship by their resident school districts; and (2) students who are siblings of currently enrolled students (**Amendment:** sibling priority was added)
- Enrollment applications: Students apply directly to the school district or private school desired, which notifies PDE of the student’s enrollment
 - Athletic recruiting is prohibited
 - **Amendment:** School districts must notify PDE of their intent to enroll scholarship students, but are not required to certify open attendance slots
- Scholarship applications: Students apply directly to PDE, which determines the scholarship amounts and distributes the awards
 - For students attending private school: Payment by check made payable to the parents, but endorsable only to the private school the student attends
 - Enhanced penalties if the check is not endorsed as directed by PDE (*i.e.*, civil penalty of 300% of the voucher award, ineligibility for future awards, and criminal prosecution); each check will contain a statement warning the endorser of possible penalties
 - For students attending public school: Payment made by transfer from the Commonwealth directly to the public school the student attends
- Education Choice Board:
 - 3 members appointed by the Governor
 - **Amendment:** Initial members are appointed without Senate confirmation; successors still require Senate confirmation
 - 4-year terms
 - **Amendment:** Approves guidelines developed by PDE, advises PDE on the administration of the program (previously, the Board was to administer the program), and delivers an annual report
 - **Amendment:** PDE provides staffing from existing personnel

IV. Programs to Benefit the Middle Class

- Public School Choice Demonstration Grant Program:
 - A school district may apply for funding to establish a tuition grant program for students who wish to attend a nonresident public school
 - School districts applying must demonstrate a commitment of funds received from both local sources and the Commonwealth equal to at least \$3 for every \$1 of grant funds received
 - Program is entirely optional to school districts
 - School districts set the parameters of the program (*e.g.*, income limit, grade levels, etc.)
- Middle-Income Scholarship Program:
 - Students would apply to PDE for scholarships, which would be awarded on a pro rata basis from available funds
 - Private schools accepting students under the Middle-Income Scholarship program would be required to comply with rules on enrollment, discrimination, testing, tuition, etc. that would be substantially identical to those applying to the low-income Opportunity Scholarship program
 - Would apply to students with a household income not exceeding 3.5 times the Federal poverty level (\$78,225 for a family of four) (**Amendment:** Increased from 3 times Federal poverty level)

V. Excess Scholarship Account

- Amounts awarded to a student over and above the student's tuition charge will be placed into the Excess Scholarship Account (**Amendment:** Previously, the Excess Scholarship Fund was an unrestricted fund, but under the amendment will be a restricted account within the General Fund, appropriated to PDE)
- Money in the Excess Scholarship Account will be used as follows:
 - In years 2 and 3: 100% applied to offset costs of the Opportunity Scholarship program
 - In years 4 and beyond:
 - ½ applied to Public School Choice Demonstration Grant program
 - ½ applied to Middle-Income Scholarship program
 - **Amendment:** Previously, beginning in year 4, ½ the account continued to be applied toward the Opportunity Scholarship program, with ¼ applied to the Public School Choice Demonstration Grant program and ¼ applied to the Middle-Income Scholarship program; now the entire account will be used for the Demonstration Grant and Middle-Income programs beginning in year 4

VI. EITC

- **Amendment:** EITC increase and programmatic changes become effective July 1, 2012 (moved back one year from July 1, 2011)
- Increases EITC to \$100 million
 - An increase of \$25 million over the \$75 million that will be in effect in fiscal year 2011-2012
 - \$92 million available to scholarship organizations (SOs) and educational improvement organizations (EIOs)
 - \$8 million available to pre-kindergarten scholarship organizations (PKSOs)
- Of the \$92 million available to SOs and EIOs, 75% will be available to SOs and 25% will be available to EIOs
 - Currently, 2/3 is available to SOs and 1/3 is available to EIOs

- Timing of applications:
 - All applications may be filed beginning May 15 for a fiscal year beginning on July 1
 - Applications will be accepted in the following order beginning on July 1 (to the extent insufficient credits area available, applications will be accepted on a pro rata basis):
 - Group 1 firms that have applied by July 1 (Group 1: any business firm entering the second year of a two-year commitment)
 - Group 2 firms that have applied by July 1 (Group 2: any business firm renewing a two-year commitment or contributing to a PKSO in the same amount that it contributed in the most recent fiscal year)
 - Group 3 firms that have applied by July 1 (Group 3: any business firm that is not in Group 1 or Group 2)
 - If any credits remain, the applications of all firms that apply after July 1 will be considered on a daily basis

- Contributions to EIOs that are school foundations: 20% of the amount of tax credits available for contributions to EIOs will be set aside for contributions to EIOs that are also school foundations
 - After July 1, any tax credits remaining from the set-aside amount will be made available to business firms for contributions to any EIO

- Additional tax included in EITC program: Business firms will be able to make EITC contributions in return for a credit on the Surplus Lines Tax, a tax imposed under the Insurance Law

- Other proposed changes to the EITC program:
 - Credits may be claimed on joint returns
 - Automatic increase mechanism:
 - Beginning in the 2015-2016 fiscal year, the available EITC credit will automatically increase by 5% if, in any fiscal year, the amount of credit approved equals or exceeds 90% of the amount of credit available
 - Increased credit amount would be the base amount available going forward

VII. Amendment A01748 (Agreed upon with Corbett Administration)

- **Effective Date:** Effective date of implementation of Opportunity Scholarship program and EITC increase and programmatic changes is delayed one year, to 2012-2013

- **Cap on Year 3:** Scholarships for students whose eligibility begins in year 3 (*i.e.*, low-income children who do not live within the attendance boundary of a low-achieving school) will be capped at 3% of the basic education funding appropriation for the prior school year
 - Projected to be approximately \$163 million in 2014-2015)

- **PDE Administers Program:** PDE will administer the program and establish guidelines
 - Education Opportunity Board will advise PDE on implementation and administration of the program and will approve the guidelines developed by PDE

- **Education Opportunity Board:**
 - Education Opportunity Board will advise PDE on implementation and administration of the program and will approve the guidelines developed by PDE
 - The Governor will appoint the initial three members of the Board; future appointments will require Senate confirmation

- Board will prepare an annual report describing the manner in which the Board carries out its powers and duties
- PDE shall provide the Board with staff from existing PDE personnel
- **Low achieving schools:**
 - Term has changed (from “persistently lowest-achieving schools”)
 - Method of determining the list of schools has changed
 - Bottom 5% of elementary and secondary schools (ranked separately)
 - Based on combined math and reading scores for the most recent PSSA
 - AYP is not considered
 - Charters, vo-techs, magnets and schools without attendance boundaries are still excluded
- **Excess Scholarship Account:**
 - Excess Scholarship Fund becomes Excess Scholarship Account, a restricted account in the General Fund
 - Beginning in year 4, the entire amount in the account will be used to fund the Public School Choice Demonstration Grant program and the Middle-Income Scholarship Program (1/2 of the account will be allocated to each)
- **Middle-Income Eligibility:** Middle-Income Scholarship program eligibility increase to 350% of Federal Poverty Level (from 300%)
- **Admission Priority for Siblings:** Allow school districts to give admission priority to siblings of students who are currently enrolled in the district
- **Testing:**
 - PDE must conduct a study of the effectiveness of the testing provisions applicable to private schools -- but may not demand information from private schools other than aggregate test results posted on the schools’ Internet websites
 - PDE develops policies and procedures to be followed by the private schools in posting aggregate testing results on their Internet websites -- but may not require a private school to provide individual or aggregate test results directly to PDE or require information beyond the posting of aggregate test results
- **Minor technical amendments:**
 - Add definitions of “elementary school” and “secondary school”, for purposes of determining the list of “low achieving schools”
 - Clarify that a student’s scholarship amount will not be reduced if the student’s public school improves and is no longer on the list of low achieving schools
 - Clarify that a nonresident school district is not required to provide field trip transportation services to another school district
 - Clarify that educational services required to be provided to a student who has been expelled from a private school will be determined based on federal and state law
 - Clarify that scholarship recipients who were enrolled in a resident school district before enrolling in either a nonresident public school or a private school will remain in the resident school district’s average daily membership
 - Clarify that PDE transmits local scholarship funds to the nonresident school district in which a local scholarship recipient is enrolled